

**WSR 08-02-005**  
**PROPOSED RULES**  
**SPOKANE REGIONAL**  
**CLEAN AIR AGENCY**

[Filed December 19, 2007, 4:58 p.m.]

Supplemental Notice to WSR 07-21-113.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: SRCAA Regulation I, Article II, Section 2.09 Source Tests.

Hearing Location(s): Spokane County Public Works Building, 1206 West Broadway, Hearing Room Lower Level, Spokane, WA 99201, on February 7, 2008, at 9:00 a.m.

Date of Intended Adoption: February 7, 2008.

Submit Written Comments to: Joe Southwell, 1101 West College, Suite 403, Spokane, WA 99201, e-mail jsouthwell@spokane-cleanair.org, fax (509) 477-6828, by 4:30 p.m. on January 22, 2008.

Assistance for Persons with Disabilities: Contact Barbara Nelson by 4:30 p.m. on February 1, 2008, (509) 477-4727.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New section in Regulation I, Article II, to establish notification, performance, and reporting requirements for source tests performed in SRCAA's jurisdiction.

A public hearing on the proposed rule was originally held on December 6, 2007 (see original CR-102, WSR 07-21-113). Based on comments received during the public hearing, Spokane Regional Clean Air Agency (SRCAA) has made revisions to the following sections of the originally proposed rule: Section E (1st paragraph), Section E.9, Section I, Section K.1, Section K.2, Section 4, Section 6 (1st paragraph), and Section K.6.a. These changes to the originally proposed rule are considered substantive, therefore this CR-102 is being filed as a supplemental notice to WSR 07-21-113.

Reasons Supporting Proposal: SRCAA does not currently have a source test regulation in place.

Statutory Authority for Adoption: RCW 70.94.141(1).

Statute Being Implemented: Chapter 70.94 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: SRCAA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Joe Southwell, SRCAA, 1101 West College, Suite 403, Spokane, WA 99201, (509) 477-4727.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is a local air pollution control authority rule and as such, chapter 19.85 RCW does not apply.

A cost-benefit analysis is not required under RCW 34.05.328. This is a local agency rule and pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule.

December 19, 2007

Joe R. Southwell  
Air Quality Engineer

**NEW SECTION**

REGULATION I, ARTICLE II, SECTION 2.09

**ARTICLE II**

**SECTION 2.09 SOURCE TESTS**

A. Purpose. This Section establishes notification, performance, and reporting requirements for all source tests and combustion tests performed to determine compliance with applicable air quality regulations and/or emission standards.

B. Applicability. This Section applies to any source test performed on sources established or operated in Spokane County that will be submitted to the Agency for regulatory purposes. Tests performed on gasoline dispensing facilities are exempt from the requirements of this section, unless otherwise required by the Agency.

Combustion tests performed on fuel burning equipment shall meet the requirements of Section 2.09.K.

C. Definitions. In addition to the definitions given in SRCAA Regulation I, Article I, Section 1.04, and unless a different meaning is clearly required by context, words and phrases used in this Section shall have the following meaning:

1. Combustion test means a test performed on fuel burning equipment, using a combustion analyzer, for purposes of analyzing the combustion products produced by the equipment.

2. Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or improper operation are not malfunctions.

3. Regulated pollutant means any air contaminant regulated under the Federal Clean Air Act, the Washington Clean Air Act, Washington Administrative Code, and/or SRCAA regulations.

4. Regulatory purposes means to determine compliance with an applicable air quality regulation or emission standard or as otherwise required by the Agency.

5. Representative operating conditions means the range of combined process, production, and control measure conditions under which the source normally operates or will normally operate (regardless of the frequency of the conditions). Operations during startup, shutdown, and malfunctions do not constitute representative operating conditions.

6. Source test means any testing performed at a source that measures i) the amount or concentration of a regulated pollutant, pollutants, or surrogates being emitted; ii) the capture efficiency of a capture system; and/or iii) the destruction or removal efficiency of a control device used to reduce emissions. Combustion tests and data accuracy assessments of continuous emission monitoring systems (i.e., relative accuracy tests, cylinder gas audits, etc.) are not considered source tests.

D. Test Methods. Testing of sources for regulatory purposes shall be performed in accordance with U.S. Environmental Protection Agency (EPA) approved methods as found in 40 CFR Parts 51, 60, 61, and 63, as in effect on the date identified in SRCAA Regulation I, Article II, Section 2.13. Alternative methods may be used, provided the method(s)

has been approved by the Agency and/or EPA prior to performing the test.

E. Test Notifications and Plans. At least 15 calendar days prior to performing the source test, a test notification and plan shall be submitted to the Agency for review and approval. Test notifications and plans shall be submitted in writing by either hard copy, facsimile, or e-mail. The 15-day submittal requirement may be waived upon receipt of written Agency approval. The test plan shall include, unless otherwise specified in writing by the Agency, the following information:

1. Facility name, mailing address, and source location;
2. Facility contact name(s) and telephone number(s);
3. Source testing company name, company contact name(s), and telephone number;
4. Source testing schedule and date(s);
5. Source description including a description of the pollution control device and sample locations;
6. Pollutant(s) to be measured;
7. Test methods;
8. Number of test runs and length of each individual test run;
9. A description of what constitutes representative process and control conditions for the source to be tested (i.e., production rate, etc.). This shall include the expected process and control conditions (including production rate) during testing;
10. Applicable process and/or production information to be collected during the source test;
11. Control device operating parameters to be monitored during the source test;
12. Fuel and/or raw material samples (if applicable), type of analysis, how the samples will be collected, and who will collect the samples;
13. Timeline for submittal of the final test report to SRCAA;
14. Any other testing information required by the Agency.

Once approved, the source test plan shall be followed. Changes to approved plans may be implemented upon receipt of Agency approval prior to completion of the source test. Test plan modification requests may be submitted in writing by either hard copy, facsimile, or e-mail. SRCAA may require a new series of tests for test plan modifications submitted after initiation of the tests and prior to completion of the tests.

F. Test Procedures.

1. The source test shall consist of a minimum of three (3) individual runs, unless otherwise required in the test method or written Agency approval is given for an alternative testing scenario prior to performing the source test.
2. The individual pollutant test runs for any source test shall be performed consecutively, with no overlap of any test runs for the same pollutant. Test runs may overlap provided the overlapping test runs are not for testing the same pollutant or are not being performed using the same test method. Each consecutive test run shall be initiated as soon as practicable after completion of the previous test run, unless Agency approval is given for an alternative testing scenario prior to performing the source test.

3. During each source test, the source to be tested shall be operated as described in the approved source test plan, unless an alternative operating scenario is approved by the Agency prior to performing the source test. Upon acceptance of the source test, the source will be limited to no more than 110% of the average production rate that the source operated during that source test, unless otherwise allowed by regulation or Agency issued Order.

G. Stoppages.

1. A source test may be stopped only because of safety reasons or testing and/or process equipment malfunction. The testing shall be resumed as soon as practicable. A source test may not be stopped solely due to the expected or known failure of one or more test runs to meet applicable standards.
2. The Agency shall be notified of any test stoppage as soon as practicable, but no later than the next working day (i.e., Monday through Friday, excluding legal holidays observed by the Agency).
3. The reason for the test stoppage shall be documented and included in the source test report. All test data collected during a stopped test shall be included in the source test report. The Agency will evaluate the reason for the stoppage and determine if it meets the stoppage provisions in Section 2.09.G.1.

H. Invalidation of Test Results. For any test results that are found or considered to be invalid, due to stoppages, sampling or analysis problems or errors, or other reasons, the invalid data must be included in the test report. The reason that the test results were invalidated shall be documented and included in the test report. The Agency will evaluate the reason for the test results invalidation and determine whether to accept or reject the source test results.

I. Postponements/Rescheduling. A source test shall not be postponed and/or rescheduled without prior Agency notification. Postponement notifications for a scheduled source test shall include the reason(s) for the requested postponement and the date of the rescheduled source test. Postponement and/or rescheduling notifications shall be made by telephone or submitted in writing by either hard copy, facsimile, or e-mail. Within two working days after a telephone notification is made, a written notification must be submitted by either hard copy, facsimile, or e-mail.

J. Test Reports.

1. Reports of all source tests performed under this section shall be submitted to the Agency regardless of the source test results (i.e., failure to meet an emission limit or standard, test stoppage, equipment malfunction, test data invalidation, etc.).
2. Source test reports shall be submitted to the Agency as described in the approved test plan, unless an alternative test report submittal timeline has received written Agency approval.
3. The source test report shall, at a minimum, include the following information:
  - a) Source testing company name, company contact name(s), and phone number;
  - b) Facility name, mailing address, and source location;
  - c) Facility contact name(s) and telephone number(s);
  - d) Description of the source and the sampling locations;
  - e) Date(s) of the source test;

f) Summary of results, reported in units and averaging periods consistent with the applicable emission standard.

g) Length, in minutes, of each individual test run, including start and end times for each individual test run;

h) Description of any test stoppages and re-starts, and the reasons for each test stoppage;

i) Description of any deviations from the approved source test plan and the reason for the deviation;

j) Description of the test methods and quality assurance procedures employed;

k) Operating parameters and production data for the source and control equipment during the test, as specified in the approved test plan under Section 2.09E.10-12;

l) Company name, contact name, and telephone number of the laboratory processing any samples;

m) All field data collected and example calculations;

n) Any reasons for considering a test run(s) to be invalid;

o) Any reasons for objection of use of a test run(s) for regulatory purposes;

p) A statement signed by the responsible official of the testing company certifying the validity of the source test report; and

q) Any other information specified and/or required by the Agency in the approved test plan.

K. Combustion Tests. Unless otherwise required by the Agency, combustion tests performed on fuel burning equipment for regulatory purposes shall meet all of the following requirements:

1. The Agency shall be notified at least two working days prior to performing the combustion test, unless an alternative notification timeline is approved the Agency.

2. The fuel burning equipment shall be operated at high fire during the combustion test. The combustion test shall be performed under representative operating conditions for the equipment.

3. The combustion test equipment shall be capable of analyzing for the pollutant to be measured.

4. Immediately prior to the test, the combustion analyzer shall be calibrated using the analyzer manufacturer's recommended calibration procedures.

5. During each combustion test, the following operational parameters shall be measured and recorded:

a) Concentration (ppmv) of the measured pollutant in the exhaust gases;

b) Exhaust gas temperature;

c) Percent oxygen for each pollutant concentration reading; and

d) Average load for the fuel burning equipment tested.

6. A report documenting the results of each combustion test shall be submitted to SRCAA within 30 calendar days of each test, unless an alternative test report submittal timeline has been approved the Agency. The report shall include:

a) Calibration report for the combustion analyzer, including the calibration method and type and concentration of each gas used to calibrate the combustion analyzer;

b) Summary of the measured pollutant emissions given in ppmv and corrected to 3% oxygen, unless a different correction is required by regulation or Agency issued Order;

c) Parameters listed under Section 2.09.K.5 above; and

d) Copies of actual data sheets.

**Reviser's note:** The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

## WSR 08-02-013

### PROPOSED RULES

#### HORSE RACING COMMISSION

[Filed December 21, 2007, 8:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-22-059.

Title of Rule and Other Identifying Information: WAC 260-28-200 Trainer—Paddock duties.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on February 14, 2008, at 9:30 a.m.

Date of Intended Adoption: February 14, 2008.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by February 5, 2008.

Assistance for Persons with Disabilities: Contact Patty Sorby by February 5, 2008, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend WAC 260-28-200 no [to] not only require the trainer to have his horse at the paddock at the appointed time, but to also require the trainer to have his horse at the receiving barn at the appointed time.

Reasons Supporting Proposal: There is an expectation that races will begin at the set post time, not only for the local bettor in the stands, but for all the bettors outside the state of Washington who wager on our races. In order to ensure races begin on time, trainers must have their horses first at the receiving barn to be properly identified and then at the paddock to be saddled for the race.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Lechner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

December 21, 2007

R. J. Lopez

Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-07-007, filed 3/8/07, effective 4/8/07)

**WAC 260-28-200 Trainer—Paddock duties.** (1) A trainer must have his or her horse in the receiving barn or paddock at the time appointed.

(2) A trainer must attend his or her horse in the paddock, and must be present to saddle the horse, unless he/she has obtained the permission of a steward to send another licensed trainer as a substitute.

**WSR 08-02-014**  
**PROPOSED RULES**  
**HORSE RACING COMMISSION**

[Filed December 21, 2007, 8:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-22-060.

Title of Rule and Other Identifying Information: WAC 260-28-295 Trainer responsibility.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on February 14, 2008, at 9:30 a.m.

Date of Intended Adoption: February 14, 2008.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by February 5, 2008.

Assistance for Persons with Disabilities: Contact Patty Sorby by February 5, 2008, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend WAC 260-28-295 to add the following two provisions: (1) Trainers are required to promptly report if a colt or horse is gelded; and (2) trainers are required to ensure that anyone employed by the trainer is properly licensed to perform the duties assigned.

Reasons Supporting Proposal: (1) In addition to ensuring bettors have accurate information about horses entered in a race, persons contemplating claiming a horse out of a race should also be provided with accurate information on the condition of the horse prior to claiming; and (2) because the commission collects industrial insurance premiums, it is critical for employee coverage that they be properly licensed to perform the duties assigned.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Lechner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

December 21, 2007

R. J. Lopez

Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-03-065, filed 1/16/07, effective 2/16/07)

**WAC 260-28-295 Trainer responsibility.** The purpose of this section is to identify the minimum responsibilities of the trainer that pertain specifically to the health and well-being of horses in his/her care.

(1) The trainer is responsible for and is the absolute insurer of the condition of the horses entered regardless of the acts of third parties.

(2) The trainer is responsible for the condition of horses in his/her care.

(3) The trainer is responsible for the presence of any prohibited drug, medication, or other prohibited substance, including permitted medication in excess of the maximum allowable concentration, in horses in his/her care. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable concentration, as reported by a commission-approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer will be held responsible.

(4) A trainer will prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules.

(5) A trainer whose horse has been claimed remains responsible for violation of any rules regarding that horse's participation in the race in which the horse is claimed.

(6) The trainer is responsible for:

(a) Maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission to attend to horses that are on association grounds;

(c) The proper identity, custody, care, health, condition and safety of horses in his/her care;

(d) Immediately reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and an official veterinarian when a posterior digital neurectomy (heel nerving) is performed on a horse in his/her care and ensuring that such fact is designated on its certificate of registration;

(f) Promptly report to the racing secretary, when mares who have been entered to race, have been bred;

(g) If a colt or horse has been gelded, promptly submit a completed gelding report to The Jockey Club Office, or report the fact to the racing secretary;

(h) Promptly reporting the serious injury and/or death of any horse at locations under the jurisdiction of the commission to the stewards and the official veterinarian and compliance with the rules in this chapter governing postmortem examinations;

~~((h))~~ (i) Maintaining knowledge of the medication record and medication status of horses in his/her care;

~~((i))~~ (j) Immediately reporting to the stewards and the official veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;

~~((j))~~ (k) Ensuring the fitness to perform creditably at the distance entered;

~~((k))~~ (l) Ensuring that every horse he/she has entered to race is present at its assigned stall for a prerace soundness inspection as prescribed in chapter 260-70 WAC;

~~((l))~~ (m) Ensuring proper bandages, equipment and shoes; ~~and~~

~~((m))~~ (n) Attending the collection of a urine or blood sample or delegating a licensed employee or the owner to do so; and

(o) Ensuring that any person employed by him/her is properly licensed to perform the duties assigned.

**WSR 08-02-015**  
**PROPOSED RULES**  
**HORSE RACING COMMISSION**

[Filed December 21, 2007, 8:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-21-079.

Title of Rule and Other Identifying Information: WAC 260-44-080 Weighing out(~~(—Overweight—Declarations—Posting—Maximum—)~~).

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on February 14, 2008, at 9:30 a.m.

Date of Intended Adoption: February 14, 2008.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by February 5, 2008.

Assistance for Persons with Disabilities: Contact Patty Sorby by February 5, 2008, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend WAC 260-44-040 to allow jockeys at Class C (nonprofit) race meets to ride up to one hundred thirty-five pounds.

Reasons Supporting Proposal: Provides greater opportunities for jockeys to ride at the Class C race meets, thus improving the chances of more horses being able to enter and run in races. This amendment is being proposed to assist the nonprofit race meets in the state of Washington.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Lechner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

December 21, 2007

R. J. Lopez

Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-07-035, filed 3/12/07, effective 4/12/07)

**WAC 260-44-080 Weighing out—Overweight(~~(—Declarations—Posting—Maximum—)~~).** (1) If a jockey intends to carry overweight, he/she must declare the amount at the time of weighing out.

(2) If a jockey reports an overweight exceeding two pounds, the owner or trainer has the option to replace the jockey without being assessed a double-jock mount fee. Failure on the part of a jockey to comply with this rule will be reported to the stewards by the clerk of scales.

(3) At Class A or B race meets a horse may not carry more than seven pounds overweight(~~(—except as provided in subsection (4) of this section)~~).

(4) Horses (~~(running)~~) at Class C race meets may carry more than seven pounds overweight (~~(with the permission of the stewards)~~), up to a maximum weight of one hundred thirty-five pounds(~~(—except in handicap races or races where the conditions of the race expressly state to the contrary)~~).

**WSR 08-02-016**  
**PROPOSED RULES**  
**HORSE RACING COMMISSION**

[Filed December 21, 2007, 8:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-22-069.

Title of Rule and Other Identifying Information: Chapter 260-36 WAC, Licensing.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on February 14, 2008, at 9:30 a.m.

Date of Intended Adoption: February 14, 2008.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by February 8, 2008.

Assistance for Persons with Disabilities: Contact Patty Sorby by February 8, 2008, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A number of sections in chapter 260-36 WAC need to be amended, including those that address the authority of the stewards and appropriate penalties for failing to complete the application/licensing process. The following sections in chapter 260-36 WAC are being amended: WAC 260-36-085 License and fingerprint fees, 260-36-100 Fingerprints, 260-36-200 Application for license by trainer, 260-36-220 Industrial insurance premi-

ums, and 260-36-230 Short duration industrial insurance coverage.

Reasons Supporting Proposal: Amendment to WAC 260-36-085 waives fingerprint fees for Class C race meet volunteers; WAC 260-36-100 allows the stewards to discipline persons not submitting fingerprints as part of the application process, WAC 260-36-200 allows other licensees to submit application for an owner; and WAC 260-36-220 and 260-36-230 amend language to better clarify when industrial insurance premiums are required.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

December 21, 2007  
R. J. Lopez  
Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-21-059, filed 10/12/07, effective 11/12/07)

**WAC 260-36-085 License and fingerprint fees.** The following are the license fees for any person actively participating in racing activities:

Apprentice jockey	\$76.00
Assistant trainer	\$36.00
Association employee—management	\$25.00
Association employee—hourly/seasonal	\$15.00
Association volunteer nonpaid	No fee
Authorized agent	\$25.00
Clocker	\$25.00
Exercise rider	\$76.00
Groom	\$25.00
Honorary licensee	\$15.00
Jockey agent	\$76.00
Jockey	\$76.00
Other	\$25.00
Owner	\$76.00
Pony rider	\$76.00
Service employee	\$25.00
Spouse groom	\$25.00
Stable license	\$47.00
Trainer	\$76.00

Vendor	\$116.00
Veterinarian	\$116.00

The license fee for multiple licenses may not exceed \$116.00, except persons applying for owner, veterinarian or vendor license must pay the license fee established for each of these licenses.

The following are examples of how this section applies:

Example one - A person applies for the following licenses: Trainer (\$76.00), exercise rider (\$76.00), and pony rider (\$76.00). The total license fee for these multiple licenses would only be \$116.00.

Example two - A person applies for the following licenses: Owner (\$76.00), trainer (\$76.00) and exercise rider (\$76.00). The total cost of the trainer and exercise rider license would be \$116.00. The cost of the owner license (\$76.00) would be added to the maximum cost of multiple licenses (\$116.00) for a total license fee of \$192.00.

Example three - A person applies for the following licenses: Owner (\$76.00), vendor (\$116.00), and exercise rider (\$76.00). The license fees for owner (\$76.00) and vendor (\$116.00) are both added to the license fee for exercise rider (\$76.00) for a total license fee of \$268.00.

In addition to the above fees, except for association volunteers (nonpaid) at Class C race meets, a \$10.00 fee will be added to cover the costs of conducting a fingerprint-based background check. The background check fee will be assessed only once annually per person regardless of whether the person applies for more than one type of license in that year.

The commission will review license and fingerprint fees annually to determine if they need to be adjusted to comply with RCW 67.16.020.

AMENDATORY SECTION (Amending WSR 07-01-052, filed 12/14/06, effective 1/14/07)

**WAC 260-36-100 Fingerprints.** Every person applying for a license must furnish the commission his or her fingerprints upon making an initial application for a license and at least once every three years thereafter. However, the commission, executive secretary, stewards, or security investigators, in their discretion, may require fingerprints from any applicant or licensee at any time. If an applicant fails to furnish fingerprints, the stewards may suspend the license or deny, and/or assess a fine.

AMENDATORY SECTION (Amending WSR 07-01-052, filed 12/14/06, effective 1/14/07)

**WAC 260-36-200 Application for owner's license by trainer or other licensee.** (1) A trainer, or other licensee approved by the stewards, may submit an application for an owner's license on behalf of an owner. Upon submitting such application, the ~~((trainer))~~ licensee must pay all license fees and required labor and industries premiums.

(2) Within fourteen days of the ~~((trainer's))~~ licensee's submission of a license application on behalf of an owner, the owner must complete the license application process by providing fingerprints, a photograph, and any other information

required by the commission. If the owner fails to complete the application process within ~~((the))~~ fourteen days, the board of stewards may ~~((revoke))~~ suspend the owner's license and/or assess a fine to the licensee found responsible.

(3) No horse may start in a race if the horse is owned in whole or in part by an owner who has failed to complete the owner's application.

AMENDATORY SECTION (Amending WSR 07-01-051, filed 12/14/06, effective 1/14/07)

**WAC 260-36-220 Industrial insurance premiums—Additional premiums for stalls and horses started.** (1) At the time of licensing, a trainer must pay all the industrial insurance premiums established by labor and industries, unless exempted under WAC 260-36-240.

(2)(a) A trainer at a Class A or B track must pay ~~((an))~~ industrial insurance premiums ~~((for exercise riders))~~ based upon the number of stalls the trainer has both on and off the grounds of a racing association. ~~((The registration papers filed in the race office may be used to determine the number of stalls the trainer has on the grounds.))~~ All trainers at a Class A or B track are required to pay at least one stall premium at the time of licensing. As to stalls off the grounds of a racing association, a trainer must count all stalls that are used for horses subject to being ridden by licensed exercise riders employed by the trainer, ~~((where those))~~ if the exercise riders are ((subject)) to be covered by Washington labor and industries industrial insurance ((coverage)) under the horse industry account.

(b) ~~((In the event the number of stalls a trainer has on the grounds or the registration papers in the race office are unavailable, the number of industrial insurance premiums for exercise riders))~~ The calculations for number of stalls will be based upon ((the number of)) stalls ((or papers in the race office from the previous year)) allotted by the racing association.

(c) The number of ~~((exercise riders for which))~~ stall premiums that a trainer is required to pay ~~((industrial insurance premiums))~~ will be determined as follows:

(i) For zero to twelve stalls a trainer must pay ~~((an industrial insurance))~~ for one stall premium ~~((for one exercise rider));~~

(ii) For thirteen to twenty-four stalls a trainer must pay ~~((an industrial insurance))~~ for two stall premiums ~~((for two exercise riders));~~

(iii) For twenty-five to thirty-six stalls a trainer must pay ~~((an industrial insurance))~~ for three stall premiums ~~((for three exercise riders));~~ and

(iv) For thirty-seven or more stalls a trainer must pay ~~((an industrial insurance))~~ for four stall premiums ~~((for four exercise riders)).~~

(d) If any trainer increases the number of stalls, on or off the grounds, during the license year, the trainer is responsible to pay the additional stall premiums owed as provided in this section.

~~((The calculation of exercise rider industrial insurance premiums for trainers at Class C racetracks is the total number of horses listed under that trainer at all the Class C racetracks.))~~ (a) A trainer at a Class C track must pay indus-

trial insurance horse-start premiums based upon the number of different horses the trainer starts at the Class C tracks during the calendar year. All trainers at a Class C track are required to pay at least one horse-start premium.

(b) The number of ~~((exercise riders for which))~~ horse-start premiums a trainer is required to pay ~~((industrial insurance premiums))~~ will be determined as follows:

~~((a))~~ (i) For zero to twelve different horses ~~((listed))~~ started, a trainer must pay ~~((an industrial insurance))~~ for one horse-start premium ~~((for one exercise rider));~~

~~((b))~~ (ii) For thirteen to twenty-four different horses ~~((listed))~~ started, a trainer must pay ~~((an industrial insurance))~~ for two horse-start premiums ~~((for two exercise riders));~~

~~((c))~~ (iii) For twenty-five to thirty-six different horses ~~((listed))~~ started, a trainer must pay ~~((an industrial insurance))~~ for three horse-start premiums ~~((for three exercise riders));~~ and

~~((d))~~ (iv) For thirty-seven or more different horses ~~((listed))~~ started, a trainer must pay ~~((an industrial insurance))~~ for four horse-start premiums ~~((for four exercise riders)).~~

~~((4))~~ If any trainer increases the number of horses listed or the number of stalls on or off the grounds during the license year, the trainer must pay an additional exercise rider industrial insurance premium owed as provided in this section. (c) If, during the calendar year, a horse is started by more than one trainer, that horse will count as a different horse for each trainer for the purpose of calculating the number of horse-start premiums required.

(d) The trainer is responsible to maintain their records of the number of different horses started, and to pay the additional horse-start premiums owed, when they increase the number of different horses started in a race as described in this section.

AMENDATORY SECTION (Amending WSR 07-01-051, filed 12/14/06, effective 1/14/07)

**WAC 260-36-230 Short duration industrial insurance coverage.** (1) Trainers entering horses to run in Washington races will be allowed to obtain short duration industrial insurance coverage under the following conditions:

(a) Trainers who ship in to Class A or B race meets may purchase short duration industrial insurance coverage for seven consecutive calendar days. The trainer must pay twenty percent of the trainer base premium, and twenty percent for each groom slot obtained, assistant trainer hired, and each ~~((exercise rider))~~ industrial insurance stall premium as required in WAC 260-36-220 (all rounded to the next whole dollar). The base premium used for this calculation will be the industrial insurance premiums for Class A or B race meets. A trainer may only purchase Class A or B race meet short duration coverage for three seven-day periods per calendar year.

(b) Trainers who ship in to Class C race meets may purchase short duration industrial insurance coverage for seven consecutive calendar days. The trainer must pay twenty percent of the trainer base premium, and twenty percent of each groom slot obtained, assistant trainer hired, and each ~~((exercise rider))~~ industrial insurance horse-start premium as required in WAC 260-36-220 (all rounded to the next whole

dollar). The base premium used for this calculation will be the industrial insurance premiums for Class C race meets. A trainer may only purchase Class C race meet short duration coverage for three seven-day periods per calendar year. Class C race meet short duration industrial insurance coverage is not transferable to a Class A or B race meet.

(2) Before short duration coverage will be allowed, a trainer must obtain a license and pay all applicable license and fingerprint fees required in WAC 260-36-085. The trainer is also required to ensure that each groom, assistant trainer, pony rider, and exercise rider hired by the trainer has a proper license. A trainer may only employ persons on the grounds of the racing association who are properly licensed by the commission.

**WSR 08-02-027**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Aging and Disability Services Administration)  
 [Filed December 24, 2007, 8:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-15-048.

Title of Rule and Other Identifying Information: The department is amending chapter 388-106 WAC, Long-term care services.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on February 5, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than February 6, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on February 5, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by January 29, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is revising sections within chapter 388-106 WAC to amend the in-home classifications to allow for the additional consideration of hours for clients with complex behavioral and cognitive issues and for clients with extremely high needs for assistance with activities of daily living.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: Chapter 522, Laws of 2007 (SHB 1128).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Susan Engels, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2353.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the rules and determined that no new costs will be imposed on small businesses or nonprofit organizations.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(vii), relating only to client medical or financial eligibility.

December 20, 2007  
 Stephanie E. Schiller  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

**WAC 388-106-0100 How does the CARE tool measure mood and behaviors?** (1) When you do not meet the criteria for the clinically complex classification group, or the criteria for exceptional care, or for in-home only have a cognitive performance scale score of five or six, then the mood and behavior criteria listed in subsections (3) and (4) below determines your classification group. If you are eligible for more than one "B" group classification based on the two methodologies, CARE will place you in the highest group for which you qualify.

(2) For each behavior that the CARE tool has documented, the department will determine a status as "current" or "past" as defined in WAC 388-106-0010.

(3) CARE places you in the mood and behavior classification group only if you have one or more of the behavior/moods that also meets the listed status, frequency, and alterability as identified in the following chart (~~(-No other moods or behaviors documented by CARE will qualify you for the mood and behavior classification.)~~):

Behavior/Mood	AND Status, Frequency & Alterability
Assaultive	Current
Combative during personal care	Current
Combative during personal care	In past and addressed with current interventions
Crying tearfulness	Current, frequency 4 or more days per week
Delusions	In past, addressed with current interventions
Depression score ((≥14)) of 14 or greater	N/A
Disrobes in public	Current and not easily altered
Easily irritable/agitated	Current and not easily altered
Eats nonedible substances	Current
Eats nonedible substances	In past, addressed with current interventions
Hallucinations	Current
Hiding items	In past, addressed with current interventions



Behavior/Mood	AND Status, Frequency & Alterability
Hoarding/collecting	In past, addressed with current interventions
Mental health therapy/program	Need
Repetitive complaints/questions	Current, daily
Repetitive complaints/questions	In past, addressed with current interventions
Repetitive movement/pacing	Current, daily
Resistive to care	Current
Resistive to care	In past, addressed with current interventions
Sexual acting out	Current
Sexual acting out	In past, addressed with current interventions
Spitting	Current and not easily altered
Spitting	In past, addressed with current interventions
Breaks/throws items	Current
Unsafe smoking	Current and not easily altered
Up at night and requires intervention	Current
Wanders exit seeking	Current
Wanders exit seeking	In past, addressed with current interventions
Wanders not exit seeking	Current
Wanders not exit seeking	In past, addressed with current interventions
Yelling/screaming ((Key: > means greater than. >= means greater than or equal to.))	Current, frequency 4 or more days per week

or

(4) CARE places you in the mood and behavior classification group if you have a behavior point score greater than 1, your CPS score (as defined in WAC 388-106-0090) is greater than 2, and your ADL score (as defined in WAC 388-106-0105) is greater than 1.

Status	Intervention	Frequency	Weight
Past	No Intervention	N/A	0
Past	With Intervention	N/A	0.25
Current	N/A	1-3 days/wk	0.5
Current	N/A	4-6 days/wk	0.75
Current	N/A	Daily	1

Each current behavior (as shown in the table below) has a value from .5 to 6 depending on the severity and alterability. Each status combination (shown in the table above) has a weight from 0 to 1. Behavior points are determined by multiplying the value of each current behavior (from the list below) by the weight of the status combination (above). Behavior points for past behaviors will be determined by multiplying the easily altered value of the behavior from the table below by the appropriate weight from the table above (0 or .25).

The list of behaviors below is divided into categories. Each category has a point limit of how many points can be counted toward the total behavior point score as detailed

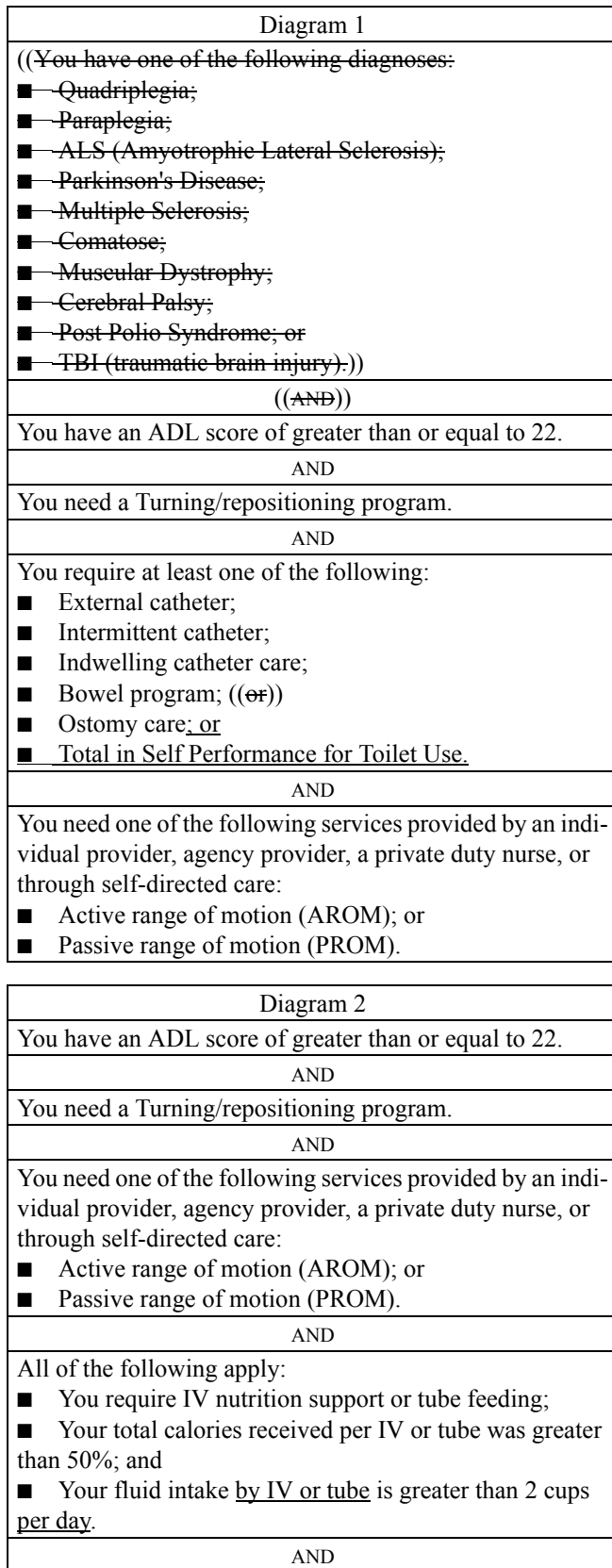
below. The total behavior point score is determined by totaling the weight-adjusted values for each category below.

Behavior	Value	
	Easily Altered/Past	Not Easily Altered
1. Crying and Tearfulness	.5	1
2. Easily Irritable/Agitated	.5	1
3. Obsessive about health or body functions	.5	1
4. Repetitive Physical Movement	.5	1
5. Hiding Items	.5	1
6. Hoarding/Collecting	.5	1
7. Inappropriate Verbal Noise	.5	1
8. Wanders, not exit seeking	.5	1
Maximum total points after adjusting for status for behaviors 1-8 = 2		
9. Repetitive anxious complaints/questions	1	2
10. Rummaging through or takes others belongings	1	2
11. Verbally Abusive	1	2
12. Yelling/Screaming	1	2
13. Spitting	1	2
14. Unrealistic Fears	1	2
15. Accuses others of stealing	1	2
Maximum total points after adjusting for status for behaviors 9-15 = 3		
16. Resistive to care with words/gestures	2	3
17. Up at night, requires intervention	2	3
18. Unsafe cooking	2	3
19. Inappropriate toileting/menses activity	2	3
20. Unsafe smoking	2	3
21. Left home and became lost	2	3
22. Disrobes in public	2	3
Maximum total points after adjusting for status for behaviors 16-22 = 4		
23. Injures self	4	5
24. Wanders/Exit seeking	4	5
25. Sexual acting out	4	5
26. Intimidating	4	5
27. Assaultive	4	5
28. Breaks, throws items	4	5
Maximum total points after adjusting for status for behaviors 23-28 = 10		
29. Fire setting	5	6
30. Combative during care	5	6
31. Pica	5	6
32. Seeks vulnerable partners	5	6
Maximum total points after adjusting for status for behaviors 29-32 = 12		

**AMENDATORY SECTION** (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

**WAC 388-106-0110 How does the CARE tool evaluate me for the exceptional care classification of in-home care?** CARE places you in the exceptional care classifica-

tions for the in-home setting when the following criteria are met in either diagram 1 or 2:



You need assistance with one of the following, provided by an individual provider, agency provider, a private duty nurse, or through self-directed care:

- Dialysis; or
- Ventilator/respirator.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

**WAC 388-106-0125** **How does CARE use ((the)) criteria ((of cognitive performance as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behaviors as determined under WAC 388-106-0100, ADLs as determined under WAC 388-106-0105, and exceptional care as determined under WAC 388-106-0110,)) to place me in a classification group for in-home care?** CARE uses the criteria of cognitive performance score as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behavior and behavior point score as determined under WAC 388-106-0100, ADLS as determined under WAC 388-106-0105, and exceptional care as determined under WAC 388-106-0110 to place you into one of the following ((fourteen)) seventeen in-home groups. CARE classification is determined first by meeting criteria to be placed into a group, then you are further classified based on ADL score or behavior point score into a classification sub-group following a classification path of highest possible base hours to lowest qualifying base hours.

(1) If you meet the criteria for exceptional care, then CARE will place you in **Group E**. CARE then further classifies you into:

(a) **Group E High** with 420 base hours if you have an ADL score of 26-28; or

(b) **Group E Medium** with 350 base hours if you have an ADL score of 22-25.

(2) If you meet the criteria for clinical complexity and have cognitive performance score of 4-6 or you have cognitive performance score of 5-6, then you are classified in **Group D** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group D High** with 280 base hours if you have an ADL score of 25-28; or

(b) **Group D Medium-High** with 240 base hours if you have an ADL score of 18-24; or

(c) **Group D Medium** with 190 base hours if you have an ADL score of 13-17; or

(d) **Group D Low** with 145 base hours if you have an ADL score of 2-12.

(3) If you meet the criteria for clinical complexity and have a CPS score of less than 4, then you are classified in **Group C** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group C High** with 200 base hours if you have an ADL score of 25-28; or

(b) **Group C Medium-High** with 180 base hours if you have an ADL score of 18-24; or

(c) **Group C Medium** with 140 base hours if you have an ADL score of 9-17; or

(d) **Group C Low** with 95 base hours if you have an ADL score of 2-8.

(4) If you meet the criteria for mood and behavior qualification and do not meet the classification for C, D, or E groups, then you are classified into **Group B**. CARE further classifies you into:

(a) **Group B High** with 155 base hours if you have an ADL score of 15-28; or

(b) **Group B Medium** with 90 base hours if you have an ADL score of 5-14; or

(c) **Group B Low** with 52 base hours if you have an ADL score of 0-4; or

(5) If you meet the criteria for behavior points and have a CPS score of greater than 2 and your ADL score is greater than 1, and do not meet the classification for C, D, or E groups, then you are classified in **Group B**. CARE further classifies you into:

(a) **Group B High** with 155 base hours if you have a behavior point score 12 or greater; or

(b) **Group B Medium-High** with 110 base hours if you have a behavior point score greater than 6; or

(c) **Group B Medium** with 90 base hours if you have a behavior point score greater than 4; or

(d) **Group B Low** with 52 base hours if you have a behavior point score greater than 1.

(6) If you are not clinically complex and your CPS score is less than 5 and you do not qualify under either mood and behavior criteria, then you are classified in **Group A**. CARE further classifies you into:

(a) **Group A High** with 78 base hours if you have an ADL score of 10-28; or

(b) **Group A Medium** with 62 base hours if you have an ADL score of 5-9; or

(c) **Group A Low** with 29 base hours if you have an ADL score of 0-4.

((Classification))	((ADL Score))	((Group))	((Base Hours of Group))
((Group E)) (Exceptional care = yes and Mood and behavior = yes or no and Cognitive performance score = 0-6))	((ADL Score 26-28))	((E High (14))	((420))
	((ADL Score 22-25))	((E Med (13))	((350))

((Classification))	((ADL Score))	((Group))	((Base Hours of Group))
((Group D)) (Cognitive performance score = 4-6 and Clinically complex = yes and Mood and behavior = yes or no)) <b>((OR))</b> (Cognitive performance score = 5-6 and Clinically complex = no and Mood and behavior = yes or no))	((ADL Score 18-28))	((D High (12))	((240))
	((ADL Score 13-17))	((D Med (11))	((190))
	((ADL Score 2-12))	((D Low (10))	((145))

((Classification))	((ADL Score))	((Group))	((Base Hours of Group))
((Group C)) (Cognitive performance score = 0-3 and Clinically complex = yes and Mood and behavior = yes or no))	((ADL Score 18-28))	((C High (9))	((180))
	((ADL Score 9-17))	((C Med (8))	((140))
	((ADL Score 2-8))	((C Low (7))	((83))

((Classification))	((ADL Score))	((Group))	((Base Hours of Group))
((Group B)) (Mood and behavior = yes and Clinically complex = no and Cognitive performance score = 0-4))	((ADL Score 15-28))	((B High (6))	((155))
	((ADL Score 5-14))	((B Med (5))	((90))
	((ADL Score 0-4))	((B Low (4))	((52))

((Classification))	((ADL Score))	((Group))	((Base Hours of Group))
((Group A)) (Mood and behavior = no and Clinically complex = no and Cognitive performance score = 0-4))	((ADL Score 10-28))	((A High (3))	((78))
	((ADL Score 5-9))	((A Med (2))	((62))
	((ADL Score 0-4))	((A Low (1))	((29))

**WSR 08-02-036****PROPOSED RULES****PUBLIC DISCLOSURE COMMISSION**

[Filed December 24, 2007, 9:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-22-046.

Title of Rule and Other Identifying Information: Amendment to WAC 390-16-206 Ratings and endorsements.

Hearing Location(s): Commission Hearing Room, 711 Capitol Way, Room 206, Olympia, WA 98504, on February 28, 2008, at 9:30 a.m.

Date of Intended Adoption: February 28, 2008.

Submit Written Comments to: Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908, e-mail dellis@pdc.wa.gov, fax (360) 753-1112, by February 25, 2008.

Assistance for Persons with Disabilities: Contact Kami Madsen by phone (360) 586-0544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update WAC 390-16-206 following the State Supreme Court ruling in *San Juan County v. No New Gas Tax* et al (2007). The amended administrative code will clarify that ratings and endorsements may qualify for reporting exemptions found in chapter 42.17 RCW.

Reasons Supporting Proposal: To provide guidance and clarification on ratings and endorsements so that persons engaging in this activity know when they are subject to the disclosure law.

Statutory Authority for Adoption: RCW 42.17.370(1).

Statute Being Implemented: RCW 42.17.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Public disclosure commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Doug Ellis, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735; Enforcement: Phil Stutzman, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The public disclosure commission (PDC) is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not voluntarily make section 201 applicable to the adoption of these rules pursuant to subsection (5)(a)(i) of section 201, and, to date, JARRC has not made section 201 application [applicable] to the adoption of these rules.

December 24, 2007

Vicki Rippie

Executive Director

AMENDATORY SECTION (Amending Order 86-02, filed 3/26/86)

**WAC 390-16-206 Ratings and endorsements.** (1) Any person making a measurable expenditure of funds to communicate a rating, evaluation, endorsement or recommendation for or against a candidate or ballot proposition (~~((other than news, feature, or editorial comment in a regularly scheduled issue of a printed periodical or broadcast media program)))~~) shall report such expenditure including all costs of preparation and distribution in accordance with chapter 42.17 RCW ((42.17.030 through 42.17.100)). However, rating, endorsement or recommendation expenditures governed by the following provisions are not reportable: The news media exemptions provided in RCW 42.17.020 (15)(b)(iv) and (21)(c), and WAC 390-16-313 (2)(b), and the political advertising exemption in WAC 390-05-290.

(2) A candidate or sponsor of a ballot proposition who, or a political committee which, is the subject of the rating, evaluation, endorsement or recommendation shall not be required to report such expenditure as a contribution unless the candidate, sponsor, committee or an agent thereof advises, counsels or otherwise encourages the person (~~or committee~~) to make the expenditure.

~~((3) A candidate who is an officer, director, employee or owner of 10 percent or more in any entity which owns or controls any newspaper, magazine, printed periodical, radio station, television station or other medium of mass communication, and who is provided feature, editorial or advertising space or broadcast time at less than fair market value by the medium with the intent to personally advocate support for his candidacy or to oppose the candidacy of his opponents, must report the fair market value of that space or time as a contribution from the medium. The fair market value shall be the same as that charged for an equal amount of advertising space or time or, if there is no similar space or time, the most expensive advertising space or time sold by the organization.))~~

**WSR 08-02-043****PROPOSED RULES****DEPARTMENT OF COMMUNITY,  
TRADE AND ECONOMIC DEVELOPMENT**

[Filed December 27, 2007, 7:34 a.m.]

Supplemental Notice to WSR 07-20-126.

Preproposal statement of inquiry was filed as WSR 07-03-168.

Title of Rule and Other Identifying Information: New chapter 194-37 WAC, Energy independence.

Hearing Location(s): CTED, Davis Williams Building, 906 Columbia Street S.W., Conference Room Floor 1, Olympia, WA 98504, on February 5, 2008, at 9 a.m. - 11 a.m.

Date of Intended Adoption: March 4, 2008.

Submit Written Comments to: Howard Schwartz, WA - CTED, P.O. Box 43173, 906 Columbia Street S.W., Olympia, WA 98504-3173, e-mail Howards@CTED.wa.gov, fax (360) 586-0049.

Assistance for Persons with Disabilities: Contact Carolee Sharp, carolees@cted.wa.gov, TTY (360) 586-0772.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making proposes to adopt rules to facilitate the implementation of chapter 19.285 RCW, the Energy Independence Act, which codifies the November 2006 passage of voter initiative 937. The statute directs the department of community, trade and economic development (CTED) to adopt rules that apply to qualifying electric utilities that are not investor-owned. The rules address the process, timelines and documentation needed to ensure the proper implementation of chapter 19.285 RCW. The rules include, but are not limited to, rules associated with a qualifying utility's development of conservation targets; a qualifying utility's decision to pursue alternative compliance; and the format and content of reports required in this statute.

Reasons Supporting Proposal: RCW 19.285.080(2) requires the department to adopt rules to ensure the proper implementation of this chapter. The rules will provide additional clarity beyond that contained in the initiative to guide the utilities in their implementation of the statute, and to assist the Washington state auditor's office and independent third-party auditors with their compliance audits and the Washington attorney general's office with its enforcement role.

Statutory Authority for Adoption: Chapter 19.285 RCW.

Statute Being Implemented: Chapter 19.285 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: CTED, governmental.

Name of Agency Personnel Responsible for Drafting: Howard Schwartz, CTED, Olympia, Washington, (360) 725-3114; Implementation: State Auditors Office, Olympia, Washington, (360) 902-0370; and Enforcement: Office of the Attorney General, Olympia, Washington, (360) 753-6200.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small businesses are directly affected by the rule (or statute). None of the electric utilities subject to the rules meet the definition of a small business based on their number of employees or gross revenues. All but two are units of government (municipal utilities and public utility districts). The remaining two are cooperative utilities.

A cost-benefit analysis is not required under RCW 34.05.328. CTED is not included in the list of departments required to conduct a cost-benefit analysis.

December 24, 2007

Tony Usibelli

Assistant Director

## Chapter 194-37 WAC

### ENERGY INDEPENDENCE

#### NEW SECTION

**WAC 194-37-010 Purpose and scope.** The purpose of this chapter is to implement the requirements of the Energy Independence Act, chapter 19.285 RCW.

#### NEW SECTION

**WAC 194-37-020 Applicability.** The provisions of this chapter apply to consumer-owned electric utilities that provide electrical service to more than twenty-five thousand retail customers in the state of Washington.

#### NEW SECTION

**WAC 194-37-030 Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

#### NEW SECTION

**WAC 194-37-040 Definitions.** The definitions in chapter 19.285 RCW apply throughout this chapter. Some of those definitions are included here, in addition to rule-specific definitions, to assist in understanding this chapter.

(1) "Auditor" means:

(a) The Washington state auditor's office or its designee for consumer-owned utilities under its jurisdiction, such as a public utility district formed under Title 54 RCW, a municipal electric utility formed under Title 35 RCW, or any other public entity authorized by law to sell electricity for retail use, the Washington state auditor's office or its designee;

(b) An independent auditor selected by a utility that is not under the jurisdiction of the state auditor, such as a cooperative formed under chapter 23.86 RCW or an electric mutual corporation or association formed under chapter 24.06 RCW, an independent auditor selected by such a utility.

(2) "Annual revenue requirement" means that portion of a utility's annual budget approved by its governing body for the target year that is intended to be recovered through retail electricity sales in the state of Washington in the target year, or as otherwise documented by the utility pursuant to WAC 194-37-150.

(3) "Average water generation" means the average megawatt-hours of generation from a hydroelectric project over a period of ten consecutive years or more, taking into account differences in water flows from year to year.

(4) "Biennial target" means a utility's biennial conservation target.

(5) "BPA" means the Bonneville Power Administration.

(6) "Conservation" means any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution.

(7) "Conservation calculator" means a spreadsheet or piece of software developed and maintained by the NWPCC to approximate a utility's ten-year potential. The conservation calculator will use methodologies consistent with the most recently published *Power Plan*. It is available at [www.nwcouncil.org](http://www.nwcouncil.org).

(8) "Cost-effective" means, as defined in RCW 80.52-030, that a project or resource is forecast:

(a) To be reliable and available within the time it is needed; and

(b) To meet or reduce the electric power demand of the intended consumers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative project or resource, or any combination thereof.

(c) For purposes of this paragraph, the term "system cost" means an estimate of all direct costs of a project or resource over its effective life, including, if applicable, the costs of distribution to the consumer, and, among other factors, waste disposal costs, end-of-cycle costs, and fuel costs (including projected increases), and such quantifiable environmental costs and benefits as are directly attributable to the project or resource.

(9) "Council" means the Washington state apprenticeship and training council within the department of labor and industries.

(10) "Customer" means a person or entity that purchases electricity for ultimate consumption and not for resale.

(11) "Department" means the department of community, trade, and economic development.

(12) "Distributed generation" means an eligible renewable resource where the facility or any integrated cluster of generating units has a generating capacity of not more than five megawatts. If several five-megawatt or smaller projects are located in the same immediate area but are owned or controlled by different developers, each qualifies as a separate, independent distributed generation project. For the purposes of this rule, an eligible resource or group of similar eligible resources cannot be subdivided into amounts less than five megawatts solely to be considered distributed generation.

(13) "Eligible renewable resource" means:

(a) Electricity from a generation facility powered by a renewable resource other than fresh water that commences operation after March 31, 1999, where:

(i) The facility is located in the Pacific Northwest; or

(ii) The electricity from the facility is delivered into Washington state on a real-time basis without shaping, storage, or integration services (an eligible renewable resource within the Pacific Northwest may receive integration, shaping, storage or other services from sources outside the Pacific Northwest and remain eligible to count towards a utility's renewable resource target); or

(b) Incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, to a hydroelectric generation project owned by one or more qualifying utilities (see definition of qualifying utility in chapter 19.285 RCW) and located in the Pacific Northwest or to hydroelectric generation in irrigation pipes and canals located in the Pacific Northwest, where the additional electricity generated in either case is not a result of new water diversions or impoundments.

(14) "Fifth power plan" means *The Fifth Northwest Electric Power and Conservation Plan* produced by the NWPCC. The power plan is available at [www.nwcouncil.org](http://www.nwcouncil.org).

(15) "Incremental hydropower" means the incremental amount of kilowatt-hours of electricity generated from a base or constant amount of water.

(16) "Integrated cluster" of eligible renewable resources means colocated projects owned or controlled by the same entity that feed into the same substation.

(17) "Load" means the amount of kilowatt-hours of electricity delivered in the most recently completed year by a utility to its Washington retail customers.

(18) "Nonpower attributes" means all environmentally related characteristics, exclusive of energy, capacity, reliability, and other electrical power service attributes, that are associated with the generation of electricity from a renewable resource, including but not limited to the facility's fuel type, geographic location, vintage, qualification as an eligible renewable resource, and avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases.

(19) "NWPCC" means Pacific Northwest Electric Power and Conservation Planning Council also known as the Northwest Power and Conservation Council. Its calculation of avoided costs and publications are available at [www.nwcouncil.org](http://www.nwcouncil.org).

(20) "Pacific Northwest" means the area consisting of:

(a) The states of Oregon, Washington, and Idaho, the portion of the state of Montana west of the Continental Divide, and such portions of the states of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin; and

(b) Any contiguous areas, not in excess of seventy-five air miles from the area referred to in (a) of this subsection, which are a part of the service area of a rural electric cooperative customer served by the BPA on December 5, 1980, which has a distribution system from which it serves both within and without such region.

(21) "Qualified incremental hydropower efficiency improvements" means the installation or modification of equipment and structures, or operating protocols that increase the amount of electricity generated from the same amount of water. These may include rewinding of existing generators, replacing turbines with more efficient units and changing control systems to optimize electricity generation, and improvements to hydraulic conveyance systems that decrease head loss. They do not include additions to capacity by increasing pondage or elevation head, or diverting additional water into the project.

(22) "Qualifying utility" means an electric utility, as the term "electric utility" is defined in RCW 19.29A.010, that serves more than twenty-five thousand customers in the state of Washington.

(23) "Regional technical forum" or "RTF" means a voluntary advisory committee that reports to the executive director of the NWPCC and whose members are appointed by the NWPCC's chair.

(24) "Renewable energy credit" or "REC" means a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource where the generation facility is not powered by fresh water, the certificate includes all of the nonpower attributes associated with that megawatt-hour of electricity, and the certificate is verified by the renewable energy credit tracking system chosen by the department.

(25) "Renewable resource" means:

(a) Water;

(b) Wind;

(c) Solar energy;

(d) Geothermal energy;

- (e) Landfill gas;
  - (f) Wave, ocean, or tidal power;
  - (g) Gas from sewage treatment facilities;
  - (h) Biodiesel fuel as defined in RCW 82.29A.135 that is not derived from crops raised on land cleared from old growth or first-growth forests where the clearing occurred after December 7, 2006; and
  - (i) Biomass energy based on animal waste or solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include:
    - (i) Wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol;
    - (ii) Black liquor by-product from paper production;
    - (iii) Wood from old growth forests; or
    - (iv) Municipal solid waste.
- (26) "Substitute resource" means reasonably available electricity or generating facilities, of the same contract length or facility life as the eligible renewable resource the utility invested in to comply with chapter 19.285 RCW requirements, that otherwise would have been used to serve a utility's retail load in the absence of chapter 19.285 RCW requirements to serve that retail load with eligible renewable resources.
- (27) "Target year" means the specific year for which a renewable energy target must be met.
- (28) "Ten-year potential" means the ten-year cost effective conservation resource potential.
- (29) "Utility" means an electric consumer-owned electric utility, as the term consumer-owned utility is defined in RCW 19.29A.010, that serves more than twenty-five thousand retail customers in the state of Washington. The number of customers served shall be based on data reported by a utility in Form EIA - 861, "Annual Electric Power Industry Report," filed with the Energy Information Administration, United States Department of Energy.
- A consumer-owned electric utility whose number of retail customers grows beyond twenty-five thousand over the course of a year shall be subject to the requirements of this chapter, or per chapter 19.285 RCW shall become a qualifying utility, starting January 1 of the following year. All applicable target dates, per chapter 19.285 RCW will be delayed by the same number of years as there are between January 1, 2007, and the year in which the utility becomes a qualifying utility.
- (30) "Weather-adjusted load" means load calculated after variations in peak and average temperatures from year to year are taken into account.
- (31) "WREGIS" means the Western Renewable Energy Generation Information System. WREGIS is an independent, renewable energy data base for the region covered by the Western Interconnection. WREGIS creates renewable energy certificates, WREGIS certificates, for verifiable renewable generation from units that register in the data base. The department selects WREGIS as the renewable energy credit tracking system to issue verified RECs per RCW 19.285.030(17) in WAC 194-37-210.
- (32) "Year" means the twelve-month period commencing January 1 and ending December 31.

#### NEW SECTION

**WAC 194-37-050 Documentation and auditing timelines.** Utilities will maintain all records necessary to document their compliance with the Energy Independence Act, as described in WAC 194-37-070, 194-37-080, 194-37-090, 194-37-100, 194-37-120, 194-37-130, 194-37-140, 194-37-150, 194-37-160, 194-37-170, 194-37-180, 194-37-190, and 194-37-200. All current and historical reports required in WAC 194-37-060 and 194-37-110 shall be available to a utility's customers and may be provided in conjunction with the utilities requirements under RCW 19.29A.050. Utilities that are not under the jurisdiction of the Washington state auditor must be audited for compliance with the Energy Independence Act by an independent auditor at least every twenty-four months.

#### NEW SECTION

**WAC 194-37-060 Conservation reporting requirements.** Each utility shall submit an annual conservation report to the department by June 1 beginning in 2012. The conservation report shall document the utility's progress in meeting the conservation targets established in RCW 19.285.040 and shall include the following:

(1) A summary of the data the utility reports to the "planning, tracking and reporting system." The summary shall include total electricity savings by customer sector - residential, commercial, industrial, and agricultural, by production efficiencies, and by distribution efficiencies. To create this summary report, each utility will report their annual conservation achievements using the NWPCC's regional technical forum "planning, tracking and reporting system," or an alternative reporting system approved, in advance of the reporting year, by the department. Each utility can report using the default values embedded in the NWPCC's planning, tracking and reporting system or the utility may use its own inputs as documented per WAC 194-37-080 (8) and (9).

(2) If the utility counts towards its biennial target any electricity savings from local, regional, state, or federal market transformation programs, or local, state or federal codes or standards, the utility shall include copies of reports of the annual electricity savings for the utility's service territory as estimated and recorded by entities such as the department, the NWPCC, regional market transformation organizations, or the utility.

(3) A brief description of the methodology used to establish the utility's ten-year potential and biennial target to capture cost-effective conservation, including the share of this target to be captured by efficiency improvements in customer measures, and, if any, in distribution measures and production measures.

(4) The utility's total expenditures for conservation reported by customer conservation broken down by residential sector, commercial sector, industrial sector, and agricultural sector, and, if any, production efficiency and distribution efficiency.

(5) The most recent final audit report(s), if any, that evaluate(s) the utility's compliance with chapter 19.285 RCW and the information the utility reported per this chapter.

(6) In even years this report must include the following information categorized by customer conservation savings, and if any, total distribution efficiency savings, and total production efficiency savings:

- (a) The utility's achievement in meeting its preceding biennial target; and
- (b) The utility's current ten-year potential and biennial target.

#### NEW SECTION

**WAC 194-37-070 Documenting development of conservation targets.** (1) Ten-year potential. By January 1, 2010, each utility shall establish its ten-year cost-effective conservation resource potential. At least every two years thereafter, the public utility shall review and update this assessment for the subsequent ten-year period.

(2) Biennial target. In January 2010, and each two years thereafter, each utility shall establish and make public a biennial conservation target. The utility's biennial target shall be no less than its pro rata share of its ten-year potential.

(3) To document that the utility has established its ten-year potential and biennial target using methodologies consistent with those in the fifth power plan, the utility shall choose one of the documentation procedures set forth in subsection (4), (5), or (6) of this section, subject to the following conditions:

(a) If a utility uses the conservation calculator, or the modified conservation calculator to determine its customer conservation ten-year potential, it must use the utility analysis option per subsection (6) of this section to compute any ten-year potential for production and distribution efficiencies.

(b) If a portion of a utility's ten-year potential and biennial target includes calculations of efficiency gains from utility production and/or distribution efficiency measures, that portion of the ten-year potential or biennial target shall carry the stamp of a registered professional engineer licensed by the Washington department of licensing.

(c) If a utility includes production and/or distribution efficiencies in its target, then a utility's ten-year potential shall be the combined total of all cost effective achievable conservation in customer, distribution, and production efficiency measures available to that utility.

(d) A utility will hold a noticed public meeting, which provides an opportunity for public comment, regarding its assessment of conservation potential. The utility will adopt the ten-year potential and the two-year conservation targets by action of the utility's governing board in a public meeting. Such public meeting may be conducted separately, or as part of public meetings conducted for resource planning, budget setting, or other related processes. The public notice will indicate that the meeting agenda includes the establishment of the utility's ten-year and biennial targets.

(4) Conservation calculator option.

(a) A utility that chooses this option will document its calculation of its pro rata biennial conservation targets based on its share of regional annual megawatt-hour retail sales using the NWPCC's conservation calculator. If the NWPCC updates its conservation calculator within twelve months of

an even-numbered year, a utility may choose to use the NWPCC's most recent conservation calculator or the immediately preceding version.

(b) Any utility that publishes a ten-year potential and biennial target with the customer sector portion of its biennial target equal to or higher than its target calculated using the conservation calculator has effectively documented its biennial target setting requirement for customer conservation.

(c) Starting in 2010, a utility that uses the conservation calculator to establish its ten-year potential and biennial target may deduct its biennial customer sector conservation achievement that meets the criteria in WAC 194-37-080(2) from its share of the NWPCC's conservation resource potential.

(5) Modified conservation calculator option.

A utility that chooses this option will document consistency with the NWPCC's methodologies by modifying its ten-year potential and biennial target as identified through the use of the conservation calculator by making the following adjustments to the NWPCC's analysis in the NWPCC's most recently published power plan:

(a) Deduct conservation measures in the NWPCC's list not applicable to the utility's service territory;

(b) Add conservation measures, that are not included in the NWPCC's list, but are applicable to the utility's service territory;

(c) Modify the number or ratio of applicable units, such as the ratio of electrically heated houses or square footage of commercial space, if the utility has data surveys indicating that their data on applicable units varies from the NWPCC's;

(d) Increase and/or reduce the per unit incremental resource savings for conservation measures, relative to the NWPCC's data for savings per unit;

(e) Increase and/or reduce forecasted program costs;

(f) Increase or decrease retail sales growth rates;

(g) Increase or decrease avoided distribution capacity cost savings; and

(h) How production and distribution efficiencies cost-effectively replace end-use conservation.

(6) Utility analysis option.

(a) The NWPCC's analytical methodology for establishing the conservation resource potential and conservation targets for the Northwest power system is outlined in procedures (a)(i) through (xv) of this subsection. A utility that chooses this option will document that it established a ten-year potential using an analytical methodology consistent with these NWPCC procedures (a)(i) through (xv) of this subsection:

(i) Analyze a broad range of energy efficiency measures considered technically feasible;

(ii) Perform a life-cycle cost analysis of measures or programs, including the incremental savings and incremental costs of measures and replacement measures where resources or measures have different measure lifetimes;

(iii) Set avoided costs equal to a forecast of market prices, which represents the cost of the next increment of available and reliable power supply available to the utility for the life of the energy efficiency measures to which it is compared;



(iv) Calculate the value of the energy saved based on when it is saved. In performing this calculation, use time differentiated avoided costs to conduct the analysis that determines the financial value of energy saved through conservation;

(v) Conduct a total resource cost analysis that assesses all costs and all benefits of conservation measures regardless of who pays the costs or receives the benefits. The NWPCC identifies conservation measures that pass the total resource cost test as economically achievable;

(vi) Identify conservation measures that pass the total resource cost test, by having a benefit/cost ratio of one or greater as economically achievable;

(vii) Include the increase or decrease in annual or periodic operations and maintenance costs due to conservation measures;

(viii) Include deferred capacity expansion benefits for transmission and distribution systems in its cost-effectiveness analysis;

(ix) Include all nonpower benefits that a resource or measure may provide that can be quantified and monetized;

(x) Include an estimate of program administrative costs;

(xi) Discount future costs and benefits at a discount rate based on a weighted, after-tax, cost of capital for utilities and their customers for the measure lifetime;

(xii) Include estimates of the achievable customer conservation penetration rates for retrofit measures and for lost-opportunity (long-lived) measures. The NWPCC's twenty-year achievable penetration rates are eighty-five percent for retrofit measures and sixty-five percent for lost opportunity measures achieved through a mix of utility programs and local, state and federal codes and standards. The NWPCC's ten-year achievable penetration rates are sixty-four percent for nonlost opportunity measures and twenty-three percent for lost-opportunity measures; the weighted average of the two is a forty-six percent ten-year achievable penetration rate;

(xiii) Include a ten percent bonus for conservation measures as defined in 16 U.S.C. § 839a of the Pacific Northwest Electric Power Planning and Conservation Act;

(xiv) Analyze the results of multiple scenarios. This includes testing scenarios that accelerate the rate of conservation acquisition in the earlier years; and

(xv) Analyze the costs of estimated future environmental externalities in the multiple scenarios that estimate costs and risks.

(b) In addition to the requirements in subsection (6) of this section, the utility may document any variable listed in subsection (5) of this section to indicate that its conservation resource assessment methodology is consistent with the NWPCC's but results in unique conservation resource assessment outcomes.

#### NEW SECTION

**WAC 194-37-080 Documentation of conservation savings.** (1) The utility shall document:

(a) That it achieved its biennial conservation target;

(b) The total savings in customer efficiency measures; and

(c) If included in the target, the savings in the production and distribution sectors.

(2) A conservation measure or program counts towards a utility biennial target if it meets the following criteria:

(a) The conservation has a measure life of at least two years, or, if the measure life is less than two years the utility can verify that it has acquired the conservation for the entire biennium;

(b) It meets the definitions of conservation and cost effective as contained in WAC 194-37-040; and

(c) The NWPCC includes the measure or program in its power plan, or the measure or program is not identified by the NWPCC but it meets the definitions in RCW 19.285.030.

(3) The utility shall count the total first year savings of a conservation measure in the year during which either the measure was installed or the utility paid for it.

(4) Each utility may count towards its biennial conservation targets the proportionate share of savings resulting in its service territory from the following conservation efforts during the one biennium in which either the measure or program was placed in service or the utility paid for the measure:

(a) End-use savings from region-wide conservation projects that are centrally funded by BPA and for which the utility shared in the funding through their BPA rates.

(b) Savings from regional market transformation efforts if the NWPCC includes the program measures in its most recently published *Power Plan's* conservation resource potential or, as a newly emerging technology, the measure has yet to be included in the NWPCC's resource potential. Each utility will report a proportion of savings from these programs using established distribution methods, based on each utility's relative share of funding the regional market transformation effort through both direct funding and indirect funding through their BPA rates.

(c) Savings from improved federal minimum energy efficiency standards or Washington state building energy code improvements or improved state appliance codes and standards in the biennium in which they become effective, as proportionate to the utility's service territory. After that biennium, a utility may no longer include savings from those specific code and or standards in its next ten-year potential.

(5) Utilities may count savings from more stringent local building and/or local equipment codes and standards, including utility new service or connection standards, towards meeting their biennial conservation target in the biennium in which they become effective and in each biennium the local standards continue to be enforced and achieve incremental savings above minimum state energy codes or minimum federal energy standards.

(6) A utility cannot count the loss of load due to curtailments or matters outside of the utility's control (such as a facility shut-down) as achievement towards its conservation targets. However, such losses of load may change the level of current and future targets to the extent that they reduce the conservation potential available to the utility.

(7) The energy savings from an increase in distribution efficiencies are described, documented and counted under WAC 194-37-090. The energy savings from an increase in production efficiencies are described, documented and counted under WAC 194-37-100.

(8) Conservation savings from utility programs beginning in 2010 for measures for which the NWPCC and the regional technical forum have established per unit energy savings values will be based on the per unit savings set by the NWPCC's regional technical forum "planning, tracking and reporting system," unless the utility documents its variations in electricity saving estimates from the regional technical forum.

(9) Conservation savings from utility programs beginning in 2010 for custom measures shall be developed pursuant to the NWPCC's custom requirements available through the regional technical forum's "planning, tracking and reporting system" or through a similar analytical framework.

(10) A utility may count towards the utility's biennial end-use conservation target, twelve individual months' worth of conservation during the first twelve months of the high efficiency cogeneration facility's operations. The high efficiency cogeneration facility shall be owned and used by a retail electric consumer to meet that consumer's heat and power needs. Only that output used by that customer to meet its own needs can count toward the utility's conservation target.

In order to count this in its conservation target, the utility shall prepare the following documentation, certified by a registered professional engineer licensed by the Washington department of licensing:

(a) That the cogeneration system has a useful thermal energy output of no less than thirty-three percent of the total energy output; and

(b) An analysis that indicates the reduction in annual electricity consumption due to high efficiency cogeneration. This reduction is calculated as the net facility's annual electrical energy production times the ratio of the fuel chargeable to power heat rate of the cogeneration facility divided by the heat rate on a new and clean basis of a best-commercially available technology combined-cycle natural gas-fired combustion turbine.

(11) A utility may document shortfalls in meeting its conservation target due to lack of customer participation. Documentation of such shortfalls shall include a demonstration that:

(a) A broad array of marketing and program options were provided to customers; and

(b) The utility offered to pay customers an incentive in an amount equal to the utility's full avoided cost over the lifetime of measures, up to one hundred percent of the incremental cost of measures.

#### NEW SECTION

**WAC 194-37-090 Additional documentation of efficiency from distribution system loss reduction improvements, including peak demand management and voltage regulation.** (1) To the extent a utility can document a distribution system upgrade or management practice results in lower line losses and/or transformation losses, the avoided energy supply requirement to serve customers may be included in the utility's assessment of its ten-year resource potential and may count as conservation achievement towards the utility's biennial target.

(2) A utility that counts distribution system improvements in meeting its obligations under RCW 19.285.040 shall document these savings on either a component-performance basis or a system-analysis basis and shall indicate these savings distinctly from end-use and production efficiency savings.

(a) Component-performance basis. A utility that implements the component-performance basis for documenting distribution system improvements shall identify the components of the distribution system that were replaced, and the savings from replacement. The calculation shall be prepared under the direction of, and carry the stamp of a registered professional electrical engineer licensed by the Washington department of licensing.

(b) System-analysis basis. A utility that implements the system analysis basis for documenting conservation savings from distribution system improvements shall provide the following:

(i) For distribution system upgrades, the utility will prepare a distribution flow analysis to compare the annual energy losses of the system being replaced or upgraded to the final system as installed.

(ii) For conservation voltage regulation, the utility will prepare a distribution flow analysis to compare the annual energy losses of the system before and after the implementation of a voltage regulation program. The difference in annual kilowatt-hour requirement at the utility point(s) of receipt (for distribution utilities) or net energy for load for generating utilities may be counted as conservation savings.

(iii) For peak demand management, the utility will prepare a distribution flow analysis to compare the annual energy losses of the system before and after implementation of the peak demand management program. The change in net energy losses may be counted as conservation savings. Any net reduction in energy sales (economic curtailment) shall not be included in conservation savings.

(iv) The distribution flow analysis conducted for (b)(i), (ii), or (iii) of this subsection shall be prepared under the direction of, and carry the stamp of a registered professional electrical engineer licensed by the Washington department of licensing.

#### NEW SECTION

**WAC 194-37-100 Additional documentation of improved efficiency from production facilities.** (1) A utility will measure production efficiency improvements as the fraction of fuel savings achieved by the utility. The percentage reduction in fuel use per kilowatt-hour will be applied to the annual generation to determine the amount that is to be reported as conservation.

(2) A utility that includes production efficiency improvements in its annual report pursuant to RCW 19.285.070 shall document the electricity savings for each generating unit with the following information certified by a registered professional engineer licensed by the Washington state department of licensing:

(a) The first twelve-month electricity savings that the utility is counting towards its biennial target;

(b) A description of the efficiency improvements made to the generating unit;

(c) Annual fuel use for three preceding years, in quantity units and million British thermal units;

(d) Annual electrical output for three preceding years, in kilowatt-hours;

(e) The amount of capital investment and/or annual operating expenditure associated with the efficiency improvements;

(f) The cost-effectiveness analysis prepared by the utility in planning the efficiency improvement(s);

(g) Any post-retrofit analysis prepared by the utility in evaluating the performance and/or cost-effectiveness of the efficiency improvement(s);

(h) A simple calculation showing the fuel use per kilowatt-hour before the efficiency improvement, the fuel use per kilowatt-hour after the efficiency improvement, and the amount of energy conservation being reported as the product of the percentage improvement in fuel use per kilowatt-hour and the number of kilowatt-hours generated; and

(i) If efficiency improvements are installed at the same time as pollution control equipment that may itself affect efficiency, the utility may provide documentation of the effect of the efficiency improvements alone on the fuel consumption per kilowatt-hour of the production facility. In this situation, the utility shall provide a description of the changes made, the capital cost expended for both efficiency changes and pollution control equipment, and an analysis of the impact of each on the fuel use per kilowatt-hour of the production facility.

(3) A utility shall not count towards its biennial conservation target the results from efficiency improvements made to hydropower facilities that are qualified incremental hydropower efficiency improvements and are counted towards any utility's renewable energy targets under RCW 19.285.040 or 19.285.050.

#### NEW SECTION

**WAC 194-37-110 Renewable resource energy reporting.** Each utility shall submit a renewable resource energy report to the department by June 1 of each year, beginning in 2012. Reporting requirements vary, as follows, depending upon how the utility elects to comply with chapter 19.285 RCW.

(1) Universal renewable energy reporting requirements. The renewable resource energy report shall include the following information:

(a) The utility's annual load for the two years preceding each renewable energy target year and the average load for those two years.

(b) The amount of megawatt-hours needed to meet the utility's annual renewable energy targets identified in RCW 19.285.040. These annual targets are established as a percentage of the utility's average retail load for the two years prior to the renewable energy target year: Three percent of each year 2012 through 2015; nine percent of each year 2016 through 2019; and fifteen percent for year 2020 and each year thereafter.

(c) The names of the eligible renewable resource facilities and/or the vintage (year in which associated power was generated) of renewable energy credits by generator that the utility owns or with which the utility has a contract dated no later than January 1 of the target year; and the estimated annual quantity (megawatt-hours) of eligible renewable resources or RECs that will be produced, or has been produced, through these resources or contracts to meet its annual targets.

(i) A utility may count any purchases of:

(A) Electricity from BPA that are generated by eligible renewable resources, for which no RECs have been created or, if RECs have been created, for which the RECs have been or will be retired by BPA on behalf of the utility; or

(B) RECs from the BPA generated by eligible renewable resources to meet all or any portion of its annual eligible renewable resource targets.

To document the annual amount of power supplied by BPA from eligible renewable resources, the utility may rely on BPA's determination of the portion of its power supply provided by eligible renewable resources during a calendar year for which no RECs have been created, or, if RECs have been created, that the RECs have been or will be retired by BPA on behalf of the utility.

(ii) The list of resources will identify any resource that both commenced operations after December 31, 2005, and meets the apprenticeship construction practice standards as adopted by the council per WAC 194-37-120(1), thereby earning a 1.2 multiplier credit on its electricity output.

(iii) The list of resources will identify any resource that meets the definition of distributed generation and that the utility owns or contracts for the associated REC, thereby earning a 2.0 multiplier credit on the electricity output.

(d) A utility that does not meet the renewable energy requirements in RCW 19.285.040(2), the financial requirements in RCW 19.285.050, or the financial requirements in RCW 19.285.040 (2)(d) shall include the following information in its June 1 report of each year beginning in 2014:

(i) The quantity of eligible renewable resources acquired by December 31 of the target year;

(ii) RECs from the target year, the year prior or the year subsequent to the target year; or

(iii) The combination of (d)(i) and (ii) of this subsection.

(e) The most recent final audit report(s), if any, that evaluate(s) the utility's compliance with chapter 19.285 RCW and the information reported per this chapter.

(2) Renewable energy target reporting.

(a) A utility that meets the renewable energy requirements in RCW 19.285.040(2) shall include the following in its June 1 report of each year beginning in 2014.

(i) Demonstration that it acquired:

(A) By January 1 of the target year, megawatt-hours of eligible renewable resources and that those megawatt-hours were actually generated by December 31 of the target year.

(B) By January 1 of the target year, RECs produced during the target year, the year prior or the year subsequent to the target year; or

(C) Any combination of (a)(i)(A) and (B) of this subsection, in amounts sufficient to meet the percent of load target for the calendar year two years prior.

(D) In lieu of reporting per subsection (5) of this section, utilities may report any additional purchases of RECs or renewable energy that made up for any shortfalls caused by uncontrollable events.

(ii) Documentation of the amount of megawatt-hours purchased or generated, the amount of WREGIS-certified RECs purchased and the names of the respective eligible renewable facilities that produced the associated power, specified by the year it was generated.

(b) The utility may, in addition, submit a copy of its fuel mix report, per chapter 19.29A RCW, for each target year.

(3) Resource cost reporting.

Each year that a utility does not meet the renewable energy target requirements in RCW 19.285.040, but meets the financial requirements in RCW 19.285.050, the utility shall include the following information in its June 1 report of that year:

(a) Its annual revenue requirement for the target year;

(b) The annual levelized delivered cost of its eligible renewable resource(s) reported separately for each resource;

(c) The annual levelized delivered cost of its substitute resources and the eligible renewable resource with which it is being compared;

(d) The total cost of renewable energy credits to be applied in the reporting year;

(e) The percentage of its annual revenue requirement invested in the incremental cost of eligible renewable resources and the cost of RECs; and

(f) The most current information required by WAC 194-37-160 used for this financial demonstration.

(4) Nonload growing utility reporting.

Each year that a utility does not meet the renewable energy target requirements in RCW 19.285.040 (2)(a), but meets the financial requirements in RCW 19.285.040 (2)(d), the utility shall report to the department each June 1 its:

(a) Annual revenue requirement for the target year;

(b) Weather-adjusted load for each of three years prior to the target year;

(c) Delivered cost of its eligible renewable resource(s), RECs or a combination of both for the target year to be applied to the one percent of annual revenue requirement, reported separately for each resource;

(d) Quantity of megawatt-hours for each target year for which the utility:

(i) Commenced or renewed ownership of nonrenewable resources after December 7, 2006; or

(ii) Made electricity purchases from nonrenewable energy resources, incremental to its annual electricity purchases made or contracted for prior to December 7, 2006. Sources of power for daily spot market purchases are not counted; and

(e) List of RECs that the utility acquired, in addition to any RECs purchased in (c) of this subsection, to offset nonrenewable purchases listed in (d) of this subsection.

(5) Reporting of uncontrollable events.

For any target year that a utility demonstrates to the auditor that it did not meet the annual renewable resource requirements in chapter 19.285 RCW due to events beyond the reasonable control of the utility per RCW 19.285.040 (2)(i), the

utility shall summarize these events in its June 1 report to the department immediately following the target year.

NEW SECTION

**WAC 194-37-120 Documentation of renewable energy achievement.** Each utility shall provide the auditor access to contracts indicating purchases of or documentation indicating ownership of RECs and/or megawatt-hours from eligible renewable/ resources equal to or exceeding the annual percentage standard for the target year. The megawatt-hours from owned eligible renewable resources count towards the percentage annual renewable energy target as long as the associated nonpower attributes, or RECs, if any have been created, are not owned by a separate entity or have not been used in an optional pricing program. A utility's power purchase contract, for eligible renewable resources, provides documentation for this section if the contract specifies that the nonpower attributes, or RECs if any have been created, associated with the power from the eligible renewable resources have been acquired by the utility.

(1) Each utility that claims a 1.2 multiplier credit for the electricity output from an eligible renewable resource per RCW 19.285.040 (2)(h)(i) shall provide a copy of written documentation from the council that the facility met the apprenticeship labor standard of fifteen percent of the total labor hours used in its construction.

(2) A utility may provide a copy of documentation from the BPA indicating a quantity of power that BPA sold to the utility for the target year that was supplied by an eligible renewable resource.

(3) Each utility that claims a 2.0 multiplier credit for the electricity output from an eligible renewable resource per RCW 19.285.040 (2)(b) shall provide documentation that the REC applied in that year, associated with the distributed generation resource, is owned by the utility.

NEW SECTION

**WAC 194-37-130 Documentation of incremental hydropower.** (1) Utilities may count toward their annual renewable resource targets incremental power acquired from qualified incremental hydropower efficiency improvements made at the following facilities since 1999:

(a) Hydropower facilities in the Pacific Northwest owned by a qualifying utility where the new generation does not result in new water diversions or impoundments.

(b) Hydroelectric generation facilities in irrigation pipes and canals located in the Pacific Northwest, where the additional generation does not result in new water diversions or impoundments.

(2) The utility shall calculate renewable resource power from incremental hydropower as the increase in annual megawatt-hours of generation attributable to the qualified incremental hydropower efficiency improvements under average water generation.

(3) The increase in annual megawatt-hours of generation attributable to the qualified incremental hydropower efficiency improvements shall be documented by engineering studies or with before and after generation data. The documentation shall clearly explain:

- (a) Where the facility is located;
- (b) When the improvements were made;
- (c) How the amount of generation in "average water generation" was calculated;
- (d) What other factors may have caused an increase in electricity production and how the amount "attributable to the qualified improvements" was extracted from the total increase;
- (e) How and why the "qualified improvements" increased hydropower production; and
- (f) How the utility came to acquire the incremental output associated with the qualified improvements.

#### NEW SECTION

**WAC 194-37-140 Documentation of renewable resource financial path for no-load growth utilities.** For each year that a utility meets the renewable energy financial cost cap, associated with no load growth, identified in RCW 19.285.040 (2)(d), the utility must document the following by January 1:

- (1) That it used a consistent methodology from year to year to weather-adjust its retail load;
- (2) That its weather-adjusted load for the most recent prior year is lower than the third year prior;
- (3) That it invested at least one-percent of its total annual revenue requirement in each target year on eligible renewable resources, RECs, or a combination of both;
- (4) That it executed contracts, dated no later than January 1 of the target year, for power purchases of eligible renewable resources and/or RECs;
- (5) The quantity of megawatt-hours for each target year for which the utility:
  - (a) Commenced or renewed ownership of nonrenewable resources after December 7, 2006; or
  - (b) Made electricity purchases from nonrenewable energy resources, incremental to its annual electricity purchases made or contracted for before December 7, 2006.
 Sources of power for daily spot market purchases are not included in this calculation;
- (6) The RECs the utility acquired, in addition to any RECs acquired for subsection (3) of this section, to offset nonrenewable power purchases listed in subsection (5) of this section; and
- (7) Annual revenue requirement for the target year.

#### NEW SECTION

**WAC 194-37-150 Financial documentation of annual revenue requirement.** (1) For purposes of the report filed pursuant to RCW 19.285.070, a utility shall document its annual revenue requirement.

(2) A utility that uses a different basis for the determination of its annual revenue requirement for purposes of calculating what it expects to recover or actually recovers through retail electricity sales in the state of Washington in that year may use that number in the calculation of the cost cap and must provide documentation to support this alternative approach.

#### NEW SECTION

**WAC 194-37-160 Documentation of financial cost cap—Current information and timeline.** By January 1 of the first target year that a utility fulfills its renewable energy requirements under RCW 19.285.050, the utility shall select one of the following methodologies for calculating the incremental cost of all eligible renewable resources acquired thereafter by that utility:

(1) Annual update methodology. In each year that a utility fulfills its renewable energy requirements by complying with the cost cap identified in RCW 19.285.050 it must document its calculations no later than January 1 of the target year. The utility will use the most current information available to the utility within twelve months prior to the initial documentation of the cost cap pursuant to WAC 194-37-170 through 194-37-190. The utility will update this documentation in its June 1 report submitted pursuant to RCW 19.285.070. These annual updates of costs, based on the most current information available, apply to both the renewable resource and the substitute resource.

(2) Permanent one-time methodology. For each specific renewable resource investment, a utility shall perform a one-time calculation of the levelized incremental cost pursuant to WAC 194-37-170 through 194-37-190. The levelized incremental cost may be a single annual value or a stream of annual values. If a single annual value is used, the levelized incremental cost for each eligible renewable resource project or purchase, calculated through this one-time analysis in the year of acquisition, shall be allowed to inflate utilizing the Producer Price Index over the life of the renewable resource after the initial calculation. If a stream of annual values is used, the inflated values contained within the stream shall be used to calculate the incremental cost at future points in time. The utility will include a determination of incremental cost for each renewable resource investment in its June 1 report submitted pursuant to RCW 19.285.070, beginning in the year the utility complies with the cost cap identified in RCW 19.285.050.

#### NEW SECTION

**WAC 194-37-170 Documentation for financial path—Levelization of costs.** (1) Each utility must document its calculation of the levelized annual incremental cost of eligible renewable resources. Utilities are encouraged, but not obligated, to use the following methodology:

**Step 1:** Calculate the net present value of the cost of the utility's eligible renewable resource and substitute resource over an equivalent contract length or facility life.

**Step 2:** Calculate equal nominal values over the appropriate contract length or facility life that have a net present value equal to those calculated in Step 1, using the same discount rate.

**Step 3:** Calculate the annual difference between the levelized delivered cost for the eligible renewable resource and the substitute resource to determine the levelized incremental cost of the eligible renewable resource.

A utility that uses the annual update methodology must document the basis for any change to the levelization methodology used in a prior June 1 report to levelize the costs of

an eligible renewable resource and its associated substitute resource.

(2) Regardless of the methodology chosen to levelize costs, utilities must document the basis for their chosen method for levelizing costs.

(3) Utilities must document the basis for the discount rate used in its levelized cost calculations.

(4) Utilities must document how the discount rate used to perform the levelized cost calculations is consistent with the inflationary assumptions incorporated into the delivered cost projections for the eligible renewable resource and substitute resource.

(5) Utilities must document how the method and assumptions used to levelize delivered costs for the eligible renewable resource are consistent with those used to levelize the delivered cost of the associated substitute resource.

#### NEW SECTION

**WAC 194-37-180 Documentation of financial path—Delivered cost.** (1) The delivered cost of a resource includes all direct and indirect costs associated with that resource being delivered to the distribution system of a utility over the contract length or facility life of the delivered resource. Direct and indirect costs may include operating and capital expenses related to the delivered resource.

(2) Using the Uniform System of Accounts of the Federal Energy Regulatory Commission (FERC) as an illustration, the reported resource costs are expected to generally fall within, but not necessarily be limited to, the following cost accounts:

##### *Operating Expenses*

Accounts 500-557:	Production Expense
Account 565:	Wholesale Wheeling Expense
Accounts 920-935:	Administrative and General Expense
Account 408.1:	Taxes Other than Federal Income Taxes

##### *Capital Expenses*

Accounts 403-407:	Depreciation and Amortization Expense
Accounts 427-431:	Interest-Related Expenses

(3) A utility may include actual costs in order to equitably compare the costs of eligible renewable resources and substitute resources. This may include the actual costs of transmission, firming, shaping, integration, and project specific development costs.

(4) Utilities are encouraged to use the FERC system of accounts to document the delivered cost of resources. Regardless of the accounting convention used, utilities must document the delivered cost estimates for eligible renewable resources and their associated substitute resources in a manner consistent with generally accepted accounting standards.

#### NEW SECTION

**WAC 194-37-190 Documentation of financial path—Substitute resource and resource equivalence.** (1) In support of its annual filings to the department under RCW 19.285.070, utilities must document the type, availability, and cost of the reasonably available substitute resource used to calculate the incremental cost of an eligible renewable resource.

(a) In documenting the incremental cost under RCW 19.285.050 (1)(b), a utility is encouraged to identify substitute resources using its integrated resource planning process, if one is available. If a utility elects to choose a substitute resource from a different source other than its most recently published integrated resource plan, it must document the basis for this decision. Documentation of the cost of a substitute resource may include, but is not limited to, formal offers for the sale of electricity, or published cost projections from reputable third-party sources.

(b) In its selection of a substitute resource, the utility shall develop documentation demonstrating that the substitute resource satisfies the requirements set forth in RCW 19.285.050. The requirements are:

(i) Equivalence between the eligible renewable resource and the substitute resource by demonstrating the equivalence in the amount of energy produced by each resource;

(ii) Equivalence between the eligible renewable resource and the substitute resource by demonstrating the same contract length or facility life of each resource;

(iii) The substitute resource is reasonably available to the utility; and

(iv) The substitute resource does not qualify as an eligible renewable resource.

(c) Only supply-side substitute resources shall be used by utilities in the calculation of the incremental cost of eligible renewable resources.

(d) When the renewable requirements under RCW 19.285.040(2) result in a utility having resources in excess of its load, the utility may use that excess resource or a forecast of projected market prices as the substitute resource if the substitute resource requirements of (b) of this subsection are otherwise satisfied. The utility will document the resale revenues, net of transaction costs, received through the sale of excess resources or the purchase price for the sale of the excess facility sold as a result of the requirement to acquire eligible renewable resources. A utility that uses a value other than the documented resale revenue in the determination of the levelized delivered cost of the substitute resource must provide documentation to support this alternative approach.

(e) A utility may use foregone power purchases from BPA, plus any billing credit obtained for reducing its purchases from BPA, as the basis for the cost of the substitute resource if:

(i) The substitute resource requirements of (b) of this subsection are otherwise satisfied;

(ii) It is entitled under its BPA power sales contract to have the BPA meet its net power requirements for the expected life of an eligible renewable resource or eligible renewable resource purchase; and

(iii) As a result of meeting the renewable requirements under RCW 19.285.040(2), it foregoes part of its BPA entitlement in order to obtain that eligible renewable resource.

(2) For an eligible renewable resource acquired prior to the passage of chapter 19.285 RCW, November 7, 2006, a utility must support the selection of the related substitute resource used in the determination of the incremental cost under RCW 19.285.050 with documentation that was available at the time of the utility's decision to acquire the eligible renewable resource. If no such documentation is available, the incremental cost of an eligible renewable resource acquired prior to the passage of chapter 19.285 RCW will be assumed equal to zero.

#### NEW SECTION

**WAC 194-37-200 Financial documentation path using renewable energy credits.** A utility may elect to invest in RECs to meet any portion of, or the entirety of, each annual renewable resource target in RCW 19.285.040(2) or 19.285.050(1). If the cost of the RECs and the incremental cost of acquired renewable resources, as documented according to WAC 194-37-150 through 194-37-190, for any one year meets or exceeds four percent of the utility's annual revenue requirement, the utility shall document that the utility achieved the four percent cost cap alternative compliance path in RCW 19.285.050(1). The documentation must include copies of its WREGIS RECs, copies of purchase contracts, and its annual revenue requirement.

#### NEW SECTION

**WAC 194-37-210 Selection of a renewable energy credit tracking system.** Pursuant to RCW 19.285.030(17), the department selects WREGIS as the renewable energy credit tracking system. If WREGIS proves to be unworkable and if there are alternative tracking systems, the department may re-open these rules and solicit, through an open process, proposals from other tracking systems to allow it to verify renewable energy credits for compliance with chapter 19.285 RCW.

**WSR 08-02-044**  
**PROPOSED RULES**  
**HORSE RACING COMMISSION**

[Filed December 27, 2007, 8:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-21-086.

Title of Rule and Other Identifying Information: Chapter 260-84 WAC, Penalties.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on February 14, 2008, at 9:30 a.m.

Date of Intended Adoption: February 14, 2008.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail

rlopez@whrc.state.wa.us, fax (360) 459-6461, by February 8, 2008.

Assistance for Persons with Disabilities: Contact Patty Sorby by February 8, 2008, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission is proposing amending the following sections in chapter 260-84 WAC: (1) WAC 260-84-060 Penalty matrixes, a number of penalties, for first, second, third and subsequent offenses are increasing based upon the current penalty not being a sufficient deterrent. Also, penalties at Class A and B race meets that are the same as penalties at a Class C race meet are being moved under "Class A, B, and C Licensed Facilities." Some of the current penalties are being amended for clarity. Finally, several new violations (with penalties) have been added (e.g., unauthorized late scratch and failure to submit gelding report); (2) WAC 260-84-090 Equine medication and prohibited substances—Penalties—Guidelines; (3) WAC 260-84-100 Furosemide penalties; (4) WAC 260-84-120 Penalties for permitted medications, the term "shall" is being replaced by the term "will" or "must." Also, in WAC 260-84-120 the penalty for violations within a 365-day period is clarified; and (5) WAC 260-84-130 Penalties for prohibited practices, includes changes for clarification.

Reasons Supporting Proposal: Purpose is to clarify and streamline the rules in this chapter.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Lechner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

December 21, 2008 [2007]

R. J. Lopez

Deputy Secretary

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

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

Class A and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
<del>((Smoking in restricted areas WAC 260-20-030</del>	\$25	\$50	\$100))
Disturbing the peace WAC 260-80-140	Warning to \$200 and/or suspension	Warning to \$500 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010	<del>\$(50))</del> <u>100</u>	<del>\$(100))</del> <u>200</u>	<del>\$(150))</del> <u>300</u>
<u>Unlicensed or improperly licensed personnel WAC 260-28-230</u>	<u>\$100</u>	<u>\$200</u>	<u>\$300</u>
<del>((Unlicensed or improperly licensed personnel or failure to report correct stall or registration paper count for L&amp;I purposes (trainer's responsibility) WAC 260-28-230 and 260-36-220</del>	Required to pay full labor and industries premium and assessed a fine equal to 50% of the premium due		
<del>Licensing - failure to divulge a felony WAC 260-36-120</del>	\$100 or possible denial of license		
<del>Licensing - failure to divulge a gross misdemeanor or misdemeanor WAC 260-36-120</del>	Warning to \$50		
<del>Licensing - providing false information on application WAC 260-36-120</del>	\$50 to \$250 or possible denial of license		
<del>Licensing - nonparticipation WAC 260-36-080</del>	License canceled))		
Violation of any claiming rule in chapter 260-60 WAC	\$200 to \$500 plus possible suspension		
<del>((Use of improper, profane or indecent language to a racing official WAC 260-80-130</del>	\$50	\$100	\$250
<del>Unsafe vehicle operation WAC 260-20-020</del>	Warning to \$50	\$100 and recommend racing association revoke vehicle pass	
<del>Financial responsibility WAC 260-28-030</del>	Resolve within 30 days or before the end of the meet (whichever is sooner) or suspension		
<del>Failure to appear - for ruling conference WAC 260-24-510</del>	Suspension))		
Failure <u>of jockey agent</u> to honor riding engagements (call)( <del>agents</del> ) WAC 260-32-400	\$75	\$100	\$200
<del>((Reporting incorrect weight - jockeys))</del> <u>Failure of jockey to report correct weight</u> WAC 260-32-150	<del>\$(50))</del> <u>100</u>	<del>\$(100))</del> <u>200</u>	<del>\$(200))</del> <u>300</u>
Failure <u>of jockey</u> to appear for films( <del>jockeys</del> ) WAC 260-24-510	\$50	\$100	\$200
Failure <u>of jockey</u> to fulfill riding engagement WAC 260-32-080	\$100	\$150	\$200
<u>Jockey easing mount without cause</u> WAC 260-52-040	\$250 <u>and/or suspension</u>	<del>\$(250))</del> <u>500</u> and/or suspension	<del>\$(500))</del> <u>1000</u> and/or suspension



<b>Class A and B Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Jockey failing to maintain straight course or careless riding <u>with no disqualification (jockey at fault)</u> WAC 260-52-040	Warning to \$750 and/or suspension (riding days)		
Jockey failing to maintain straight course or careless riding resulting in a disqualification (jockey at fault) WAC 260-52-040	Suspension (riding days) and possible fine		
Jockey's misuse of whip WAC 260-52-040	Warning to \$2500		
<del>((Use of stimulating device (may include batteries) WAC 260-52-040</del>	<del>1 year suspension plus mandatory referral to commission for revocation</del>		
<del>Possession of stimulating device (may include batteries) WAC 260-52-040 and 260-80-100</del>	<del>1 year suspension plus mandatory referral to commission for revocation</del>		
<del>Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010 and 260-80-020</del>	<del>1 year suspension plus mandatory referral to commission for revocation))</del>		
Entering ineligible horse WAC 260-40-140 and 260-80-030	<del>\$(50)</del> <u>250</u>	<del>\$(100)</del> <u>500</u>	<del>\$(100)</del> <u>1000</u>
Unauthorized late scratch (WAC 260-40-010)	<u>\$200</u>	<u>\$300</u>	<u>\$400</u>
Arriving late to the paddock <u>or receiving barn</u> WAC 260-28-200	Warning to \$50	<del>((Warning to))</del> <u>\$50 to \$100</u>	<del>((50 to))</del> <u>\$100 to \$200</u>
Failure to deliver furosemide treatment form to official veterinarian by appointed time WAC 260-70-650	<u>Warning to \$50</u>	<u>\$100</u>	<u>\$200</u>
Failure to have registration papers on file - resulting in a scratch WAC 260-40-090	<del>\$(50 to \$100)</del> <u>200</u>	<del>\$(100)</del> <u>300</u>	<del>\$(100)</del> <u>400</u>
Failure to obtain permission for equipment changes WAC 260-44-010	<del>((Warning to))</del> <u>\$50</u>	<u>\$100</u>	<del>\$(100)</del> <u>200</u>
Failure to report performance records WAC 260-40-100	Warning to \$50	<u>\$100</u>	<u>\$150</u>
Failure to submit gelding report WAC 260-28-295	<u>\$100</u>	<u>\$200</u>	<u>\$300</u>
Insufficient workouts - resulting in scratch WAC 260-40-100	<del>\$(50 to \$100)</del> <u>200</u>	<del>\$(100)</del> <u>300</u>	<del>\$(100)</del> <u>400</u>

<b>Class C Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
<del>((Smoking in restricted areas WAC 260-20-030</del>	<del>\$25</del>	<del>\$50</del>	<del>\$100))</del>
Disturbing the peace WAC 260-80-140	Warning to \$100 and/or suspension	\$250 and/or suspension	Suspension

<b>Class C Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Person performing duties for which they are not licensed WAC 260-36-010	\$50	\$100	\$150
<u>Unlicensed or improperly licensed personnel WAC 260-28-230</u>	<u>\$50</u>	<u>\$100</u>	<u>\$200</u>
<del>((Unlicensed or improperly licensed personnel or failure to report correct stall or registration paper count for L&amp;I purposes (trainer's responsibility) WAC 260-28-230 and 260-36-220</del>	<del>Required to pay full labor and industries premium and assessed a fine equal to 50% of the premium due</del>		
<del>Licensing - failure to divulge a felony WAC 260-36-120</del>	<del>\$100 or possible denial of license</del>		
<del>Licensing failure to divulge a misdemeanor or gross misdemeanor WAC 260-36-120</del>	<del>Warning to \$25</del>		
<del>Licensing - providing false information on application WAC 260-36-120</del>	<del>\$50 to \$250 or possible denial of license</del>		
<del>Licensing - nonparticipation WAC 260-36-080</del>	<del>License canceled))</del>		
Violation of any claiming rule in chapter 260-60 WAC	\$100 to \$250 plus possible suspension		
<del>((Use of improper, profane or indecent language to a racing official WAC 260-80-130</del>	<del>\$50</del>	<del>\$100</del>	<del>\$250</del>
<del>Unsafe vehicle operation WAC 260-20-020</del>	<del>Warning to \$50</del>		
<del>Financial responsibility WAC 260-28-030</del>	<del>Resolve 30 days or before the end of the fall meet (whichever is sooner) to resolve or suspension</del>		
<del>Failure to appear for ruling conference WAC 260-24-510</del>	<del>Suspension))</del>		
Failure to honor riding engagements (call) - agents WAC 260-32-400	\$25	\$50	\$100
Reporting incorrect weight - jockeys WAC 260-32-150	\$25	\$50	\$100
Failure to appear for films - jockeys WAC 260-24-510	\$25	\$50	\$100
Failure to fulfill riding engagement WAC 260-32-080	\$50	\$100	\$200
Easing mount without cause WAC 260-52-040	\$100	\$200 and/or suspension	\$400 and/or suspension
Jockey failing to maintain straight course or careless riding WAC 260-52-040	Warning to \$750 and/or suspension (riding days)		
Jockey's misuse of whip WAC 260-52-040	Warning to \$2500		
<del>((Use of stimulating device (may include batteries) WAC 260-52-040</del>	<del>1 year suspension plus mandatory referral to commission for revocation</del>		

<b>Class C Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Possession of stimulating device (may include batteries) WAC 260-52-040 and 260-80-100	<del>1 year suspension plus mandatory referral to commission for revocation</del>		
Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010 and 260-80-020	<del>1 year suspension plus mandatory referral to commission for revocation))</del>		
Entering ineligible horse WAC 260-40-140 and 260-80-030	<del>\$(25)</del> <u>100</u>	<del>\$(50)</del> <u>200</u>	<del>\$(50)</del> <u>300</u>
Unauthorized late scratch WAC 260-40-010	<u>\$100</u>	<u>\$200</u>	<u>\$300</u>
Arriving late to the paddock WAC 260-28-200	Warning to \$25	\$50	<del>\$(50)</del> <u>100</u>
Failure to deliver furosemide treatment form WAC 260-70-650	<u>Warning to \$25</u>	<u>\$50</u>	<u>\$100</u>
Failure to have registration papers on file - resulting in a scratch WAC 260-40-090	\$50	\$100	\$100
Failure to submit gelding report WAC 260-28-295	<u>\$50</u>	<u>\$100</u>	<u>\$200</u>
Failure to obtain permission for equipment changes WAC 260-44-010	<del>((Warning to \$50))</del> <u>\$25</u>	\$50	<del>\$(50)</del> <u>100</u>

<b>Class A, B and C Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Smoking in restricted areas WAC 260-20-030	<u>\$50</u>	<u>\$100</u>	<u>\$250 and/or suspension</u>
Tampering with a fire protection, prevention or suppression system or device WAC 260-20-030	<del>\$(50)</del> <u>200</u>	<del>\$(100)</del> <u>500</u>	<del>\$(250 plus possible)</del> <u>1000 and/or suspension</u>
Failure to post problem gambling signs WAC 260-12-250	Warning to \$50	\$100	\$200
Issuing a check to the commission with not sufficient funds WAC 260-28-030	<del>\$(25)</del> <u>50</u>	<del>\$(50)</del> <u>100</u>	<del>\$(100)</del> <u>200</u>
Failure to follow instructions of the outrider WAC 260-24-690	\$50	\$100	\$200
Use of improper, profane, or indecent language WAC 260-80-130	<u>\$200</u>	<u>\$300</u>	<u>\$500</u>
Failure to complete provisional license application within fourteen days WAC 260-36-200	<del>((Warning to))</del> <u>\$100 and ((denial)) suspension of license</u>	<u>\$250 and ((denial)) suspension of license</u>	<u>\$500 and ((denial)) suspension of license</u>
Failure to register employees with the commission (trainers responsibility) WAC 260-28-230	Warning to \$50	\$100	\$200
Failure to furnish fingerprints WAC 260-36-100	<u>\$100 and suspension of license</u>	<u>\$250 and suspension of license</u>	<u>\$500 and suspension of license</u>

<b>Class A, B and C Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
<u>Nonparticipation - licensing WAC 260-36-080</u>	<u>License canceled</u>		
<u>False application WAC 260-36-100 and 260-36-120</u>	<u>\$50 to \$250 and/or possible denial, suspension or revocation of license</u>		
<u>Failure to divulge a misdemeanor or gross misdemeanor WAC 260-36-120</u>	<u>Warning to \$100</u>		
<u>Failure to divulge a felony WAC 260-36-120</u>	<u>\$100 to \$250 and/or denial, suspension, or revocation of license</u>		
<u>Failure to provide full disclosure, refusal to respond to questions, or responding falsely to stewards or commission investigators WAC 260-24-510</u>	<u>\$500 fine and/or denial, suspension or revocation of license</u>		
<u>Failure to pay proper industrial insurance premium(s) chapter 260-220 WAC and WAC 260-36-230</u>	<u>In addition to being required to pay the full industrial insurance premium, the trainer will be assessed a fine equal to fifty percent of the premium due</u>		
<u>Failure to pay ((or default on)) L&amp;I payment agreement WAC 260-28-235</u>	<u>((Per L&amp;I premium payment agreement,)) Immediate suspension until premium paid ((plus \$25)) and \$50 fine for each quarter payment is late</u>		
<u>Failure to register employees with the commission (trainer's responsibility) WAC 260-28-230</u>	<u>Warning to \$50</u>		
<u>Unlicensed person on the backside WAC 260-20-040 ((and 260-20-090))</u>	<u>Report violation to the racing association</u>		
<u>Financial responsibility WAC 260-28-030</u>	<u>Resolution with mutual agreement between the parties - failure to comply with the agreement will result in immediate suspension</u>		
<u>Failure to appear for a ruling conference WAC 260-24-510</u>	<u>Suspension (conference may be held in individual's absence)</u>		
<u>Failure to pay fine within 7 days of ruling conference (no extension granted or no request for hearing filed) WAC 260-24-510</u>	<u>Suspension until fine paid</u>		
<u>Possession or use of a stimulating device (may include batteries) WAC 260-52-040 and 260-80-100</u>	<u>1 year suspension plus mandatory referral to commission for revocation</u>		
<u>Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010</u>	<u>1 year suspension plus mandatory referral to commission for revocation</u>		
<u>Failure to wear proper safety equipment WAC 260-12-180</u>	<u>\$50</u>	<u>\$100</u>	<u>\$200</u>
<u>Horses shod with improper toe grabs WAC 260-44-150</u>	<u>Horse scratched and \$250 fine to trainer and plater</u>	<u>Horse scratched and \$500 fine to trainer and plater</u>	<u>Horse scratched and \$1000 fine to trainer and plater</u>
<u>Failure to display or possess license badge when in restricted area WAC 260-36-110</u>	<u>\$25</u>	<u>\$50</u>	<u>\$100</u>

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 06-07-058, filed 3/10/06, effective 4/10/06)

**WAC 260-84-090 Equine medication and prohibited substances—Penalties—Guidelines.** (1) Upon a finding of a violation of the medication and prohibited substances rules in chapter 260-70 WAC, the stewards ((shall)) will consider the classification level of the medication, drug or substance prior to imposing a penalty. The stewards ((shall)) will also consult with an official veterinarian to determine the nature and seriousness of the laboratory finding or the medication violation and whether the violation was a result of the administration of a therapeutic medication as documented in a veterinarian's report received per WAC 260-70-540.

(2) A lesser penalty than that established in WAC 260-84-110 may be imposed if a majority of the stewards determine that mitigating circumstances warrant a lesser penalty. If a majority of the stewards determine a greater penalty is appropriate or that a penalty in excess of the authority granted them is appropriate, they may impose the maximum penalty authorized and refer the matter to the commission with specific recommendations for further action. In determining if there are mitigating circumstances surrounding a medication violation for substances referred to in chapter 260-70 WAC, at least the following ((shall)) will be considered:

- (a) The past record of the trainer and/or veterinarian in medication/drug cases;
  - (b) The potential of the medication/drug to influence a horse's racing performance;
  - (c) The availability of the medication/drug;
  - (d) Whether there is reason to believe the responsible party knew of the administration of the medication/drug used;
  - (e) The steps taken by the trainer to safeguard the horse;
  - (f) The probability of environmental contamination or inadvertent exposure due to human drug use;
  - (g) The purse of the race;
  - (h) Whether the medication found was one for which the horse was receiving a treatment as determined by the veterinarian report(s);
  - (i) Whether there was any suspicious betting pattern in the race; and
  - (j) Whether the presence of the medication/drug in urine was confirmed in serum or plasma.
- (3) If a majority of the stewards determine a penalty greater than established in these rules is appropriate, they may impose the maximum penalty authorized and refer the matter to the commission with specific recommendations for further action.
- (4) If the penalty is not otherwise established for a violation of chapter 260-70 WAC, the penalty ((shall)) will be determined by the board of stewards.

AMENDATORY SECTION (Amending WSR 05-07-064, filed 3/11/05, effective 4/11/05)

**WAC 260-84-100 Furosemide penalties.** (1) Penalties ((shall)) will be assessed against any person found to be responsible or party to the improper administration of furosemide or failure to administer furosemide when required, in chapter 260-70 WAC as follows:

Fine not to exceed three hundred dollars. Multiple violations by an individual within a three hundred sixty-five day period may be referred to the commission for further action, which may include an additional fine or suspension.

(2) Equine medication violations from Washington and all recognized racing jurisdictions, ((shall)) will be considered when assessing penalties.

AMENDATORY SECTION (Amending WSR 05-07-064, filed 3/11/05, effective 4/11/05)

**WAC 260-84-110 Penalties for uniform classifications.** (1) Penalties ((shall)) will be assessed against any person found to be responsible or party to the improper administration of a drug or the intentional administration of a drug resulting in a positive test. In assessing penalties under this section, violations in the last three hundred sixty-five days from Washington and all recognized racing jurisdictions ((shall)) must be considered.

- (a) Class 1 - One to five year suspension and at least \$5,000 fine and loss of purse.
- (b) Class 2 - Six months to one year suspension and \$1,500 to \$2,500 fine and loss of purse.
- (c) Class 3 - Sixty days to six months suspension and up to \$1,500 fine and possible loss of purse.

(d) Class 4 - Zero to sixty days suspension and up to \$1,000 fine and possible loss of purse.

(e) Class 5 - Warning to fifteen days suspension with a possible loss of purse and/or fine.

(2) A lesser penalty may be imposed if a majority of the stewards determine that mitigating circumstances, as outlined in WAC ((260-70-090)) 260-84-090 exist.

AMENDATORY SECTION (Amending WSR 05-07-064, filed 3/11/05, effective 4/11/05)

**WAC 260-84-120 Penalties relating to permitted medication.** (1) Should the laboratory analysis of serum or plasma taken from a horse show the presence of more than

Concentration	1st offense within 365 days	2nd offense within 365 days	3rd and subsequent offenses within 365 days
> 5.0 but < 6.5 mcg/ml	Warning	Fine not to exceed \$300	Fine not to exceed \$500
((≥)) ≥ 6.5 but < 10.0 mcg/ml	Fine not to exceed \$300	Fine not to exceed \$500	Fine not to exceed \$1000
((≥)) ≥ 10.0 mcg/ml	Fine not to exceed \$500	Fine not to exceed \$1000	Fine not to exceed \$2500 and possible suspension

(3) Detection of any unreported permitted medication, drug, or substance by the primary testing laboratory may be grounds for disciplinary action.

(4) As reported by the primary testing laboratory, failure of any test sample to show the presence of a permitted medication, drug or substance when such permitted medication, drug or substance was required to be administered may be grounds for disciplinary action, which may include a fine not to exceed three hundred dollars. Multiple violations by an individual within a three hundred sixty-five day period may be referred to the commission for further action, which may include an additional fine and/or suspension or revocation.

(5) In assessing penalties for equine medication, violations from Washington and all recognized racing jurisdictions ((shall)) will be considered.

AMENDATORY SECTION (Amending WSR 05-07-064, filed 3/11/05, effective 4/11/05)

**WAC 260-84-130 Penalties for prohibited practices.** For a person or persons found to be responsible for ((or party to)) violation of WAC 260-70-545, including the treating veterinarian, the following penalties ((shall)) will be assessed:

(1) For violations of WAC 260-70-545, except WAC 260-70-545 (4)(b);

(a) For first offense - Thirty day suspension and \$1,000 fine;

(b) For second offense - Sixty day suspension and \$2,000 fine;

(c) For third offense - One year suspension, \$2,500 fine and a mandatory referral to the commission.

(2) For violations of WAC 260-70-545 (4)((b)), the person or persons found to be responsible for ((or party to)) the violation, including the treating veterinarian ((shall)) will be suspended for one year, ((shall)) pay a \$2,500 fine and ((there shall be a mandatory referral)) referred to the commission.

one approved nonsteroidal anti-inflammatory drug (NSAID) in violation of these rules the following penalties ((shall)) will be assessed:

(a) For a first offense within a three hundred sixty-five day period - Fine not to exceed \$300;

(b) For a second offense within a three hundred sixty-five day period - Fine not to exceed \$750;

(c) For a third offense within a three hundred sixty-five day period - Fine not to exceed \$1,000.

(2) Should the laboratory analysis of serum or plasma taken from a horse show the presence of phenylbutazone in excess of the quantities authorized by this rule, the following penalties ((shall)) will be assessed:

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 260-84-050                      Suspensions—Computation of time.
- WAC 260-84-070                      Ejection from grounds—Permission to reenter.

**WSR 08-02-045**  
**PROPOSED RULES**  
**HORSE RACING COMMISSION**  
 [Filed December 27, 2007, 8:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-09-131.

Title of Rule and Other Identifying Information: Amending the following chapters in Title 260 WAC: Chapter 260-24 WAC, Association officials and employees; chapter 260-52 WAC, The race—Paddock to finish; chapter 260-56 WAC, Objections and protests; chapter 260-60 WAC, Claiming; chapter 260-64 WAC, Winning; and chapter 260-66 WAC, Walking over.

In addition, chapter 260-76 WAC, Bookmaking, is being repealed and new WAC 260-80-170 Bookmaking, is being added.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on February 14, 2008, at 9:30 a.m.

Date of Intended Adoption: February 14, 2008.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by February 5, 2008.

Assistance for Persons with Disabilities: Contact Patty Sorby by February 5, 2008, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In March 2003, the commission noted that the rules in Title 260 WAC were outdated and needed review. As part of the agency's regulatory [regulatory] reform effort a comprehensive comparison of Title 260 WAC with the National Parimutuel Model Rules was conducted. That study was completed and published in August 2003. As a result, it was recommended at [and] approved by the commission that rather than adopting the national model rules in their entirety, the commission undertake the effort of amending rules, chapter by chapter and adopting only those portion[s] of the model rules that met the needs of the state of Washington, while still maintaining the integrity of the Washington "Rules of Racing." Since 2003, the agency has undertaken a chapter-by-chapter reform effort. It was not until 2007 that the agency had the resources to focus it[s] efforts on those chapters that had yet to be reviewed. The proposal is to amend the following chapters: Chapter 260-24 WAC, Association officials and employees; chapter 260-52 WAC, The race—Paddock to finish; chapter 260-56 WAC, Objections and protests; chapter 260-60 WAC, Claiming; chapter 260-64 WAC, Winning; chapter 260-66 WAC, Walking over; and chapter 260-76 WAC, Bookmaking (this chapter is being repealed and a new section in chapter 260-80 WAC, Penalties, is being added - WAC 260-80-170 Bookmaking).

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

December 27, 2007

R. J. Lopez

Deputy Secretary

AMENDATORY SECTION (Amending Rule 232, filed 1/30/67)

**WAC 260-24-030** ~~((Submittal of roster to commission—Approval—Substitutions.))~~ **Commission approval of racing officials.** ~~((At least ten days prior to the first day of a race meeting the association shall submit in writing to the commission the names of all association racing officials engaged for the meeting, and no association racing official shall be qualified to act until he shall have been approved by the commission. In the event of incapacitation of any such approved association official the association may, with the approval of the commission, appoint a substitute.))~~ (1) At least ten days prior to the first day of an approved race meet,

the association must submit to the commission, in writing, the names of all racing officials for the race meet.

(2) At least ten days prior to the first day of an approved race meet, the executive secretary must submit to the commission, in writing, the names of all commission employees who will be serving as racing officials for the race meet.

(3) Both the association and the executive secretary may use substitutions as necessary. All substitutions must be reported to the commission, in writing, at the next regular scheduled meeting of the commission.

AMENDATORY SECTION (Amending WSR 05-07-065, filed 3/11/05, effective 4/11/05)

**WAC 260-24-500 Racing officials.** (1) Officials at a race meet include the following:

- (a) Stewards;
- (b) Racing secretary;
- (c) Horsemen's bookkeeper;
- (d) Mutuel manager;
- (e) Official veterinarian(s);
- (f) Horse identifier;
- (g) Paddock judge;
- (h) Starter;
- (i) Security director, association;
- (j) Commission ~~((security inspector(s)))~~ investigator(s);
- (k) Commission auditor;
- (l) Clerk of scales;
- (m) Jockey room supervisor;
- (n) Film analyst;
- (o) Clocker(s);
- (p) Race timer;
- (q) Paddock plater;
- (r) Mutuel inspector;
- (s) Outrider(s);
- (t) Any other person designated by the commission.

~~(2) ((The commission officials of a race meet shall be designated prior to each race meet and those commission officials shall be compensated by the commission.))~~

The association officials of a race meet ~~((shall))~~ will include but are not limited to: Racing secretary, mutuel manager, starter, horsemen's bookkeeper, association security director, jockey room supervisor and outrider(s).

(3) Eligibility:

(a) To qualify as a racing official, the appointee ~~((shall))~~ must be;

- (i) Of good character and reputation;
- (ii) Familiar with the duties of the position and with the commission's rules of racing;
- (iii) Mentally and physically able to perform the duties of the job; and
- (iv) In good standing and not under suspension or ineligible in any recognized racing jurisdiction.

(b) To qualify for appointment as a steward the appointee ~~((shall))~~ must be an Association of Racing Commissioners International-accredited steward, unless the appointee has been appointed as a substitute steward as provided in WAC 260-24-510, and be in good standing with all Association of Racing Commissioners International member jurisdictions(~~;~~ unless the appointee has been appointed as a substitute stew-

and as provided in WAC 260-24-510)). The commission may waive this accreditation requirement for Class C race ~~((meetings))~~ meets.

(4) The commission, in its sole discretion, may determine the eligibility of a racing official and, in its sole discretion, may approve or disapprove any such official for licensing.

(5) While serving in an official capacity, racing officials and their assistants ~~((shall))~~ may not:

(a) Participate in the sale ~~((or))~~, purchase, or ownership of any horse racing at the meet; unless disclosed in advance and approved by the board of stewards;

(b) Sell or solicit horse insurance on any horse racing at the meet;

(c) Be licensed in any other capacity without permission of the ~~((commission))~~ executive secretary, or in case of an emergency, the permission of the stewards;

(d) ~~Make a wager on the outcome of any horse race ((for which parimutuel wagering is conducted))~~ at a race meet under the jurisdiction of the commission; or

(e) Consume or be under the influence of alcohol and/or ~~((any prohibited substances))~~ drugs while performing official duties.

(6) Racing officials and their assistants ~~((shall))~~ must immediately report to the stewards every observed violation of these rules.

(7) Complaints against officials:

~~((Complaints against any steward shall be made in writing to the commission and signed by the complainant;~~

~~(b))~~ Any complaint against ((a)) an association racing official other than a steward ((shall)) will be made to the board of stewards in writing and signed by the complainant. ((All such complaints shall be reported to the commission by the stewards, together with a report of the action taken or the recommendation of the stewards;

~~(c) A racing official may be held responsible by the stewards or the commission for the actions of their assistants;~~

~~(8) Appointment:~~

~~(a) A person shall not be appointed to more than one racing official position at a meet unless specifically approved by the commission;~~

~~(b) The commission shall appoint or approve its officials for each race meet, the officials shall perform the duties as outlined herein and such other duties as are necessary as determined by the commission or its executive secretary.~~

~~(9) Where an emergency vacancy exists among racing officials, the executive secretary or the association, shall fill the vacancy immediately. Such appointment shall be reported to the commission and shall be effective until the vacancy is filled in accordance with these rules.~~

~~(10))~~ The presiding steward will report to the executive secretary the action taken or recommended by the board of stewards. The executive secretary will determine whether the matter will be referred to the commission. The board of stewards will notify the complainant, in writing, of the action taken or recommended;

(b) Any complaint against a commission racing official, including an association steward, will be made to the executive secretary. The executive secretary will, if able, notify the complainant in writing of the action taken;

~~(8) Should any steward be absent at race time, and no approved alternate steward be available, the remaining stewards ((shall)) may appoint a substitute for the absent steward. If a substitute steward is appointed, the ((commission)) presiding steward will notify the executive secretary and the association ~~((shall be notified by the stewards))~~.~~

AMENDATORY SECTION (Amending WSR 07-03-067, filed 1/16/07, effective 2/16/07)

**WAC 260-24-510 Stewards.** (1) General authority:

(a) The stewards for each race meet are responsible to the executive secretary for the conduct of the race meet and the initial agency determination of alleged rule violations in accordance with these rules;

(b) The stewards will enforce the rules of racing in chapters 260-12 through 260-84 WAC, excluding chapters 260-49 and 260-75 WAC. The stewards will take notice of alleged misconduct or rule violations and initiate investigations into such matters;

(c) The stewards' authority includes regulation of all racing officials, track management, licensed personnel, other persons responsible for the conduct of racing, and patrons, as necessary to insure compliance with these rules;

(d) All nominations, entries, ~~((declarations))~~ and scratches will be monitored by a steward;

(e) The stewards have authority to resolve conflicts or disputes related to violations of the rules of racing and to discipline violators in accordance with the provisions of these rules;

(f) The stewards have the authority to interpret the rules and to decide all questions of racing. The stewards of the race meet are hereby given authority to exercise their full power, recommending to the commission the imposition of more severe penalties if necessary.

(2) The stewards' period of authority will commence and terminate at the direction of the executive secretary. One steward will be designated as the presiding steward by the executive secretary.

(3) Stewards ruling conference regarding violations of rules of racing:

(a) The stewards have authority to charge any licensee or other person with a violation of these rules, to make rulings and to impose penalties including the following:

(i) Issue a reprimand;

(ii) Assess a fine not to exceed \$2,500.00, except as provided in chapter 260-84 WAC ~~((260-84-060 and 260-84-110));~~

(iii) Require forfeiture or redistribution of purse or award, when specified by applicable rules;

(iv) Place a licensee on probation;

(v) Suspend a license or racing privileges for not more than one year per violation;

(vi) Revoke a license; or

(vii) Exclude from ~~((grounds))~~ facilities under the jurisdiction of the commission.

(b) The stewards' imposition of reprimands, fines and suspensions will be based on the penalties in chapter 260-84 WAC.



For any violation not specifically listed in chapter 260-84 WAC, the stewards have discretion to impose the penalties as provided in (a) of this subsection.

(c) The stewards may direct a jockey to meet with the film analyst whenever a jockey is involved in questionable, unsafe or potentially dangerous riding. Jockeys referred to the film analyst must appear when directed. Failure to appear when directed will be considered a violation of the rules of racing for which penalties may be imposed.

(d) The stewards have the authority to conduct a ruling conference, and the authority to:

(i) Direct the attendance of witnesses and commission employees;

(ii) Direct the submission of documents, reports or other potential evidence;

(iii) Inspect license documents, registration papers and other documents related to racing or the rule violation;

(iv) Question witnesses; and

(v) Consider all relevant evidence.

(e) The stewards must serve notice of a conference to person(s) alleged to have committed a violation, which must contain the following information:

(i) A statement of the time and place the conference will be held;

(ii) A reference to the particular sections of the WAC involved;

(iii) A short and plain statement of the alleged violation; and

(iv) A statement that if the person does not appear, the ruling will be made in his/her absence, and that failure to appear will be considered a separate violation of the rules of racing.

(f) Failure to appear for a ruling conference will be considered a violation of the rules of racing for which penalties may be imposed.

(g) It is the duty and obligation of every licensee to make full disclosure to the board of stewards and commission investigators conducting an investigation into any alleged violation of these rules, of any knowledge he/she possesses of a violation of any rule of racing. No person may refuse to respond to questions before the stewards or commission investigators on any relevant matter within the authority of the stewards or commission, except in the proper exercise of a legal privilege, nor may any person respond falsely before the stewards or to commission investigators.

(h) At the ruling conference, the stewards will allow the person alleged to have committed a violation to make a statement regarding the alleged violation.

(i) All ruling conferences will be recorded.

(j) Every ruling by the stewards from a ruling conference must be served in writing on the person(s) or parties found in violation within five days and must include:

(i) Time and place the ruling was made;

(ii) Statement of rules violated;

(iii) Details of the violation;

(iv) Penalties to be imposed;

(v) Procedure for requesting a hearing before the commission to challenge the ruling; and

(vi) Plain statement of the options of the person found in violation, which must include:

(A) Accepting the penalty imposed by the stewards; or

(B) Requesting a hearing before the commission challenging the stewards' ruling within seven days of service of the ruling.

(k) ~~((Any penalty))~~ Penalties imposed by the stewards, except for those penalties in (l), (m), and (q) of this subsection, will be stayed if a request for hearing before the commission is filed within the seven days of service of the ruling.

(l) If the stewards determine that a person's actions constitute an immediate ~~(;)~~ and/or substantial danger to human and/or equine health, safety, or welfare, and a request for hearing before the commission is filed within seven days of service of the ruling, no stay will be granted except by a hearing before the commission. The hearing before the commission will occur within thirty days of filing the request for hearing before the commission.

(m) If the stewards deny an application for license or suspend or revoke an existing license for any reasons listed in WAC 260-36-120(2), and a request for hearing before the commission is filed within seven days of service of the ruling, no stay will be granted except by a hearing before the commission. A hearing before the commission over whether or not to grant a stay will occur at the discretion of the commission.

(n) The stewards' ruling will be posted and a copy provided to the racing association.

~~((#))~~ (o) If a person does not file a request for hearing before the commission within seven days or in the format required by chapter 260-08 WAC, then the person is deemed to have waived his or her right to a hearing before the commission. After seven days, if a request for hearing before the commission has not been filed, the stewards' penalty will be imposed.

~~((#))~~ (p) "Service" of the notice of ruling conference or a stewards' ruling may be by either personal service to the person or by depositing the notice of ruling conference or stewards' ruling into the mail to the person's last known address in which case service is complete upon deposit in the U.S. mail.

~~((#))~~ (q) If the stewards determine that a person's actions constitute an immediate, substantial danger to human and/or equine health, safety, or welfare, the stewards may enter a ruling summarily suspending the license and/or ejecting the person from the grounds pending a ruling conference before the board of stewards. A summary suspension takes effect immediately on issuance of the ruling. If the stewards suspend a license under this subsection, the licensee is entitled to a ruling conference before the board of stewards, not later than five days after the license was summarily suspended. The licensee may waive his/her right to a ruling conference before the board of stewards on the summary suspension.

(4) Protests, objections and complaints. The stewards will ensure that an investigation is conducted and a decision is rendered in every protest, objection and complaint made to them. ~~((The stewards are vested with the power to determine the extent of disqualification in case of fouls. They may place the offending horse behind such horses as in their judgment it interfered with, or they may place it last.))~~

## (5) Stewards' presence:

(a) On each racing day at least one steward will be on duty at the track beginning three hours prior to first race post time.

(b) Three stewards must be present in the stewards' stand during the running of each race. ~~((In case of emergency, the executive secretary may appoint a substitute steward.))~~

## (6) Order of finish for parimutuel wagering:

(a) The stewards will determine the official order of finish for each race in accordance with these rules of racing;

(b) The decision of the stewards as to the official order of finish, including the disqualification of a horse or horses as a result of any event occurring during the running of the race, is final for purposes of distribution of the parimutuel wagering pool.

(7) The stewards have the authority to cancel wagering on an individual betting interest or on an entire race and also have the authority to cancel a parimutuel pool for a race or races, if such action is necessary to protect the integrity of parimutuel wagering.

## (8) Records and reports:

(a) The stewards will prepare a weekly report of their regulatory activities. The report will contain the name of the racetrack, the date, the weather and track conditions, claims, inquiries, protests, objections, complaints and conferences. The report will be filed with and approved by the executive secretary;

(b) Not later than seven days after the last day of a race ~~((meeting)) meet, unless approved by the executive secretary,~~ the presiding steward will submit a written report regarding the race ~~((meeting)) meet~~ to the executive secretary. The report will contain:

(i) The stewards' observations and comments regarding the conduct of the race ~~((meeting)) meet~~, the overall conditions of the association grounds during the race ~~((meeting)) meet~~; and

(ii) Any recommendations for improvement by the association or action by the commission.

## (9) Stewards' list:

(a) The stewards will maintain a stewards' list of the horses which are ineligible to be entered in a race because of poor or inconsistent performance or behavior on the racetrack that may endanger the health or safety of other participants in racing;

(b) The stewards may place a horse on the stewards' list when there exists a question as to the exact identification or ownership of said horse;

(c) A horse which has been placed on the stewards' list because of inconsistent performance or behavior, may be removed from the stewards' list when, in the opinion of the stewards, the horse can satisfactorily perform competitively in a race without endangering the health or safety of other participants in racing;

(d) A horse which has been placed on the stewards' list because of questions as to the exact identification or ownership of ~~(said) the~~ horse, may be removed from the stewards' list when, in the opinion of the stewards, proof of exact identification and/or ownership has been established.

(e) An owner or trainer who disagrees with the stewards' decision of placing or maintaining a horse on the stewards'

list may request and be granted a stewards' ruling conference to challenge the decision of the stewards.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

**WAC 260-24-520 Racing secretary.** ~~((1) The racing secretary shall be responsible for the programming of races during the race meeting, compiling and publishing condition books, assigning weights for handicap races, and shall receive all entries, subscriptions, declarations and scratches. The racing secretary may employ one or more assistants who may assist in performing the following duties. An assistant racing secretary shall assume the duties of the racing secretary in that person's absence.~~

~~(2) Foal, health and other eligibility certificates:~~

~~(a) The racing secretary shall be responsible for receiving, inspecting and safeguarding the foal and health certificates, Equine Infectious Anemia (EIA) test certificates and other documents of eligibility for all horses competing at the track or stabled on the grounds;~~

~~(b) The racing secretary shall record the alteration of the sex of a horse on the horse's foal certificate and report such to the appropriate breed registry and past performance services;~~

~~(c) The racing secretary shall record on a horse's registration certificate when a posterior digital neurectomy (heel nerving) is performed on that horse.~~

~~(3) The racing secretary shall maintain a list of nerved horses which are on association grounds and shall make the list available for inspection by other licensees participating in the race meeting.~~

~~(4) The racing secretary shall maintain a list of all fillies or mares on association grounds who have been covered by a stallion. The list shall also contain the name of the stallion to which each filly or mare was bred and shall be made available for inspection by other licensees participating in the race meeting.~~

~~(5) It shall be the duty of the racing secretary to assign to applicants such stabling as he may deem proper to be occupied by horses in preparation for racing. He/she shall determine all conflicting claims of stable privileges and maintain a record of arrivals and departures of all horses stabled on association grounds.~~

~~(6) Conditions and eligibility:~~

~~(a) The racing secretary shall establish the conditions and eligibility for entering races and cause them to be published to owners, trainers and the commission and be posted in the racing secretary's office.~~

~~(b) For the purpose of establishing conditions, winnings shall be considered to include all moneys and prizes won up to the time of the start of a race;~~

~~(c) Winnings during the year shall be calculated by the racing secretary from the preceding January 1.~~

~~(7) Listing of horses, the racing secretary shall:~~

~~(a) Examine all entry blanks to verify information as set forth therein; and~~

~~(b) Select the horses to start and the also eligible horses from those entries received in accordance with these rules.~~

(8) Upon completion of the draw each day, the racing secretary shall post a list of entries in a conspicuous location in his/her office and make the list available.

(9) The racing secretary shall publish the official daily program, ensuring the accuracy therein of the following information:

(a) Sequence of races to be run and post time for the first race;

(b) Purse, conditions and distance for each race, and current track record for such distance;

(c) The name of licensed owners of each horse, indicated as leased, if applicable, and description of racing colors to be carried;

(d) The name of the trainer and the name of the jockey named for each horse together with the weight to be carried;

(e) The post position and saddle cloth number or designation for each horse if there is a variance with the saddle cloth designation;

(f) Identification of each horse by name, color, sex, age, sire and dam; and

(g) Such other information as may be requested by the association or the commission.

(10) The racing secretary shall examine nominations received for early closing events, late closing events and stakes events to verify the eligibility of all such nominations and compile lists thereof for publication.

(11) The racing secretary shall be caretaker of the permanent records of all stakes and shall verify that all entrance moneys due are paid prior to entry for races conducted at the meeting.)) The racing secretary is responsible for the following duties:

(1) Programming of races during the race meet;

(2) Compiling and publishing condition books;

(3) Assigning weights for handicap races;

(4) Receiving all entries, nominations, and scratches;

(5) Supervising the racing office employees, including the assistant racing secretary;

(6) Receiving, inspecting, and safeguarding all required foal and health certificates, Equine Infectious Anemia (EIA) test certificates, and other documents of eligibility for all horses competing at the track or stabled on the grounds;

(7) Recording the alteration of the sex of a horse on the horse's foal papers and reporting such to the appropriate breed registry and past performance services;

(8) Recording on a horse's registration certificate when a posterior digital neurectomy (heel nerving) is performed on that horse;

(9) Maintaining a list of heel nerved horses on association grounds and making the list available for inspection by persons participating in the race meet;

(10) Maintaining a list of all fillies or mares on association grounds that have been covered by a stallion, and making this list available for inspection by persons participating in the race meet. This list will include the name of the stallion;

(11) Assigning stalls to be occupied by horses in preparation for racing;

(12) Determining conflicting claims of stable privileges and maintaining a record of arrivals and departures of all horses arriving and departing the association grounds;

(13) Establishing the conditions and eligibility for entering races and publishing the conditions and eligibility to owners, trainers, and the commission. Conditions and eligibility will also be posted in the racing secretary's office.

(a) For the purpose of establishing conditions, winnings will be considered to include all moneys won up to the time of the start of the race;

(b) Winnings during the calendar year will be calculated by the racing secretary from the preceding January 1st;

(14) Entries of horses, which will include:

(a) Examining all entry blanks to verify correct information; and

(b) Selecting the horses to start and the "also eligible" horses, if any, from those entries received in accordance with WAC 260-52-020;

(15) Upon completion of the draw each day, posting a list of entries in a conspicuous location in the race office and making the lists available upon request;

(16) Publishing the official daily program and ensuring the accuracy of the following information:

(a) Sequence of races to be run and post time for the first race;

(b) Purse, conditions and distance for each race, and current track record for each distance;

(c) The name of licensed owners of each horse (indicate as leased, if applicable), and the description of racing colors to be carried;

(d) The name of the trainer and the name of the jockey for each horse together with the weight to be carried;

(e) The post position and the saddlecloth number or designation for each horse if there is a variance with the saddlecloth designation;

(f) Identification of each horse by name, color, sex, age, sire and dam; and

(g) Any other information that may be requested by the association or commission;

(17) Update the foal certificates on all winners to reflect type of race won and amount of purse money awarded;

(18) Accurately record on the foal certificates any transfer of ownership of horses, by either claim or bill of sale, to reflect true ownership of horse;

(19) Examining nominations received for early closing events, late closing events, and stakes events to verify the eligibility of all nominations and compile lists for publication;

(20) Maintaining the permanent records of all stakes and verifying that all entrance moneys due are paid prior to entry for races conducted at the race meet.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

WAC 260-24-530 Horsemen's bookkeeper. The horsemen's bookkeeper (~~((shall maintain the records and accounts and perform the duties described herein and maintain such other records and accounts and perform such other duties as the association and commission may prescribe))~~ is responsible to maintain the records, moneys and funds on account, and the payment of all purses.

(1) Records: ((~~+~~)) The records ((~~shall~~)) will include the name, mailing address, social security number or federal tax

identification number, and the state or country of residence of ~~((each))~~ all horse owners, trainers or jockeys participating at the race ((meeting)) meet who ~~((has))~~ have funds due or on deposit in the horsemen's account;

~~((b))~~ The records shall include a file of all required statements: Of partnerships, syndicates, corporations, assignments of interest, lease agreements and registrations of authorized agents;

~~(e)~~ All records of the horsemen's bookkeeper shall be kept separate and apart from the records of the association;

~~(d)~~ All records of the horsemen's bookkeeper including records of accounts and moneys and funds kept on deposit are subject to inspection by the commission at any time;

~~(e)~~ The association licensee is subject to disciplinary action by the commission for any violations of or noncompliance with the provisions of this rule.)

~~(2)~~ All records, moneys, and funds on account(;

~~(a)~~ All moneys and funds on account with the horsemen's bookkeeper shall) will be maintained(;

~~(i)~~ Separate and apart) separate from moneys and funds of the association(;

~~(ii))~~ in an account designated as Horsemen's Account(; and

~~(iii))~~ and in an account insured by the Federal Deposit and Insurance Corporation. The records are subject to inspection by the commission or the commission's designee at any time.

~~((b))~~ The horsemen's bookkeeper shall be bonded in accordance with commission stipulations;

~~(e)~~ The amount of purse money earned is credited in the currency of the jurisdiction in which the race was run. There shall be no appeal for any exchange rate loss at the time of transfer of funds from another jurisdiction.)

~~(3)~~ Payment of purses:

~~(a)~~ The horsemen's bookkeeper ((shall)) will receive, maintain and disburse the purses of each race and all stakes, entrance money, jockey fees, purchase money in claiming races, along with all applicable taxes and other moneys that properly come into ((his/her)) the bookkeeper's possession in accordance with the provisions of ((eommission)) these rules;

~~(b)~~ The horsemen's bookkeeper may accept moneys due belonging to other organizations or recognized ((meetings)) race meets, provided ((prompt return is made)) the moneys are promptly returned to the organization to which the money is due;

~~(c)~~ ((The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no chemical substance has been administered, in violation of these rules, to the horse earning such purse money;

~~((d))~~ The horsemen's bookkeeper ((shall)) will disburse the purse of each race and all stakes, entrance money, jockey fees and purchase money in claiming races, along with all applicable taxes, upon request, within ((48)) forty-eight hours of receipt of notification that all tests with respect to such races have cleared the drug testing;

~~((e))~~ (d) Absent a prior request, the horsemen's bookkeeper ((shall)) will disburse moneys to the persons entitled to receive the same within ((15)) fifteen days after the last race day of the race ((meeting, including)) meet. This

includes purses for official races, provided ((that)) all tests ((with respect to such)) on horses in races have cleared the drug testing laboratory and ((provided further)) that no protest or appeal has been filed with the stewards or the commission;

(e) The amount of purse money earned will be credited in the currency of the jurisdiction in which the race was run. There is no right to a hearing under WAC 260-08-675 for any exchange rate loss at the time of transfer of funds to or from another jurisdiction;

(f) In the event a protest or appeal has been filed with the stewards or the commission, the horsemen's bookkeeper ((shall)) will disburse the purse within ((48)) forty-eight hours of receipt of dismissal or a final nonappealable order disposing of ((such)) the protest or appeal.

(4) The association license is subject to disciplinary action by the commission for any violation of or noncompliance with the provisions of this section.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

WAC 260-24-540 Mutuel manager. ((The mutuel manager is responsible for the operation of the parimutuel department and shall:

(1) Be responsible for the correctness of all pay-off prices;

(2) Maintain records of all wagers and provide information regarding betting patterns;

(3) Employ licensed individuals to aid in the operation of the parimutuel department;

(4) Make emergency decisions regarding the operation of the parimutuel department; and

(5) Be responsible for the enforcement of the association policy and procedures relating to the mutuel department.)

The mutuel manager is responsible for the following:

(1) The overall operation of the parimutuel department;

(2) The correctness of all pay-off prices;

(3) To maintain records of all wagers;

(4) To provide information regarding betting patterns to the commission, or its designee(s);

(5) To supervise all association employees who work in the parimutuel department;

(6) To make decisions regarding the operation of the parimutuel department; and

(7) The enforcement of the association's policy and procedures relating to the parimutuel department.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

WAC 260-24-550 Official veterinarian(s). The official veterinarian(s) ((shall:

(1)) will be employed by the commission(;

(2)), and be a graduate veterinarian ((and be), licensed to practice veterinary medicine in ((this jurisdiction;

(3)) the state of Washington. The official veterinarian(s) will perform the following duties:

(1) Recommend to the board of stewards any horse ((deemed)) the official veterinarian believes is unsafe to be raced, or a horse that it would be inhumane to allow to race;

~~((4))~~ (2) Place and remove horses ~~((on the veterinarian's list and remove horses))~~ from the veterinarian's list;

~~((5))~~ (3) Place and remove horses ~~((on the bleeder list and remove horses))~~ from the bleeder list;

~~((6))~~ (4) Supervise ~~((and control))~~ the test barn;

~~((7))~~ (5) Supervise the ~~((taking))~~ collection of all specimens for testing ~~((according to procedures approved by the commission));~~

~~((8))~~ (6) Provide proper safeguards in the handling of all ~~((laboratory))~~ collected specimens to prevent tampering, confusion or contamination;

~~((9))~~ (7) Provide the stewards ~~((with))~~ a written ~~((statement))~~ report regarding the nature ~~((and))~~, seriousness ~~((of))~~, and meaning of concentration levels, if any, for all laboratory reports of prohibited substances in equine samples;

~~((10))~~ (8) Have jurisdiction over ~~((the practicing))~~ all licensed veterinarians ~~((within the enclosure))~~ on the grounds for the purpose of these rules;

~~((11))~~ (9) Report to the commission the names of all horses humanely destroyed or ~~((which otherwise expire))~~ that die on the grounds at the ~~((meeting and the reasons therefore))~~ race meet. This report will include the reason a horse was destroyed;

~~((12))~~ (10) Maintain ~~((all required))~~ records of post-mortem examinations performed on horses ~~((which))~~ that have died on association grounds;

~~((13))~~ (11) Be available to the stewards prior to scratch time each ~~((racing))~~ race day ~~((at a time designated by the stewards))~~ to inspect any horses and report on their condition ~~((as may be requested by the stewards));~~

~~((14))~~ (12) Be present in the paddock during saddling, on the racetrack during the post parade and at the starting gate until the horses are dispatched from the gate for the race;

~~((15))~~ (13) Inspect any horse when there is a question as to ~~((the))~~ its physical condition ~~((of such horse))~~ or soundness;

~~((16))~~ (14) Recommend ~~((scratching a horse))~~ to the stewards a horse be scratched if ~~((, in his/her opinion))~~ the horse is physically incapable of exerting its best effort to win;

~~((17))~~ (15) Inspect any horse ~~((which))~~ that appears in physical distress during the race or at the finish of the race ~~((;))~~ and ~~((shall))~~ report ~~((such horse together with his/her opinion as to the cause of the distress))~~ their findings to the stewards;

~~((18))~~ Refuse employment or payment, directly or indirectly, from any horse owner or trainer of a horse racing or intending to race in this jurisdiction while employed as the official veterinarian for the commission;

(19) Review and consult with the applicants and the stewards regarding commission license applications of practicing veterinarians;

(20) Cooperate) (16) Work with practicing veterinarians and other regulatory agencies to take measures to control communicable and/or reportable equine diseases;

~~((21))~~ (17) Periodically review ~~((all))~~ horse ~~((papers under the jurisdiction of the commission))~~ registration certificates to ensure that all required test and health certificates are current and properly filed in accordance with these rules; and

~~((22) Be authorized to))~~ (18) Humanely destroy any horse ~~((deemed to be))~~ so seriously injured that it is in the best interests of ~~((racing))~~ the horse to ~~((so))~~ act.

AMENDATORY SECTION (Amending WSR 99-05-048, filed 2/12/99, effective 3/15/99)

**WAC 260-24-560 Horse identifier.** ~~((The horse identifier shall:~~

(1) ~~When required, ensure the safekeeping of registration certificates and racing permits for horses stabled and/or racing on association grounds;~~

(2) ~~Inspect documents of ownership, eligibility, registration or breeding necessary to ensure the proper identification of each horse scheduled to compete at a race meeting;~~

(3) ~~Examine every starter in the paddock, or other designated location approved by the commission, for sex, color, markings and lip tattoo or other identification method approved by the appropriate breed registry and the commission for comparison with its registration certificate to verify the horse's identity; and~~

(4) ~~Supervise the tattooing, branding or other method of identification approved by the appropriate breed registry and the commission for identification of any horse located on association grounds.~~

(5) ~~The horse identifier shall report to the stewards any horse not properly identified or whose registration certificate is not in conformity with these rules.)~~ The horse identifier is responsible for performing the following duties:

(1) Inspect the certificate of registration or each horse scheduled to compete at the race meet to ensure the proper identification;

(2) Examine every starter in the receiving barn or paddock for lip tattoo, sex, color, and markings or other identification method approved by the appropriate breed registry and the commission for comparison with its registration certificate to verify the horse's identity;

(3) Approve each horse to enter and race by determining that they are properly tattooed and match their breed specific foal certificate; and

(4) Report to the board of stewards any horse not properly identified or whose registration certificate is not in compliance with these rules.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

**WAC 260-24-570 Paddock judge.** ~~((1) The paddock judge shall:~~

(a) ~~Supervise the assembly of horses in the paddock no later than fifteen (15) minutes before the scheduled post time for each race;~~

(b) ~~Maintain a written record of all equipment, inspect all equipment of each horse saddled and report any change thereof to the stewards;~~

(c) ~~Prohibit any change of equipment without the approval of the stewards;~~

(d) ~~Ensure that the saddling of all horses is orderly, open to public view, free from public interference, and that horses are generally mounted at the same time, and leave the paddock for the post in proper sequence;~~

(e) Supervise paddock schooling of all horses approved for such by the stewards;

(f) Report to the stewards any observed cruelty to a horse;

(g) Ensure that only properly authorized persons are permitted in the paddock; and

(h) Report to the stewards any unusual or illegal activities.

(2) Paddock judge's list:

(a) The paddock judge shall maintain a list of horses which shall not be entered in a race because of poor or inconsistent behavior in the paddock that endangers the health or safety of other participants in racing;

(b) At the end of each race day, the paddock judge shall provide a copy of the list to the stewards;

(c) To be removed from the paddock judge's list, a horse must be schooled in the paddock and demonstrate to the satisfaction of the paddock judge and the stewards that the horse is capable of performing safely in the paddock.)) The paddock judge is responsible for performing the following duties:

(1) Supervise the horses in the paddock and saddling enclosure;

(2) Inspect all equipment of each horse to ensure safety;

(3) Monitor any equipment as requested by the board of stewards;

(4) Prohibit any change of equipment listed in WAC 260-44-010 without approval of the board of stewards;

(5) Ensure that all horses are generally mounted at the same time, and all horses leave the paddock for the post parade in the proper sequence;

(6) Supervise paddock schooling of all horses approved for schooling;

(7) Place and remove horses on the paddock list for poor or unruly behavior in the paddock. Horses placed on the paddock list will be refused entry until the horse has been satisfactorily schooled in the paddock. Schooling will be under the direct supervision of the paddock judge or his/her designee;

(8) Ensure that only properly authorized persons are permitted in the paddock; and

(9) Report to the stewards any unusual activities in violation of these rules.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

**WAC 260-24-580 Starter and assistant starters.** ((+) The starter shall:

(a) Have complete jurisdiction over the starting gate, the starting of horses and the authority to give orders not in conflict with the rules as may be required to ensure all participants an equal opportunity to a fair start;

(b) Appoint and supervise assistant starters who have demonstrated they are adequately trained to safely handle horses in the starting gate. In emergency situations, the starter may appoint qualified individuals to act as substitute assistant starters;

(c) Ensure that a sufficient number of assistant starters are available for each race;

(d) Assign the starting gate stall positions to assistant starters and notify the assistant starters of their respective stall positions more than 10 minutes before post time for the race;

(e) Assess the ability of each person applying for a jockey's license in breaking from the starting gate and working a horse in the company of other horses, and shall make said assessment known to the stewards; and

(f) Load horses into the gate in any order deemed necessary to ensure a safe and fair start.

(2) Assistant starters, with respect to an official race, shall not:

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

(b) Impede the start of a race;

(c) Apply a whip or other device, with the exception of steward-approved twitches, to assist in loading a horse into the starting gate;

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

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

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

(3) No horse shall be permitted to start in a race unless approval is given by the starter. The starter shall maintain a starter's list of all horses which are ineligible to be entered in any race because of poor or inconsistent behavior or performance in the starting gate. Such horse shall be refused entry until it has demonstrated to the starter that it has been satisfactorily schooled in the gate and can be removed from the starter's list. Schooling shall be under the direct supervision of the starter.

(4) The starter and assistant starter shall report all unauthorized activities to the stewards.)) (1) The starter is responsible for the following duties:

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

(b) Supervise the assistant starters;

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

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

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

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

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

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

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

(5) Assistant starters may not:

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

(b) Impede the start of a race;

(c) Strike a horse with a whip;

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

**WAC 260-24-590 Security director, association.**

((The security director shall be employed by the association and shall be directly responsible for maintaining the security and safety of the racing association's grounds. He/she shall issue daily reports to the commission security inspector outlining staffing and any incidents or occurrences which may constitute a violation of the "rules of racing." The security director will work closely with the board of stewards and commission security inspector(s) to facilitate the licensing, regulation and supervision of licensees and the racing association grounds. The security director may be requested to perform such other specific duties as are mutually agreed upon between the board of stewards and the racing association.)) The security director will be employed by the association and will be responsible for maintaining the security and safety of the association's grounds. The security director will provide daily reports to the commission investigators related to any incidents or occurrences on the association grounds, which may constitute a violation of the rules in Title 260 WAC. The security director will work with the board of stewards and commission investigators in all matters related to licensing and regulation of all applicants and licensees on association grounds.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

**WAC 260-24-600 Commission ((security inspector(s))) investigator(s).** ((The commission security inspector(s) shall be employed by the commission and report to the commission executive secretary and the stewards. His/her duties shall include investigation of allegations of wrongdoing and violations of the "rules of racing," presentation of cases before the stewards and other duties as set forth by the commission or the stewards.)) The commission investigator(s) report to the executive secretary or designee. The investigator(s) are responsible to investigate allegations of

wrongdoing and violations of Title 260 WAC. The investigator(s) will present cases before the board of stewards, the commission, and perform any other duties as determined by the executive secretary or stewards.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

**WAC 260-24-610 Commission auditor.** ((The commission auditor shall be responsible for:

(1) Verifying the calculations of the parimutuel department;

(2) Calculating and/or verify the monetary commissions due;

(3) Maintaining the Washington bred owners bonus fund (including filing of tax information); and

(4) Various accounting and auditing services as requested by the commission or the stewards.)) The commission auditor is responsible for the following duties:

(1) Reviewing annually the financial statements of the racing association.

(2) Verifying the monetary commissions due to each entity as required by law, rule or agreement.

(3) Verifying Washington-bred eligibility and the accounting for the Washington-bred owners' bonus fund.

(4) Verifying payoffs on betting pools as requested by the commission or designee.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

**WAC 260-24-620 Clerk of scales.** ((The clerk of scales shall:

(1) Verify the presence of all jockeys in the jockeys' room at the appointed time;

(2) Verify that all such jockeys have a current jockey's license issued by the commission;

(3) Verify the correct weight of each jockey at the time of weighing out and weighing in and report any discrepancies to the stewards immediately;

(4) Oversee the security of the jockeys' room including the conduct of the jockeys and their attendants;

(5) Promptly report to the stewards any infraction of the rules with respect to weight, weighing, riding equipment or conduct;

(6) Record all required data on the scale sheet and submit that data to the horsemen's bookkeeper at the end of each race day;

(7) Maintain the record of applicable winning races on all apprentice certificates at the meeting;

(8) Release apprentice jockey certificates, upon the jockey's departure or upon the conclusion of the race meet; and

(9) Assume the duties of the jockey room supervisor in the absence of such employee.)) The clerk of scales is responsible for the following duties:

(1) Verifying the presence of all jockeys in the jockey's room at the time required by rule;

(2) Verifying all jockeys are properly licensed;

(3) Verifying the correct weight of each jockey at the time of weighing out and weighing in;

(4) Overseeing the security of the jockey's room, including the conduct of the jockeys and their attendants;

(5) Recording all required data on the scale sheet and submitting the completed scale sheet to the horseman's book-keeper at the end of each race day;

(6) Maintaining the records of applicable winning races on all apprentice certificates at the race meet;

(7) Releasing the apprentice jockey certificates when either the jockey departs or at the conclusion of the race meet;

(8) Reporting immediately to the board of stewards any violations of the rules of racing.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

**WAC 260-24-630 Jockey room supervisor.** ((The jockey room supervisor shall:

(1) Supervise the conduct of the jockeys and their attendants while they are in the jockey room;

(2) Keep the jockey room clean and safe for all jockeys;

(3) Ensure all jockeys are in the correct colors before leaving the jockey room to prepare for mounting their horses;

(4) Keep a daily video list as dictated by the stewards and have it displayed in plain view for all jockeys;

(5) Keep a daily program displayed in plain view for the jockeys so they may have ready access to mounts that may become available;

(6) Keep unauthorized persons out of the jockey room; and

(7) Report to the stewards any unusual occurrences in the jockey room.)) The jockey room supervisor is responsible for the following duties:

(1) Supervising the conduct of the jockeys and their attendants while they are in the jockeys' room;

(2) Keeping the jockeys' room clean and safe for all participants;

(3) Ensuring all jockeys are in the correct colors before leaving the jockeys' room to mount their horses;

(4) Keeping a daily program available for the jockeys so they have ready access to mounts that may come available;

(5) Keeping unauthorized persons out of the jockeys' room;

(6) Assisting the clerk of scales in the weighing in or out of jockeys when authorized by the stewards or clerk of scales; and

(7) Reporting to the clerk of scales or stewards any unusual occurrences in the jockeys' room.

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

**WAC 260-24-640 Film analyst.** ((The film analyst, when utilized, shall be responsible for assisting the stewards and other commission officials in the interpretation of video coverage of each race. The analyst shall perform such other duties as are designated by the board of stewards.)) The film analyst, when utilized, is responsible for the following duties:

(1) Keeping a daily video list as directed by the stewards and have it displayed in plain view for all jockeys;

(2) Reviewing with all apprentice jockeys the video record of all their rides;

(3) Reviewing with jockeys the video record of their rides as directed by the board of stewards;

(4) Assisting the board of stewards by reviewing all races and reporting to the board of stewards any unsafe or potentially dangerous occurrences detected;

(5) Performing any other duties as assigned by the board of stewards.

AMENDATORY SECTION (Amending WSR 04-07-074, filed 3/15/04, effective 4/15/04)

**WAC 260-24-650 Clocker**~~((s)).~~ ~~((1) The clocker(s) shall be present during training hours at each track on association grounds, which is open for training, to identify each horse working out and to accurately record the distances and times of each horse's workout.~~

~~(2) Each day, the clocker(s) shall prepare a list of workouts that describes the name of each horse which worked, along with the distance and time of each horse's workout.~~

~~(3) At the conclusion of training hours, the clocker shall deliver a copy of the list of workouts to the stewards and the racing secretary.~~

~~(4) The clocker(s) and his/her representative shall report the time and distance of the horse that best represents the workout which is in the best interest of the public.~~

~~(5) Whenever training occurs at other than a racing association within its scheduled race meet and training dates, only individuals licensed by the commission may clock workouts. Off-season clocking can only be performed at approved training centers, in the method prescribed by the commission, and in compliance with WAC 260 40 100. Prior to conducting off-season clocking, all clockers must be approved and licensed by the commission. Approval shall be based on the clockers' knowledge of and proficiency in performing clocking activities.)) (1) The clocker is responsible for the following duties:~~

~~(a) Be present during training hours at each association to record the time and distance of each horse's official workout. (A clocker is not required to be present for any other workouts);~~

~~(b) Prepare a daily record of all official workouts, which must include:~~

~~(i) The name of each horse;~~

~~(ii) The name of the track and training center where the official workout occurred; and~~

~~(iii) The time and distance of each horse's official workout;~~

~~(c) Deliver the daily record of all official workouts occurring on association grounds to the racing secretary at the end of each day's training.~~

~~(2) The clocker recording official workouts off the association grounds, during the association's scheduled race meet and training dates, will deliver the daily record of all official workouts to the racing secretary within twenty-four hours.~~

~~(3) Approval for a clocker's license will be based on the individual's knowledge of and proficiency in performing clocking activities.~~



AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

**WAC 260-24-660 Race timer.** ~~((1) The timer shall accurately record the time elapsed between the start and finish of each race.~~

~~(2) The time shall be recorded from the instant that the first horse leaves the point from which the distance is measured until the first horse reaches the finish line.~~

~~(3) At the end of a race, the timer shall post the official running time on the infield totalisator board.~~

~~(4) At a racetrack equipped with an appropriate infield totalisator board, the timer shall post the quarter times (splits) for races in fractions as a race is being run. For quarter horse races, the timer shall post the official times in hundredths of a second.~~

~~(5) For back-up purposes, the timer shall also use a stopwatch to time all races. In time trials, the timer shall ensure that at least three stopwatches are used by the stewards or their designees.~~

~~(6) The timer shall maintain a written record of fractional and finish times of each race and have same available for inspection by the stewards or the commission on request.)) The race timer is responsible for the following duties:~~

~~(1) Recording accurately the time elapsed between the start and finish of each race. The time will be recorded from the instant the race begins until the first horse reaches the finish line. (As a backup to the electronic timer, the race timer will also use a stopwatch to time all races. In time trials, the race timer will ensure that the board of stewards approves three designees to use at least three stopwatches.)~~

~~(2) Posting the official running time on the infield totalisator board at the end of each race. (At a racetrack equipped with an appropriate infield totalisator board, the timer will post the split times for races in fractions as a race is being run. For quarter horse races, the timer will post the official times in hundredths of a second.)~~

~~(3) Maintaining a record of fractional and finish times of each race. The record will be available for inspection by the board of stewards.~~

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

**WAC 260-24-670 Paddock plater.** ~~((The paddock plater shall be available during racing hours to perform emergency shoeing repairs on horses in either the receiving barn, the paddock or during the parade to post. When directed by the board of stewards, the paddock plater shall report horses which are wearing caulks and on which feet. With permission of the stewards the paddock plater may assume other duties as requested by the association.)) The paddock plater is responsible for the following duties:~~

~~(1) Be available during race hours to perform emergency shoeing repairs on horses in the receiving barn, paddock, or during post parade;~~

~~(2) When directed by the board of stewards, inspect the height of toe grabs, or type of shoes on all horses, either in the receiving barn or paddock.~~

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

**WAC 260-24-680 Mutuel inspector.** ~~((The mutuel inspector shall oversee parimutuel wagering activity, including but not limited to, testing of the totalisator system, working with the board of stewards, commission auditor and mutuel manager as related to chapter 260-48 WAC and shall perform other duties as directed by the commission.)) The mutuel inspector is responsible to oversee the parimutuel wagering activity during the race meet. This will include, but is not limited to, testing of the totalisator system, reviewing unusual wagering patterns, providing information to the board of stewards, assisting the commission auditor and association mutuel manager, reviewing association simulcast contracts, and performing other duties as directed by the board of stewards.~~

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

**WAC 260-24-690 Outrider(s).** ~~((The duty of the outrider(s) shall be to maintain safety on the racetrack during training hours insuring that all persons entering onto the racetrack have the proper safety equipment. During racing hours, prior to each race, the outrider(s) shall be responsible for maintaining order during the post parade and insuring that the horses arrive at the starting gate at post time. The outrider(s) shall inform the stewards of any questionable conduct and shall perform other duties as directed by the stewards.)) The outrider(s) is responsible for the following duties:~~

~~(1) During training hours:~~

~~(a) Maintaining safety on the racetrack;~~

~~(b) Ensuring all persons on horseback ride in a safe and prudent manner;~~

~~(c) Ensuring all persons on horseback have the proper safety equipment;~~

~~(d) Promptly reporting to the commission investigators any questionable conduct, and all injuries occurring on the track; and~~

~~(e) Reporting to the commission investigators, or stewards, unsafe riding, any persons on horseback who may be under the influence of alcohol and/or drugs.~~

~~(2) During racing hours:~~

~~(a) Maintaining order during post parade;~~

~~(b) Ensuring all persons on horseback have the proper safety equipment;~~

~~(c) Ensuring that the horses arrive at the starting gate at post time; and~~

~~(d) Reporting to the stewards any questionable conduct, and unsafe riding.~~

AMENDATORY SECTION (Amending WSR 98-01-145, filed 12/19/97, effective 1/19/98)

**WAC 260-24-700** ~~((**Any other person designated by the commission.**)) Other racing official designated by the commission. ~~((The commission may create additional racing official positions, as needed. Persons selected for these positions shall be considered racing officials and shall be subject to the general eligibility requirements outlined in this chap-~~~~

ter.)) The commission may create additional racing official positions. Persons selected to these positions will be considered racing officials and subject to the same eligibility requirements outlined in this chapter. Persons selected will be responsible to perform duties assigned to them.

AMENDATORY SECTION (Amending WSR 00-06-069, filed 3/1/00, effective 4/1/00)

**WAC 260-52-010 Paddock to post.** (1) Permission must be obtained from a steward to exercise a horse between races.

(2) In a race, each horse ~~((shall))~~ must carry a conspicuous saddlecloth number and a head number, corresponding to ~~((his))~~ its number on the official program. In the case of an entry each horse making up the entry ~~((shall))~~ must carry the same number (head and saddlecloth) with a distinguishing letter. For example, 1-1A, 1X. In the case of a field the horses comprising the field ~~((shall))~~ must carry an individual number; i.e., 12, 13, 14, 15, and so on.

(3) After the horses enter the track, and before the start of the race, no jockey ~~((shall))~~ may dismount and no horse ~~((shall be entitled to the care of an attendant))~~ may be handled by anyone other than the jockey, the starter, the starter's assistants, the outrider, the pony rider, or the official veterinarian without ((consent)) permission of the stewards or the starter~~((, and the horse must be free of all hands other than those of the jockey or assistant starter before the starter releases the barrier))~~.

(4) In the case of ~~((accident))~~ injury to a jockey, his/her mount, or damage to equipment, the stewards or the starter may permit the jockey to dismount and the horse to be cared for during the delay~~((, and may))~~. The stewards may permit all jockeys to dismount ((and all horses to be attended)) during the delay.

(5) All horses ~~((shall))~~ must participate in the post parade, which includes passing the steward's stand and, ((under penalty of disqualification, shall)) all horses must carry their weight from the paddock ((to the starting post, such parade to pass the steward's stand)) until the finish of the race unless approved by the stewards.

(6) ~~((After entering the track not more than 12 minutes shall be consumed in the parade of the horses to the post except in cases of unavoidable delay. After passing the stand once, horses will be allowed to break formation and canter, warm up or go as they please to the post.))~~ The post parade may not exceed twelve minutes unless approved by the stewards. When horses have reached the post, they ~~((shall))~~ will be started without unnecessary delay.

(7) If the jockey is ~~((so))~~ injured on the way to the post ~~((as to require another jockey))~~, the horse ~~((shall))~~ will be taken to the paddock and another jockey obtained, if available.

(8) No person ~~((shall))~~ may wilfully delay the arrival of a horse at the post.

(9) No person other than the rider, starter, or assistant starter ~~((shall be permitted to))~~ may strike a horse, or attempt~~((, by shouting or otherwise))~~ to assist ~~((it in getting a start))~~ the horse in starting.

(10) ~~((In all races))~~ A jockey is not required to carry a whip. However, in any race in which a jockey will not ride with a whip, ((an announcement of that fact shall be made over the public address system)) the public will be notified prior to the race.

AMENDATORY SECTION (Amending WSR 00-20-028, filed 9/27/00, effective 10/28/00)

**WAC 260-52-020 Post position.** Post position ~~((shall))~~ will be determined publicly by lot in the presence of the racing secretary or his/her deputy, a steward or steward designee. ~~((After a regular carded horse or horses have been excused from a race))~~ In the event of a scratch at a designated time, and if "also-eligible" horses are listed, all horses ((shall)) will move up in post position order; except in the case of a race on the straightaway, in which case the also-eligible ((shall)) must take the ((stall)) starting position of the horse ((declared out or)) scratched. The above rule ((shall)) will apply unless the association specifically states otherwise in its stakes or condition book.

AMENDATORY SECTION (Amending WSR 00-06-069, filed 3/1/00, effective 4/1/00)

**WAC 260-52-030 Starting the race.** (1) The starter is responsible for assuring that each participant receives a fair start.

(2) If, when the starter dispatches the field, any door at the front of the starting gate stalls ~~((should))~~ does not open properly ~~((due to a mechanical failure or malfunction))~~ or ~~((should any))~~ if the action by any starting gate personnel directly cause a horse to receive an unfair start, the stewards may declare such a horse a nonstarter.

(3) Should a horse~~((, not scratched prior to the start,))~~ not be in the starting gate stall ~~((thereby causing it to be left when the field is dispatched by the starter,))~~ at the time the starting gates are opened, the horse ((shall)) will be declared a nonstarter by the stewards.

(4) Should an accident or malfunction of the starting gate, or other unforeseeable event occur during the running of the race, which compromises the fairness of the race or the safety of ((race)) the participants, the stewards may declare individual horses to be nonstarters, exclude individual horses from one or more parimutuel pools or declare a "no contest" and refund all wagers except as otherwise provided in the rules involving multirace wagers.

AMENDATORY SECTION (Amending WSR 00-06-069, filed 3/1/00, effective 4/1/00)

**WAC 260-52-040 Post to finish.** (1) All horses ~~((shall))~~ must be ridden out in every race. A jockey ~~((shall))~~ may not ease up or coast to the finish, without reasonable cause, even if the horse has no apparent chance to win prize money. A jockey ~~((shall))~~ must always give ~~((a))~~ his/her best effort during a race~~((, and))~~. Each horse ~~((shall))~~ must be ridden to win. No jockey ~~((shall unnecessarily))~~ may cause his/her horse to shorten its stride so as to give the appearance of having suffered a foul.

(2) If a jockey strikes or touches another jockey or another jockey's horse or equipment, his/her mount may be disqualified.

(3) When clear in a race a horse may be ridden to any part of the course ~~((but))~~. If any horse swerves, or is ridden to either side, so as to interfere with, impede, or intimidate any other horse, ~~((it))~~ the horse may be disqualified ~~((;))~~.

~~((A horse which interferes with another and thereby causes any other horse to lose ground or position or causes any other horse to break stride, when such other horse is not at fault and when such interference occurs in a part of the race where the horse interfered with loses the opportunity to place where it might, in the opinion of the stewards be reasonably be expected to finish, may be disqualified;))~~ A horse may not interfere with another horse and thereby cause the other horse to lose ground or position, or cause the other horse to break stride. When this interference occurs in the part of the race where the other horse loses the opportunity to place where it might reasonably be expected to finish, the stewards may disqualify the interfering horse.

(5) If the stewards determine the foul was intentional, or due to careless riding, the jockey may be held responsible ~~((;))~~.

(6) In a straightaway race, every horse must maintain position as nearly as possible in the lane in which it starts. If a horse is ridden, drifts or swerves out of its lane ~~((in such a manner that it))~~ and interferes ~~((with))~~, impedes, or intimidates another horse, it ~~((is))~~ may be considered a foul and may result in the disqualification of the offending horse.

~~((When the stewards determine that a horse shall be disqualified, they may place the offending horse behind such horses as in their judgment it interfered with, or they may place it last;))~~ When a horse is disqualified, the stewards may place the offending horse behind the horse(s) it interfered with, place it last, or declare it unplaced and ineligible for any purse money and/or time trial qualification. In the case of multiple disqualifications, under no circumstance may a horse regain its finishing position once it has been disqualified.

(8) If a horse is disqualified, any ~~((horse or))~~ horses ~~((with which))~~ it is coupled ~~((as an entry))~~ with may also be disqualified ~~((;))~~.

(9) When a horse is disqualified in a time trial race, for the purposes of qualifying only, it ~~((shall))~~ must receive the time of the horse it is placed behind plus one-hundredth of a second penalty or more exact measurement if photo finish equipment permits, and ~~((shall be))~~ remain eligible to qualify for the finals or consolations of the race on the basis of the assigned time ~~((;))~~.

(10) In time trials, horses must qualify on the basis of time and order of finish. Times are determined by the official timer. If the automatic timer malfunctions, averages of a minimum of three hand times must be used for that individual race. In the instance of horses competing in the same race receiving identical times, order of finish must determine qualifiers. In the event two or more horses receive identical times for the final qualifying position, a draw by lot conducted by the stewards will determine the final qualifying positions.

(11) If a horse that qualified for the finals should be unable to enter due to racing soundness or scratched for any other reason other than a positive test or rule violation, the owner will receive last place purse money. If more than one horse is scratched from the final, then those purse moneys will be added together and distributed equally among those owners.

(12) If a qualifier for a final or consolation is disqualified for ineligibility or a rule violation after the time trials are declared official, but prior to entry for the final or consolation, the nonqualifier with the next fastest time must replace the disqualified horse. If a qualifier is disqualified after entry for the final or consolation for any reason other than unsoundness, illness or death, the purse will be redistributed among the remaining qualifiers.

(13) Possession of any electrical or mechanical stimulating or shocking device by a jockey, horse owner, trainer or other person ~~((authorized to handle or attend to a horse shall))~~ will be considered prima facie evidence of a violation of these rules and is sufficient grounds for the stewards to scratch or disqualify ~~((the))~~ any horse ~~((;))~~ involved, and summarily suspend the individual in possession of the device.

~~((11))~~ The stewards may determine that a horse shall be unplaced for the purpose of purse distribution and time trial qualification.

~~((12))~~ (14) Any jockey carrying a whip during a race ((shall fail to)) must use the whip in a manner consistent with using his/her best efforts to win.

~~((13))~~ (15) Any jockey who uses a whip during the running of a race is prohibited from whipping a horse:

- (a) In an excessive or brutal manner;
- (b) On the head, flanks, or on any part of its body other than the shoulders or hind quarters;
- (c) During the post parade except when necessary to control the horse;
- (d) When the horse is clearly out of the race;
- (e) Steadily, even though the horse is showing no response to the whip.

AMENDATORY SECTION (Amending WSR 00-07-041, filed 3/6/00, effective 4/6/00)

**WAC 260-52-060 Camera ~~((and photographs))~~ malfunctions and determining finish positions.** (1) ~~((On all tracks proper))~~ The photo finish cameras ((shall be installed as)) will be used as an aid to the stewards, ((placing and patrol judges;)) however, in ((all cases, the cameras are merely an aid and)) the event of a malfunction of the camera, the decision ~~((s of))~~ by the stewards ~~((are to be final. The photograph or video image of each finish shall be posted in at least one conspicuous place as promptly as possible after each race where a photo finish occurs))~~ of the order of finish is final.

(2) ~~((The association shall keep on file for the duration of the meeting each plate or film or tape of each race for reference or reproduction upon request of the commission.))~~ In placing the horses at the finish, the position of the horses' noses only will be considered and not any other part of the body.

AMENDATORY SECTION (Amending WSR 99-05-047, filed 2/12/99, effective 3/15/99)

**WAC 260-52-070 Declaring race "official."** (1) The clerk of the scales ~~((shall))~~ will weigh in ~~((at))~~ at least the first four placing jockeys after each race, and after weighing, ~~((shall))~~ will notify the stewards if the weights are correct. The stewards may then declare the race official. However, the commission may authorize a racing association to employ a "~~((fast))~~ quick official" method of declaring a race official when a written request is received from the racing association at least 45 days prior to the opening of the race meeting. When using the "~~((fast))~~ quick official," jockeys ~~((shall))~~ must claim foul immediately following the running of the race, while still mounted on the race track. The association will be responsible for having an outrider or other individual situated on the race track and equipped with a communication device for relaying any objections to the stewards. Owners and trainers must claim foul directly to the stewards via telephones assigned by the association for that purpose and situated throughout the facility. No claim of foul will be considered by the stewards after a race has been declared official.

(2) Nothing in these rules ~~((shall be construed to prevent the placing judges, with the approval of))~~ will prevent the stewards ~~((;))~~ from correcting an error before the display of the sign "official" or from recalling the sign, "official" in case ~~((it has been displayed through))~~ of an error.

AMENDATORY SECTION (Amending WSR 00-20-027, filed 9/27/00, effective 10/28/00)

**WAC 260-52-080 Official time of the race.** ~~((That))~~ The time recorded for the first horse to cross the finish line ~~((shall))~~ will be the official time of the race. (Except as provided by WAC 260-70-710~~((; namely, that if a horse establishes a track record and it later develops in the chemical analysis of the sample that there is the presence of a drug, then such track record shall be null and void)).~~)

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

**WAC 260-52-090 Dead heats.** ~~((See WAC 260-64-060.))~~ (1) In a dead heat for first place, each horse will be declared a winner and the actual earning the horse receives will be used to determine future eligibilities.

(2) When a dead heat occurs for first place, all purses or prizes to which the first and second place horses would have been entitled to will be divided equally among them. This will apply in dividing all purses or prizes, whatever number of horses are involved in the dead heat, and for whatever places the dead heat is run.

(3) When a dead heat is run for second place and an objection or inquiry is made against the winner of the race, and the winner is disqualified, the horses that finished in the dead heat for place will both be declared winners. This will apply when determining the official placing, whatever number of horses is involved in the dead heat, and for whatever places the dead heat is run.

(4) If the owners involved in a dead heat cannot agree as to which of them is to receive a trophy, plaque, or other prize

that cannot be divided, the decision will be determined by lot by the stewards or their designee.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 260-52-050 Placing judges—Duties.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

**WAC 260-56-010 ~~((Who may file.))~~ Objections ~~((claim of foul.))~~** (1) ~~((A protest))~~ An objection involving the running of a race, ~~((except a protest involving fraud,))~~ may be filed ~~((only))~~ by the owner ~~((or)),~~ his/her authorized agent ~~((;)),~~ trainer, or jockey of a horse ~~((engaged))~~ in the race ~~((over which the protest is made)),~~ or by a racing official of the meeting.

(2) ~~((A protest involving fraud may be made by any person.))~~ An objection may be received by the clerk of scales, stewards, or their designees.

(3) An objection must be filed before the race is declared official, including whenever the "quick official" method is used.

(4) The stewards will rule on all objections and determine the extent of disqualification, if any, of a horse in the race. The stewards' decision is final and cannot be challenged under WAC 260-08-675.

#### NEW SECTION

**WAC 260-56-031 Prerace protests.** (1) All prerace protests to the participation of a horse entered in any race must be made in writing to the board of stewards, signed by the person making the protest, and submitted no later than fifteen minutes prior to post time for the race in question. The protest must contain the specific reason or grounds for the protest.

(2) A protest to a horse which is entered in a race may be made on, but not limited to, the following:

(a) An error or omission in the entry of a horse;

(b) The horse entered to run is not the horse it is represented to be at the time of entry;

(c) The horse is not qualified to enter under the conditions specified for the race, the weight allowances are improperly claimed, or the weight to be carried is incorrect according to the conditions of the race; or

(d) The horse is owned in whole or in part, or leased or trained by a person ineligible to participate in racing or otherwise ineligible to own a race horse as provided in these rules.

(3) The decision of a prerace protest by the board of stewards is final and may not be appealed.

#### NEW SECTION

**WAC 260-56-035 Post-race protests.** (1) A protest against any horse which has started in a race must be made in writing to the board of stewards, signed by the person making the protest, and submitted within seventy-two hours of the

race (excluding nonrace days). If the incident for which the protest is made occurs within the last two days of the meeting, the protest must be filed within seventy-two hours of the closing day.

(2) A protest may be made on any of the following grounds:

(a) The order of finish as officially determined by the stewards was incorrect due to an oversight or errors in the number of the horses which started the race;

(b) The weight carried by a horse was improper, due to fraud or willful misconduct; or

(c) An unfair advantage was gained by violation of the rules.

(3) The time limitation on the filing of protests will not apply in any case in which fraud or willful misconduct is involved.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

**WAC 260-56-040 Disposition of moneys, prizes, pending outcome.** (1) Pending the determination of a protest, any money or prize won by a protested horse, or any other money affected by the outcome of the protest ((shall)) will be held by the racing association until the protest is ((determined)) decided.

(2) If a protest is upheld by the board of stewards, any purse moneys or prizes previously distributed must be returned for redistribution.

(3) Any person who fails to return any purse moneys or other prizes for redistribution may be subject to disciplinary action by the stewards.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

**WAC 260-56-060 Frivolous protests or objections.** No person ((shall)) may make frivolous protests or objections.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 260-56-020 Requisites—Time for filing.

WAC 260-56-070 Records and reports.

AMENDATORY SECTION (Amending WSR 05-07-063, filed 3/11/05, effective 4/11/05)

**WAC 260-60-300 Who may claim.** (1) In claiming races, any horse is subject to be claimed for its entered price by any owner licensed by the commission, including a prospective owner who has been issued a claiming certificate, or by a licensed authorized agent for the account of such owner.

(2) In order to claim a horse as a prospective owner, a person ((shall)) will submit to the stewards a completed application for a prospective owner's license and the name of a licensed trainer who will assume the care and responsibility

for any horse claimed. The stewards ((shall)) may issue a claiming certificate to the applicant upon satisfactory evidence that the applicant is eligible for an owner's license. Once the prospective owner has successfully claimed a horse and made payment of labor and industry fees due, he/she ((shall)) will be considered an owner. At that time the owner should contact a commission office for a new identification badge.

(3) The names of licensed prospective owners who have been issued a claiming certificate ((shall)) must be prominently displayed in the offices of the commission and the racing secretary.

(4) A claiming certificate ((shall)) will expire ((with)) forty-five days from the date of issue, but may be extended with approval of the stewards; at the conclusion of the race meet at which it was issued, upon the claim of a horse, or upon issuance or denial of an owner's license, whichever comes first.

(5) No owner or prospective owner ((shall)) may claim more than one horse in any one race.

(6) An authorized agent may claim up to two horses, if each horse is claimed on behalf of ((a)) entirely different ((owner)) ownerships, ((as long as)) and the ((owners)) ownerships do not have a common interest in both claims. An authorized agent ((shall)) may not make a claim on the same horse for different owners.

(7) ((When a training stable consists of horses owned by more than one person, not)) No more than two claims may be entered ((on behalf of such training stable in)) with the same trainer listed in any one race.

(8) ((In claiming races not more than two horses in the same interest or under the control of the same trainer can start.)) No trainer may enter or start more than two horses for a claiming price in one race.

AMENDATORY SECTION (Amending WSR 96-12-008, filed 5/23/96, effective 6/23/96)

**WAC 260-60-310 Entering in a claiming race—Debts and leased horse.** A person entering a horse in a claiming race ((warrants that the title to said horse is free and clear of any existing claim or lien, either as security interest mortgage, bill of sale, or lien of any kind; unless before entering such horse, the written consent of the holder of the claim or lien has been filed with the stewards and the racing secretary and its entry approved by the stewards)) must remain responsible for any existing debts associated with the horse. A transfer of ownership ((arising from a recognized claiming race)) following an approved claim will terminate any existing prior lease for that horse.

AMENDATORY SECTION (Amending WSR 96-12-008, filed 5/23/96, effective 6/23/96)

**WAC 260-60-330 Claims to be in amount printed on program.** The claiming price of each horse in a claiming race ((shall)) will be printed on the program((, and all claims for said horse shall be the amount so designated)). Except as ordered by the stewards, no claiming price may be changed after a horse has been entered for a race.

AMENDATORY SECTION (Amending WSR 96-12-008, filed 5/23/96, effective 6/23/96)

**WAC 260-60-340 Disposition by lot.** Should more than one claim be filed for the same horse, the claim of the horse ~~((shall))~~ will be determined by lot under the direction of one or more of the stewards, or their representative.

AMENDATORY SECTION (Amending WSR 04-05-093, filed 2/18/04, effective 3/20/04)

**WAC 260-60-350 Requirements for a claim.** (1) Claims must be made in writing and signed by an owner, a licensed prospective owner, or an authorized agent; and

(2) ~~((shall))~~ Be made on forms and in envelopes furnished by the association and approved by the commission. Both forms and envelopes must be filled out completely, and must be sufficiently accurate to identify the claim.

(3) In the case of joint ownership only one owner needs to sign.

(4) No money ~~((shall))~~ will accompany the claim. Each person desiring to make a claim, must first establish an account with the racing association and have on deposit with the association the whole amount of the claim (including any applicable taxes). The deposit ~~((shall))~~ must be in cash, or in the discretion of the association, a certified or bank cashier check.

(5) Claims ~~((shall))~~ must be deposited in the claiming box at least fifteen minutes before the established post time of the race for which the claim is filed. When a claim has been filed it is irrevocable and at the risk of claimant.

(6) When a claiming certificate is to be used, that certificate must accompany the claim, or the claim may be declared void.

AMENDATORY SECTION (Amending WSR 04-05-093, filed 2/18/04, effective 3/20/04)

**WAC 260-60-360 Stewards to act on claims.** After deposit of the claim the stewards or their authorized representative, ~~((shall))~~ will review the claim. Unless approved at such time, the claim ~~((shall))~~ will be deemed void. A ruling deeming a claim to be void ~~((shall))~~ will be final in all respects.

AMENDATORY SECTION (Amending WSR 96-12-008, filed 5/23/96, effective 6/23/96)

**WAC 260-60-380 Prohibited actions.** (1) No official or other employee of any association ~~((shall))~~ may give any information as to the filing of claims until after the race has been run.

(2) ~~((No))~~ A person ~~((shall offer))~~ is prohibited from offering, or ((enter)) entering into an agreement, to claim or not to claim, or ~~((attempt)) attempting~~ to prevent another person from claiming, any horse in a claiming race.

(3) ~~((No))~~ A person ~~((shall attempt))~~ is prohibited from attempting, by intimidation, to prevent any one from running a horse in any race for which it is entered.

(4) ~~((No))~~ An owner or trainer, starting a horse in any claiming race, ~~((shall make))~~ is prohibited from making any

agreement for the protection of each other's horses from being claimed by a third party.

(5) A person ~~((shall not))~~ is prohibited from participating in any claim for a horse in which he/she has a financial or beneficial interest ~~((as an owner or trainer)).~~

(6) A person ~~((shall))~~ must not cause another person to claim a horse for the purpose of obtaining or retaining an undisclosed financial or beneficial interest in the horse.

(7) A person ~~((shall))~~ must not claim a horse, or enter into any agreement to have a horse claimed, on behalf of an ineligible or undisclosed person.

AMENDATORY SECTION (Amending WSR 96-12-008, filed 5/23/96, effective 6/23/96)

**WAC 260-60-400 Entry of a filly or mare in foal.** ~~((No))~~ A person ~~((shall enter))~~ is prohibited from entering a filly or mare in a race when ~~((such))~~ the filly or mare is pregnant, unless prior to the time of entry the owner ~~((shall have))~~ has deposited with the racing secretary a signed agreement providing that the owner will at the time of entry provide for the successful claimant of such mare, without cost, protest, or fee of any kind, a valid stallion service certificate covering the breeding of the filly or mare. A successful claimant of a filly or mare may file with the commission a ~~((petition))~~ protest for ~~((reversion))~~ cancellation of the claim if it is determined the claimed mare is pregnant and the agreement concerning the stallion service certificate was not deposited as required by this section. An in-foal filly or mare ~~((shall))~~ will be eligible to be entered into a claiming race only if the following conditions are fulfilled:

(1) Full disclosure ~~((of such fact))~~ that the filly or mare is in foal is on file with the racing secretary and ~~((such))~~ the information is posted in his/her office;

(2) The stallion service certificate has been deposited with the racing secretary's office and attached to the horse's foal registration certificate;

(3) All payments due for the service in question and for any live progeny resulting from that service are paid in full.

(4) No filly or mare in foal may race, in a claiming race, after the fifth month of pregnancy.

AMENDATORY SECTION (Amending WSR 96-12-008, filed 5/23/96, effective 6/23/96)

**WAC 260-60-410 Claimed horse—In whose interest run—Delivery and passage of title.** ~~((Every horse claimed shall run in the interest and for the account of the owner who entered it in the race, but title to))~~ Any purse moneys and prizes earned by a claimed horse will be awarded to the owner that entered the horse. All claims are valid and ownership of the claimed horse ((shall be vested in the successful claimant)) is official from the time ((said)) the claimed horse becomes a "starter." ((Henceforth,)) The successful claimant ((shall)) becomes the owner of the horse, whether it be alive or dead, sound or unsound, or injured during the race or after it. Transfer of possession of a claimed horse ((shall)) will take place immediately after the race has been run unless otherwise directed by the stewards. If the horse is required to be taken to the test barn for post-race testing, the successful claimant or his/her representative ((shall)) must maintain

physical custody of the claimed horse. However, the original owner, trainer or his/her representative ~~((shall))~~ will accompany the horse, observe the testing procedure and sign the test sample tag.

AMENDATORY SECTION (Amending WSR 96-12-008, filed 5/23/96, effective 6/23/96)

**WAC 260-60-420 Claimed horse—Refusal to deliver.**

No person ~~((shall))~~ may refuse to deliver to the person legally entitled ~~((thereto))~~ to a horse claimed out of a claiming race; ~~and furthermore, the horse in question shall be disqualified until delivery is made).~~ Refusal to complete the transfer of a claimed horse will result in the suspension of the individual's license and the horse is ineligible to enter until the transfer is complete.

AMENDATORY SECTION (Amending WSR 96-12-008, filed 5/23/96, effective 6/23/96)

**WAC 260-60-440 Claimed horse—Subsequent sale or transfer—Retention by owner.** If a horse is claimed it ~~((shall))~~ may not be sold or transferred to anyone wholly or in part, except in a claiming race, for a period of 30 days from date of claim ~~((, nor shall it, unless reclaimed;)).~~ No horse that has been claimed may return to or remain in the same stable or under the control or management of its former owner or trainer for a ~~((like))~~ period of thirty days from the date of the claim.

AMENDATORY SECTION (Amending WSR 96-12-008, filed 5/23/96, effective 6/23/96)

**WAC 260-60-450 Claimed horse—~~((Title recognized according to rules of meeting))~~ Restrictions.** When a horse is claimed at a recognized meeting under rules which ~~((are at variance with these rules, title to such horse shall))~~ conflict with chapter 260-60 WAC, any restrictions concerning the claimed horse will be recognized in Washington to follow the rules of the meeting under which the claim was made.

AMENDATORY SECTION (Amending WSR 96-12-008, filed 5/23/96, effective 6/23/96)

**WAC 260-60-460 Cancellation of claims.** If within thirty days from the running of the race, in which a horse is claimed, the stewards find that a claim was made in violation of the rules of racing the stewards may disallow and cancel any such claim and order the return of the horse and order the return and refund the claim ~~((payment))~~ amount. In deciding whether to cancel a claim the stewards ~~((shall))~~ will consider which party was at fault, the status of the horse at the time the claiming violation is discovered, and such other factors as appropriate. Should the stewards cancel a claim, they may order, as appropriate, payment for the care and maintenance of the horse involved. The stewards may refer to the commission for further action any case involving a violation of the rules of racing with respect to a claim regardless of whether the stewards deem it appropriate to order the cancellation of the claim.

AMENDATORY SECTION (Amending WSR 96-12-008, filed 5/23/96, effective 6/23/96)

**WAC 260-60-470 Rules apply to all races.** These rules ~~((shall))~~ apply to all races under the jurisdiction of the commission.

AMENDATORY SECTION (Amending Order 74.2, filed 10/30/74, effective 1/1/75)

**WAC 260-64-010 ~~((What embraced in))~~ Winnings— "Winner of a certain sum."** Winnings ~~((shall))~~ must include all ~~((prizes))~~ purse moneys won for placing first in any race up to ~~((the time appointed for the start))~~ post time of the race entered, and ~~((shall))~~ will apply to all races in any country; ~~and embrace walking over or receiving forfeit, but not second or third money, or the value of any prize not of money or not paid in money).~~ Winnings during the year ~~((shall))~~ will be ~~((reckoned))~~ determined from January 1st ~~((preceding))~~ of the corresponding year.

Winner of a certain sum ~~((shall))~~ means the winner of a single race of that value unless otherwise expressed in the conditions.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

**WAC 260-64-020 Winnings in stake race.** The winnings of a horse in a stake race ~~((shall))~~ will be computed on the value of the gross earnings ~~((on and after January 1, 1961)),~~ including any added moneys.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

**WAC 260-64-040 Foreign winnings.** Foreign winnings ~~((shall))~~ will be estimated on the basis of the ~~((normal))~~ rate of exchange prevailing on the day of the winnings.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

**WAC 260-64-050 Entrance money, starting and ~~((subscription))~~ nomination fees.** The entrance money, starting and ~~((subscription))~~ nomination fees, in every race, ~~((shall))~~ will go to the winner unless otherwise provided in its conditions ~~((, but when from any cause)).~~ If a race is not run, all stakes or entrance money ~~((, if any paid, shall))~~ must be returned.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 260-64-030	Extra amount won in series of races.
WAC 260-64-060	Dead heats.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

**WAC 260-66-010 Walking over.** If, at ~~((the time for saddling))~~ post time, only one horse ~~((shall have weighed out))~~ remains eligible to race, that horse ~~((shall))~~ must be ridden past the judge's stand, ~~((go to the post, and then move over the course))~~ break from the starting gate, and complete the listed distance of the race. ~~((He shall))~~ The horse will then be ~~((deemed))~~ declared the winner.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

**WAC 260-66-020 ~~((Awards.))~~ Purse money.** ~~((+))~~ In case of a walkover, the horse walking over ~~((shall))~~ will receive:

~~((a))~~ (1) In overnight races, ~~((one half of))~~ the winner's rightful share of first money.

~~((b))~~ (2) In stake races, ~~((one half of))~~ the winner's rightful share of the added money and all nomination and entrance fees.

~~((2))~~ In case of a walkover, any money or prize which by the condition of the race would have been awarded to a horse placed second, or lower in the race, shall, if contributed by the owners, be paid to the winner. If a donation from any other source, it shall not be awarded.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

**WAC 260-66-030 Entry of two or more horses.** In case of a walkover involving ~~((an))~~ a coupled entry of two or more horses ~~((and the))~~ all horses ~~((move over the course, these rules apply as to the division of the purse))~~ involved must participate as stated in WAC 260-66-010.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 260-76-010 Hand books and foreign books prohibited.

WAC 260-76-020 Bookmakers, vagrants, fugitives, undesirable persons, not permitted at track.

NEW SECTION

**WAC 260-80-170 Bookmaking is prohibited.** No person may make, solicit for, or bet with a handbook or a foreign book on the grounds of any licensed race track or satellite location. No person who is or reputed to be a bookmaker, may enter or remain on the grounds of any racing association or satellite location in this state.

**WSR 08-02-047  
PROPOSED RULES  
SECRETARY OF STATE**  
[Filed December 27, 2007, 9:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-20-115.

Title of Rule and Other Identifying Information: Preservation of electronic public records at the Washington state digital archives.

Hearing Location(s): John L. O'Brien Building, Hearing Room D, 504 15th Avenue S.W., Olympia, WA, on March 27, 2008, at 2:00 p.m.

Date of Intended Adoption: May 1, 2008.

Submit Written Comments to: Megan Moreno, P.O. Box 40220, Olympia, WA 98504-0220, e-mail [mmoreno@secstate.wa.gov](mailto:mmoreno@secstate.wa.gov), fax (360) 586-5629, by March 21, 2008.

Assistance for Persons with Disabilities: Contact Megan Moreno by March 21, 2008, TTY (800) 422-8683.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to educate and clarify the requirements of RCW 40.14.010 as it pertains to electronic public records. The proposal establishes procedures for use of the Washington state digital archives for storage of electronic public records. Anticipated effects include: Increased compliance with RCW 40.14.010; better awareness of RCW 42.17.020 (42); and comprehension of procedures for use of the Washington state digital archives.

Reasons Supporting Proposal: RCW 40.14.010 states that any record made or received in the course of business is a public record and must be managed. Records are public records regardless of their physical form or characteristics, as defined in RCW 42.17.020(42). The proposal aids agency's use of the Washington state digital archives to meet requirements previously established in RCW 40.14.010.

Statutory Authority for Adoption: RCW 40.14.020(6).

Statute Being Implemented: Chapter 434-662 WAC.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Management of electronic public records is a preexisting requirement and is not initiated, only clarified, by this proposal. A frequently asked questions document is available with information on public records, e-mail, web sites, metadata, public disclosure, disaster recovery, certified records and fees, how to transfer documents, and other miscellaneous topics. Contact Megan Moreno for a copy, (360) 902-0445 or [mmoreno@secstate.wa.gov](mailto:mmoreno@secstate.wa.gov).

Name of Proponent: Office of the secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting: Megan Moreno, 250f Legislative Building, Olympia, Washington, (360) 902-0445; Implementation and Enforcement: Jerry Handfield, 1129 Washington Street S.E., (360) 586-2666.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposal does not affect small businesses.



A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jerry Handfield, P.O. Box 40238, Olympia, WA 98504, phone (360) 586-2666, fax (360) 664-8814, e-mail [jhandfield@secstate.wa.gov](mailto:jhandfield@secstate.wa.gov).

December 19, 2007

Steve Excell

Assistant Secretary of State

## Chapter 434-662 WAC

### PRESERVATION OF ELECTRONIC PUBLIC RECORDS AT THE WASHINGTON STATE DIGITAL ARCHIVES

#### NEW SECTION

**WAC 434-662-010 Purpose.** Pursuant to the provisions of chapters 40.14 and 42.56 RCW, the rules contained in this chapter are intended to ensure that electronic public records that have archival value are securely preserved for present and future access and are transferred to the Washington state digital archives for permanent retention so that valuable historical records of the state may be centralized, made more widely available, and insure permanent preservation.

#### NEW SECTION

**WAC 434-662-020 Definitions applicable to all sections of this chapter.** Unless the context indicates otherwise, words used in this chapter shall have the meaning given in this section.

"Archival value" means those public records, as determined by state archivist's appraisal, that are worthy of indefinite or permanent preservation by the archives due to their historical, legal, fiscal, evidential, or informational value.

"Authentic" means that a public record is accepted by the state archives as genuine, trustworthy, or original. "Authentication" means the process of verifying that a public record is acceptable as genuine, original, or authentic.

"Chain of custody" means the documentation of the succession of offices or persons who held public records from the moment they were created until they are presented as evidence in a court of law.

"Confidential" means any public record series, file, record or data base field with restrictions on public access as mandated by federal, state or local laws, or court order.

"Copy" means a duplicate made from an original public record that is nearly identical to the original but can vary significantly in its fidelity to the original. The informational content on the copy is substantially the same as the original.

"Data base" means a set of data, consisting of one file, group of integrated files or tables, maintained as an information system managed by a data base management system.

"Data base management system" means a set of software programs that controls the organization, storage and retrieval of data in a data base, as well as the security and integrity of the data base.

"Digital archives" means the mass storage facility for electronic records located in Cheney, Washington and oper-

ated by the Washington state archives. The digital archives is designed to permanently preserve electronic state and local government records with archival value in an environment designed for long-term storage and retrieval.

"Digital image" means the product resulting from a process whereby nonelectronic materials such as records, maps, pictures, photographs, books, manuscripts, and newspapers are scanned or otherwise automatically processed to generate digital files.

"Disposition" means the action taken with a record once its required retention period has expired. Disposition actions include but are not limited to transfer to the archives, preservation on microfilm or digital image, or destruction.

"Elected official" means any person elected at a general or special election to any public office, and any person appointed to fill a vacancy in any such office.

"Electronic record" includes those public records which are stored on machine readable materials such as hard disks, floppy disks, CDs, DVDs, flash media cards, USB storage devices, magnetic tape, and any other media designed to store information electronically.

"Encryption" means the process of rendering plain text unintelligible by converting it to ciphertext so it can be securely transmitted and can only be read by those authorized to decode the plain text from the ciphertext.

"Media file format" means the type of data file stored on machine readable materials such as hard disks, floppy disks, CD-ROMs, DVDs, flash media cards, USB storage devices, magnetic tape, and any other media designed to store information electronically, as well as the application program necessary to view it.

"Metadata" means data used to describe other data. Metadata describes how, when, and by whom particular content was collected, how the content is formatted, and what the content is. Metadata is designed to provide a high level of categorization to aid in the storage, indexing, and retrieving of electronic records for public use.

"Public record" means any record, original or copy, containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, received, used or owned by any state or local agency regardless of physical form or characteristic. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records includes any and all legislative records as defined in RCW 40.14.100.

"Records committees" means the local records committee created in RCW 40.14.070 and the state records committee created in RCW 40.14.050.

"Retention period" means the minimum amount of time required for the retention of a records series on a records retention schedule or general records retention schedule approved by a state or local records committee.

"Records retention schedule" means a legal document approved by the state or local records committee that specifies minimum retention periods for a records series and gives agencies ongoing disposition authority for the records series after the records' approved retention period has been satisfied.

"Spider, web spider, web crawler, robot, and bot" means a software program that automatically retrieves on-line web content and all documents linked to such content.

"Usable file format" means the transformation of the data contained in a legacy media file format into a format that can be read on computers currently in use without the loss of information contained in the original file.

#### NEW SECTION

**WAC 434-662-030 Retention scheduling and disposition of electronic public records.** Electronic records are bound by the same provisions as paper documents as set forth in chapter 40.14 RCW. Electronic records must be retained pursuant to the retention schedules adopted by the records committees. Destruction of, or changes to the retention period of, any public record, regardless of format, requires legal approval from the state or local records committee pursuant to chapters 40.14 RCW, 434-635 WAC and other applicable state laws. Public records that are designated "archival" by the state or local records committee must be maintained pursuant to the provisions of this chapter until such time as they can be transferred to the state archives.

#### NEW SECTION

**WAC 434-662-040 Agency duties and responsibilities.** Electronic records must be retained in electronic format and remain usable, searchable, retrievable and authentic for the length of the designated retention schedule. Printing and retaining a hard copy is not a substitute for the electronic version unless approved by the state or local records committee.

#### NEW SECTION

**WAC 434-662-050 Disposition of electronic public records identified by records committees as archival.** Electronic records designated as "archival" must be retained in their original format along with the hardware and software required to read the data in that format unless all the converted records have been sampled for completeness and accuracy of the migration to a new system and/or file format. Original data, hardware, and software must be maintained for a period not less than one year after successful migration to a new system. Agencies have a duty to work with the state archivist for transfer of archival data to the digital archives once records are not in active use and/or a data migration is planned.

#### NEW SECTION

**WAC 434-662-055 Disposition of electronic public records identified by records committees as nonarchival.** Electronic media rendered obsolete through the verified accurate migration to a more current media file format for readability and not designated as "archival" may be considered a secondary copy and disposed of as directed by chapter 40.14 RCW.

#### NEW SECTION

**WAC 434-662-060 Authentication and chain of custody of electronic records.** The agency must maintain chain of custody of the record, including employing sufficient security procedures to prevent additions, modifications, or deletion of a record by unauthorized parties. If there is a break in chain of custody, the digital archives must be notified along with the transmittal to the archives.

#### NEW SECTION

**WAC 434-662-070 Use of encryption on electronic records.** If encryption is employed on public records, the encryption key must be available and usable for the life of the record as designated by the retention schedule for that record. For records designated as archival, the records must be transferred unencrypted to the digital archives.

#### NEW SECTION

**WAC 434-662-080 Transfer of electronic records to the digital archives.** Archival copies of records maintained at the digital archives may not be backward compatible with the originating system. Therefore, the agency is responsible for an appropriate security back-up of active business records maintained in their own systems. This does not relieve an agency's responsibility to maintain records in original format or create security microfilm as required by other provisions of law.

#### NEW SECTION

**WAC 434-662-090 Transmittal agreement for transfer of electronic records.** The digital archives must develop a transmittal agreement for the transfer of electronic records from state and local government agencies to the digital archives. At a minimum, a transmittal agreement between the digital archives and a state or local government agency must contain:

- (1) Identification of the document series;
- (2) Disposition authority;
- (3) Number of records to be transferred;
- (4) Method, schedule, and frequency of record transmittal;
- (5) Required metadata fields;
- (6) Media file format;
- (7) Identification of any confidential information or record and the statutory authority for such confidentiality;
- (8) Other technical information necessary for ingestion of electronic data into the digital archives repository; and
- (9) Procedures for collecting any fees for public copies as provided by statute or ordinance.

#### NEW SECTION

**WAC 434-662-100 Media format for transfer.** When feasible, electronic records will be directly transferred to the digital archives via web services, secure File Transfer Protocol, T-1 line or other direct transmission as outlined in the transmittal agreement. When direct transmission is not prac-

licable, records must be transmitted via portable media formats including, but not limited to tape, CD, DVD, flash media cards, USB storage devices, or diskette.

#### NEW SECTION

**WAC 434-662-110 Metadata requirements.** Electronic records transferred to the digital archives must contain sufficient metadata to categorize, search and retrieve the records. The digital archives will not accept electronic records that do not contain appropriate metadata as specified in the transmittal agreement.

#### NEW SECTION

**WAC 434-662-140 Web site management.** All state and local government agencies must retain all web content in accordance with the approved retention schedules. Pursuant to a transmittal agreement, the digital archives will spider state and local government web sites annually, or more frequently. All state and local government agencies shall use the following best management practices in the maintenance of their web sites:

- (1) Each page shall contain meta tags identifying the agency, program area, and date of last modification;
- (2) Pages available for public viewing shall not contain a "no robots" or other tag precluding the spidering of the site;
- (3) Archived content should be stored on the web server in such a manner that it can be spidered; and
- (4) Data contained in back-end data bases should be identified in the transmittal agreement.

#### NEW SECTION

**WAC 434-662-150 E-mail management.** E-mail is a public record subject to all of the laws and regulations governing the retention, disclosure, destruction and archiving of public records. The e-mails of elected officials, agency directors, and other senior government officials and policy makers, are archival and must be retained per the approved state and local retention schedules. The e-mails of all other government officials and employees are subject to the records retention periods and disposition promulgated by the records committees, and any and all e-mails with archival value must be retained. Agencies may be relieved of the obligation to permanently retain archival e-mail by transmitting e-mail and all associated metadata to the digital archives pursuant to a transmittal agreement as provided for in WAC 434-662-090. This section does not apply to state legislators or members of the state judiciary.

### WSR 08-02-069

#### PROPOSED RULES

### HORSE RACING COMMISSION

[Filed December 28, 2007, 2:10 p.m.]

Supplemental Notice to WSR 08-02-044.

Preproposal statement of inquiry was filed as WSR 07-21-086.

Title of Rule and Other Identifying Information: Chapter 260-84 WAC, Penalties.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on February 14, 2008, at 9:30 a.m.

Date of Intended Adoption: February 14, 2008.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by February 8, 2008.

Assistance for Persons with Disabilities: Contact Patty Sorby by February 8, 2008, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission is proposing amending the following sections in chapter 260-84 WAC: (1) WAC 260-84-060 Penalty matrixes, a number of penalties, for first, second, third and subsequent offenses are increasing based upon the current penalty not being a sufficient deterrent. Also, penalties at Class A and B race meets that are the same as penalties at a Class C race meet are being moved under "Class A, B, and C Licensed Facilities." Some of the current penalties are being amended for clarity. Finally, several new violations (with penalties) have been added (e.g., unauthorized late scratch and failure to submit gelding report); (2) WAC 260-84-090 Equine medication and prohibited substances—Penalties—Guidelines; (3) WAC 260-84-100 Furosemide penalties; and (4) WAC 260-84-120 Penalties for permitted medications, the term "shall" is being replaced by the term "will" or "must." Also, in WAC 260-84-120 the penalty for violations within a three hundred sixty-five day period is clarified; and (5) WAC 260-84-130 Penalties for prohibited practices, includes changes for clarification.

Reasons Supporting Proposal: Purpose is to clarify and streamline the rules in this chapter.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Lechner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

December 28, 2008 [2007]

R. J. Lopez

Deputy Secretary

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

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

Class A and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
<del>((Smoking in restricted areas WAC 260-20-030</del>	\$25	\$50	\$100))
Disturbing the peace WAC 260-80-140	Warning to \$200 and/or suspension	Warning to \$500 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010	<del>\$(50))</del> <u>100</u>	<del>\$(100))</del> <u>200</u>	<del>\$(150))</del> <u>300</u>
<u>Unlicensed or improperly licensed personnel WAC 260-28-230</u>	<u>\$100</u>	<u>\$200</u>	<u>\$300</u>
<del>((Unlicensed or improperly licensed personnel or failure to report correct stall or registration paper count for L&amp;I purposes (trainer's responsibility) WAC 260-28-230 and 260-36-220</del>	Required to pay full labor and industries premium and assessed a fine equal to 50% of the premium due		
<del>Licensing - failure to divulge a felony WAC 260-36-120</del>	\$100 or possible denial of license		
<del>Licensing - failure to divulge a gross misdemeanor or misdemeanor WAC 260-36-120</del>	Warning to \$50		
<del>Licensing - providing false information on application WAC 260-36-120</del>	\$50 to \$250 or possible denial of license		
<del>Licensing - nonparticipation WAC 260-36-080</del>	License canceled))		
Violation of any claiming rule in chapter 260-60 WAC	\$200 to \$500 plus possible suspension		
<del>((Use of improper, profane or indecent language to a racing official WAC 260-80-130</del>	\$50	\$100	\$250
<del>Unsafe vehicle operation WAC 260-20-020</del>	Warning to \$50	\$100 and recommend racing association revoke vehicle pass	
<del>Financial responsibility WAC 260-28-030</del>	Resolve within 30 days or before the end of the meet (whichever is sooner) or suspension		
<del>Failure to appear - for ruling conference WAC 260-24-510</del>	Suspension))		
Failure of jockey agent to honor riding engagements (call)( <del>agents</del> ) WAC 260-32-400	\$75	\$100	\$200
<del>((Reporting incorrect weight - jockeys)) Failure of jockey to report correct weight WAC 260-32-150</del>	<del>\$(50))</del> <u>100</u>	<del>\$(100))</del> <u>200</u>	<del>\$(200))</del> <u>300</u>
Failure of jockey to appear for films( <del>jockeys</del> ) WAC 260-24-510	\$50	\$100	\$200
Failure of jockey to fulfill riding engagement WAC 260-32-080	\$100	\$150	\$200
Jockey easing mount without cause WAC 260-52-040	\$250 and/or suspension	<del>\$(250))</del> <u>500</u> and/or suspension	<del>\$(500))</del> <u>1000</u> and/or suspension

<b>Class A and B Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Jockey failing to maintain straight course or careless riding <u>with no disqualification</u> (jockey at fault) WAC 260-52-040	Warning to \$750 and/or suspension (riding days)		
Jockey failing to maintain straight course or careless riding resulting in a disqualification (jockey at fault) WAC 260-52-040	Suspension (riding days) and possible fine		
Jockey's misuse of whip WAC 260-52-040	Warning to \$2500		
<del>((Use of stimulating device (may include batteries) WAC 260-52-040</del>	<del>1 year suspension plus mandatory referral to commission for revocation</del>		
<del>Possession of stimulating device (may include batteries) WAC 260-52-040 and 260-80-100</del>	<del>1 year suspension plus mandatory referral to commission for revocation</del>		
<del>Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010 and 260-80-020</del>	<del>1 year suspension plus mandatory referral to commission for revocation))</del>		
Entering ineligible horse WAC 260-40-140 and 260-80-030	<del>\$(50)</del> <u>250</u>	<del>\$(100)</del> <u>500</u>	<del>\$(100)</del> <u>1000</u>
Unauthorized late scratch (WAC 260-40-010)	<u>\$200</u>	<u>\$300</u>	<u>\$400</u>
Arriving late to the paddock <u>or receiving barn</u> WAC 260-28-200	Warning to \$50	<del>((Warning to))</del> <u>\$50 to \$100</u>	<del>((50 to))</del> <u>\$100 to \$200</u>
Failure to deliver furosemide treatment form to official veterinarian by appointed time WAC 260-70-650	<u>Warning to \$50</u>	<u>\$100</u>	<u>\$200</u>
Failure to have registration papers on file - resulting in a scratch WAC 260-40-090	<del>\$(50 to \$100)</del> <u>200</u>	<del>\$(100)</del> <u>300</u>	<del>\$(100)</del> <u>400</u>
Failure to obtain permission for equipment changes WAC 260-44-010	<del>((Warning to))</del> <u>\$50</u>	<u>\$100</u>	<del>\$(100)</del> <u>200</u>
Failure to report performance records WAC 260-40-100	Warning to \$50	<u>\$100</u>	<u>\$150</u>
Failure to submit gelding report WAC 260-28-295	<u>\$100</u>	<u>\$200</u>	<u>\$300</u>
Insufficient workouts - resulting in scratch WAC 260-40-100	<del>\$(50 to \$100)</del> <u>200</u>	<del>\$(100)</del> <u>300</u>	<del>\$(100)</del> <u>400</u>

<b>Class C Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
<del>((Smoking in restricted areas WAC 260-20-030</del>	<del>\$25</del>	<del>\$50</del>	<del>\$100))</del>
Disturbing the peace WAC 260-80-140	Warning to \$100 and/or suspension	\$250 and/or suspension	Suspension

<b>Class C Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Person performing duties for which they are not licensed WAC 260-36-010	\$50	\$100	\$150
<u>Unlicensed or improperly licensed personnel WAC 260-28-230</u>	<u>\$50</u>	<u>\$100</u>	<u>\$200</u>
<del>((Unlicensed or improperly licensed personnel or failure to report correct stall or registration paper count for L&amp;I purposes (trainer's responsibility) WAC 260-28-230 and 260-36-220</del>	<del>Required to pay full labor and industries premium and assessed a fine equal to 50% of the premium due</del>		
<del>Licensing - failure to divulge a felony WAC 260-36-120</del>	<del>\$100 or possible denial of license</del>		
<del>Licensing failure to divulge a misdemeanor or gross misdemeanor WAC 260-36-120</del>	<del>Warning to \$25</del>		
<del>Licensing - providing false information on application WAC 260-36-120</del>	<del>\$50 to \$250 or possible denial of license</del>		
<del>Licensing - nonparticipation WAC 260-36-080</del>	<del>License canceled))</del>		
Violation of any claiming rule in chapter 260-60 WAC	\$100 to \$250 plus possible suspension		
<del>((Use of improper, profane or indecent language to a racing official WAC 260-80-130</del>	<del>\$50</del>	<del>\$100</del>	<del>\$250</del>
<del>Unsafe vehicle operation WAC 260-20-020</del>	<del>Warning to \$50</del>		
<del>Financial responsibility WAC 260-28-030</del>	<del>Resolve 30 days or before the end of the fall meet (whichever is sooner) to resolve or suspension</del>		
<del>Failure to appear for ruling conference WAC 260-24-510</del>	<del>Suspension))</del>		
Failure to honor riding engagements (call) - agents WAC 260-32-400	\$25	\$50	\$100
Reporting incorrect weight - jockeys WAC 260-32-150	\$25	\$50	\$100
Failure to appear for films - jockeys WAC 260-24-510	\$25	\$50	\$100
Failure to fulfill riding engagement WAC 260-32-080	\$50	\$100	\$200
Easing mount without cause WAC 260-52-040	\$100	\$200 and/or suspension	\$400 and/or suspension
Jockey failing to maintain straight course or careless riding WAC 260-52-040	Warning to \$750 and/or suspension (riding days)		
Jockey's misuse of whip WAC 260-52-040	Warning to \$2500		
<del>((Use of stimulating device (may include batteries) WAC 260-52-040</del>	<del>1 year suspension plus mandatory referral to commission for revocation</del>		

<b>Class C Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Possession of stimulating device (may include batteries) WAC 260-52-040 and 260-80-100	<del>1 year suspension plus mandatory referral to commission for revocation</del>		
Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010 and 260-80-020	<del>1 year suspension plus mandatory referral to commission for revocation))</del>		
Entering ineligible horse WAC 260-40-140 and 260-80-030	<del>\$(25)</del> <u>100</u>	<del>\$(50)</del> <u>200</u>	<del>\$(50)</del> <u>300</u>
Unauthorized late scratch WAC 260-40-010	<u>\$100</u>	<u>\$200</u>	<u>\$300</u>
Arriving late to the paddock WAC 260-28-200	Warning to \$25	\$50	<del>\$(50)</del> <u>100</u>
Failure to deliver furosemide treatment form WAC 260-70-650	<u>Warning to \$25</u>	<u>\$50</u>	<u>\$100</u>
Failure to have registration papers on file - resulting in a scratch WAC 260-40-090	\$50	\$100	\$100
Failure to submit gelding report WAC 260-28-295	<u>\$50</u>	<u>\$100</u>	<u>\$200</u>
Failure to obtain permission for equipment changes WAC 260-44-010	<del>((Warning to \$50))</del> <u>\$25</u>	\$50	<del>\$(50)</del> <u>100</u>

<b>Class A, B and C Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Smoking in restricted areas WAC 260-20-030	<u>\$50</u>	<u>\$100</u>	<u>\$250 and/or suspension</u>
Tampering with a fire protection, prevention or suppression system or device WAC 260-20-030	<del>\$(50)</del> <u>200</u>	<del>\$(100)</del> <u>500</u>	<del>\$(250 plus possible)</del> <u>1000 and/or suspension</u>
Failure to post problem gambling signs WAC 260-12-250	Warning to \$50	\$100	\$200
Issuing a check to the commission with not sufficient funds WAC 260-28-030	<del>\$(25)</del> <u>50</u>	<del>\$(50)</del> <u>100</u>	<del>\$(100)</del> <u>200</u>
Failure to follow instructions of the outrider WAC 260-24-690	\$50	\$100	\$200
Use of improper, profane, or indecent language WAC 260-80-130	<u>\$200</u>	<u>\$300</u>	<u>\$500</u>
Failure to complete provisional license application within fourteen days WAC 260-36-200	<del>((Warning to))</del> <u>\$100 and ((denial)) suspension of license</u>	<u>\$250 and ((denial)) suspension of license</u>	<u>\$500 and ((denial)) suspension of license</u>
Failure to register employees with the commission (trainers responsibility) WAC 260-28-230	Warning to \$50	\$100	\$200
Failure to furnish fingerprints WAC 260-36-100	<u>\$100 and suspension of license</u>	<u>\$250 and suspension of license</u>	<u>\$500 and suspension of license</u>

<b>Class A, B and C Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
<u>Nonparticipation - licensing WAC 260-36-080</u>	<u>License canceled</u>		
<u>False application WAC 260-36-100 and 260-36-120</u>	<u>\$50 to \$250 and/or possible denial, suspension or revocation of license</u>		
<u>Failure to divulge a misdemeanor or gross misdemeanor WAC 260-36-120</u>	<u>Warning to \$100</u>		
<u>Failure to divulge a felony WAC 260-36-120</u>	<u>\$100 to \$250 and/or denial, suspension, or revocation of license</u>		
<u>Failure to provide full disclosure, refusal to respond to questions, or responding falsely to stewards or commission investigators WAC 260-24-510</u>	<u>\$500 fine and/or denial, suspension or revocation of license</u>		
<u>Failure to pay proper industrial insurance premium(s) chapter 260-220 WAC and WAC 260-36-230</u>	<u>In addition to being required to pay the full industrial insurance premium, the trainer will be assessed a fine equal to fifty percent of the premium due</u>		
<u>Failure to pay ((or default on)) L&amp;I payment agreement WAC 260-28-235</u>	<u>((Per L&amp;I premium payment agreement,)) Immediate suspension until premium paid ((plus \$25)) and \$50 fine for each quarter payment is late</u>		
<u>((Failure to register employees with the commission (trainer's responsibility) WAC 260-28-230</u>	<u>Warning to \$50))</u>		
<u>Unlicensed person on the backside WAC 260-20-040 ((and 260-20-090))</u>	<u>Report violation to the racing association</u>		
<u>Financial responsibility WAC 260-28-030</u>	<u>Resolution with mutual agreement between the parties - failure to comply with the agreement will result in immediate suspension</u>		
<u>Failure to appear for a ruling conference WAC 260-24-510</u>	<u>Suspension (conference may be held in individual's absence)</u>		
<u>Failure to pay fine within 7 days of ruling conference (no extension granted or no request for hearing filed) WAC 260-24-510</u>	<u>Suspension until fine paid</u>		
<u>Possession or use of a stimulating device (may include batteries) WAC 260-52-040 and 260-80-100</u>	<u>1 year suspension plus mandatory referral to commission for revocation</u>		
<u>Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010</u>	<u>1 year suspension plus mandatory referral to commission for revocation</u>		
<u>Failure to wear proper safety equipment WAC 260-12-180</u>	<u>\$50</u>	<u>\$100</u>	<u>\$200</u>
<u>Horses shod with improper toe grabs WAC 260-44-150</u>	<u>Horse scratched and \$250 fine to trainer and plater</u>	<u>Horse scratched and \$500 fine to trainer and plater</u>	<u>Horse scratched and \$1000 fine to trainer and plater</u>
<u>Failure to display or possess license badge when in restricted area WAC 260-36-110</u>	<u>\$25</u>	<u>\$50</u>	<u>\$100</u>



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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 06-07-058, filed 3/10/06, effective 4/10/06)

**WAC 260-84-090 Equine medication and prohibited substances—Penalties—Guidelines.** (1) Upon a finding of a violation of the medication and prohibited substances rules in chapter 260-70 WAC, the stewards ((shall)) will consider the classification level of the medication, drug or substance prior to imposing a penalty. The stewards ((shall)) will also consult with an official veterinarian to determine the nature and seriousness of the laboratory finding or the medication violation and whether the violation was a result of the administration of a therapeutic medication as documented in a veterinarian's report received per WAC 260-70-540.

(2) A lesser penalty than that established in WAC 260-84-110 may be imposed if a majority of the stewards determine that mitigating circumstances warrant a lesser penalty. If a majority of the stewards determine a greater penalty is appropriate or that a penalty in excess of the authority granted them is appropriate, they may impose the maximum penalty authorized and refer the matter to the commission with specific recommendations for further action. In determining if there are mitigating circumstances surrounding a medication violation for substances referred to in chapter 260-70 WAC, at least the following ((shall)) will be considered:

- (a) The past record of the trainer and/or veterinarian in medication/drug cases;
  - (b) The potential of the medication/drug to influence a horse's racing performance;
  - (c) The availability of the medication/drug;
  - (d) Whether there is reason to believe the responsible party knew of the administration of the medication/drug used;
  - (e) The steps taken by the trainer to safeguard the horse;
  - (f) The probability of environmental contamination or inadvertent exposure due to human drug use;
  - (g) The purse of the race;
  - (h) Whether the medication found was one for which the horse was receiving a treatment as determined by the veterinarian report(s);
  - (i) Whether there was any suspicious betting pattern in the race; and
  - (j) Whether the presence of the medication/drug in urine was confirmed in serum or plasma.
- (3) If a majority of the stewards determine a penalty greater than established in these rules is appropriate, they may impose the maximum penalty authorized and refer the matter to the commission with specific recommendations for further action.
- (4) If the penalty is not otherwise established for a violation of chapter 260-70 WAC, the penalty ((shall)) will be determined by the board of stewards.

AMENDATORY SECTION (Amending WSR 05-07-064, filed 3/11/05, effective 4/11/05)

**WAC 260-84-100 Furosemide penalties.** (1) Penalties ((shall)) will be assessed against any person found to be responsible or party to the improper administration of furosemide or failure to administer furosemide when required, in chapter 260-70 WAC as follows:

Fine not to exceed three hundred dollars. Multiple violations by an individual within a three hundred sixty-five day period may be referred to the commission for further action, which may include an additional fine or suspension.

(2) Equine medication violations from Washington and all recognized racing jurisdictions, ((shall)) will be considered when assessing penalties.

AMENDATORY SECTION (Amending WSR 05-07-064, filed 3/11/05, effective 4/11/05)

**WAC 260-84-110 Penalties for uniform classifications.** (1) Penalties ((shall)) will be assessed against any person found to be responsible or party to the improper administration of a drug or the intentional administration of a drug resulting in a positive test. In assessing penalties under this section, violations in the last three hundred sixty-five days from Washington and all recognized racing jurisdictions ((shall)) will be considered.

- (a) Class 1 - One to five year suspension and at least \$5,000 fine and loss of purse.
- (b) Class 2 - Six months to one year suspension and \$1,500 to \$2,500 fine and loss of purse.
- (c) Class 3 - Sixty days to six months suspension and up to \$1,500 fine and possible loss of purse.

(d) Class 4 - Zero to sixty days suspension and up to \$1,000 fine and possible loss of purse.

(e) Class 5 - Warning to fifteen days suspension with a possible loss of purse and/or fine.

(2) A lesser penalty may be imposed if a majority of the stewards determine that mitigating circumstances, as outlined in WAC ((260-70-090)) 260-84-090 exist.

AMENDATORY SECTION (Amending WSR 05-07-064, filed 3/11/05, effective 4/11/05)

**WAC 260-84-120 Penalties relating to permitted medication.** (1) Should the laboratory analysis of serum or plasma taken from a horse show the presence of more than

Concentration	1st offense within 365 days	2nd offense within 365 days	3rd and subsequent offenses within 365 days
> 5.0 but < 6.5 mcg/ml	Warning	Fine not to exceed \$300	Fine not to exceed \$500
((≥)) ≥ 6.5 but < 10.0 mcg/ml	Fine not to exceed \$300	Fine not to exceed \$500	Fine not to exceed \$1000
((≥)) ≥ 10.0 mcg/ml	Fine not to exceed \$500	Fine not to exceed \$1000	Fine not to exceed \$2500 and possible suspension

(3) Detection of any unreported permitted medication, drug, or substance by the primary testing laboratory may be grounds for disciplinary action.

(4) As reported by the primary testing laboratory, failure of any test sample to show the presence of a permitted medication, drug or substance when such permitted medication, drug or substance was required to be administered may be grounds for disciplinary action, which may include a fine not to exceed three hundred dollars. Multiple violations by an individual within a three hundred sixty-five day period may be referred to the commission for further action, which may include an additional fine and/or suspension or revocation.

(5) In assessing penalties for equine medication, prior offenses will count regardless of whether the violation(s) ((from)) occurred in Washington ((and all)) or another recognized racing jurisdiction((s shall be considered)), and regardless of the prior concentration level.

AMENDATORY SECTION (Amending WSR 05-07-064, filed 3/11/05, effective 4/11/05)

**WAC 260-84-130 Penalties for prohibited practices.** For a person or persons found to be responsible for ((or party to)) violation of WAC 260-70-545, including the treating veterinarian, the following penalties ((shall)) will be assessed:

(1) For violations of WAC 260-70-545, except WAC 260-70-545 (4)(b);

(a) For first offense - Thirty day suspension and \$1,000 fine;

(b) For second offense - Sixty day suspension and \$2,000 fine;

(c) For third offense - One year suspension, \$2,500 fine and a mandatory referral to the commission.

(2) For violations of WAC 260-70-545 (4)((b)), the person or persons found to be responsible for ((or party to)) the violation, including the treating veterinarian ((shall)) will be suspended for one year, ((shall)) pay a \$2,500 fine and

one approved nonsteroidal anti-inflammatory drug (NSAID) in violation of these rules the following penalties ((shall)) will be assessed:

(a) For a first offense within a three hundred sixty-five day period - Fine not to exceed \$300;

(b) For a second offense within a three hundred sixty-five day period - Fine not to exceed \$750;

(c) For a third offense within a three hundred sixty-five day period - Fine not to exceed \$1,000.

(2) Should the laboratory analysis of serum or plasma taken from a horse show the presence of phenylbutazone in excess of the quantities authorized by this rule, the following penalties ((shall)) will be assessed:

((there shall be a mandatory referral)) referred to the commission.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 260-84-050 Suspensions—Computation of time.
- WAC 260-84-070 Ejectment from grounds—Permission to reenter.

**WSR 08-02-071  
PROPOSED RULES  
HORSE RACING COMMISSION**

[Filed December 28, 2007, 3:46 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-17-153.

Title of Rule and Other Identifying Information: WAC 260-70-630 Threshold levels.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on February 14, 2008, at 9:30 a.m.

Date of Intended Adoption: February 14, 2008.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by February 8, 2008.

Assistance for Persons with Disabilities: Contact Patty Sorby by February 8, 2008, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently all anabolic steroids are considered Class 4 substances (WAC 260-

70-680) and as such are prohibited, in any quantitative amounts in horses on race day. Given the therapeutic nature of anabolic steroids to treat sick or injured horses, the commission is proposing to set quantitative levels for the following four anabolic steroids are Boldenone, Nadrolone, Stanozolol and Testosterone. The quantitative amounts will depend on the specific substance and whether the horse is a gelding, filly, mare, or intact male. Only these four substances will be permitted, and only up to the stated quantitative levels. Any horse that has had an anabolic steroid administered in order to assist in the recovery of an illness or injury may be placed on the veterinarian's list to be monitored (by the commission veterinarian) until the concentration falls below the permitted level.

In addition, the commission is considering minor changes to subsection (2) environmental contaminants or substances.

Reasons Supporting Proposal: This proposal is based on the Racing Medication and Testing Consortium and the Association of Racing Commissioners, International model rule.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

December 28, 2007

R. J. Lopez  
Deputy Secretary

AMENDATORY SECTION (Amending WSR 06-09-009, filed 4/10/06, effective 5/11/06)

**WAC 260-70-630 Threshold levels.** ~~((1) The following quantitative medication levels are permissible in test samples up to the stated quantitative levels:~~

Procaine	25 ng/ml urine
Benzocaine	50 ng/ml urine
Mepivacaine	10 ng/ml urine
Lidocaine	50 ng/ml urine
Bupivacaine	5 ng/ml urine
Clenbuterol	25 pg/ml serum or plasma
Acepromazine	25 ng/ml urine
Promazine	25 ng/ml urine
Salicylates	750,000 ng/ml urine
Albuterol	1 ng/ml urine
Pyrilamine	50 ng/ml urine
Theobromine	2000 ng/ml urine

~~The official urine test sample may not contain more than one of the above drug substances, including their metabolites or analogs, in an amount exceeding the specified level. Official blood test samples must not contain any of the drug substances listed above, including their metabolites or analogs, except for the threshold amount established in this rule.~~

~~(2) Certain substances can be considered environmental contaminants in that they are endogenous to the horse or that they can arise from plants traditionally grazed or harvested as equine feed or are present in equine feed because of contamination during the cultivation, processing, treatment, storage or transportation phases.~~

~~(3) Certain drugs are recognized as substances of human use and addiction and which could be found in a horse. The following are permissible in test samples up to the stated quantitative levels:~~

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

~~(4) If the preponderance of evidence presented in a stewards ruling conference shows that a positive test is the result of environmental contamination or inadvertent exposure due to human drug use, that evidence should be considered as a mitigating factor in any disciplinary action taken against the trainer.)~~

(1) Permitted medications.

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

- Procaine - 25 ng/ml urine
- Benzocaine - 50 ng/ml urine
- Mepivacaine - 10 ng/ml urine
- Lidocaine - 50 ng/ml urine
- Bupivacaine - 5 ng/ml urine
- Clenbuterol - 25 pg/ml serum or plasma
- Acepromazine - 25 ng/ml urine
- Promazine - 25 ng/ml urine
- Salicylates - 750,000 ng/ml urine
- Albuterol - 1 ng/ml urine
- Pyrilamine - 50 ng/ml urine
- Theobromine - 2000 ng/ml urine

(b) The official urine or blood test sample may not contain more than one of the above substances, including their metabolites or analogs, and may not exceed the concentrations established in this rule.

(2) Environmental substances.

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

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

(b) If a preponderance of evidence presented shows that a positive test is the result of environmental substance or

inadvertent exposure due to human drug use, that evidence should be considered as a mitigating factor in any disciplinary action taken against the trainer.

(3) Androgenic-anabolic steroids.

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

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

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

Nandrolone (Durabolin) - 1 ng/ml urine in geldings, fillies, and mares, and 45 ng/ml urine in intact males.

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

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

(c) The official veterinarian will notify the laboratory when a post-race urine or blood sample is collected from an intact male.

(d) Any horse to which an androgenic-anabolic steroid has been administered in order to assist in the recovery from illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug in urine. Once the level is below the permitted concentration, the official veterinarian may remove the horse from the veterinarian's list.

### WSR 08-02-072

#### PROPOSED RULES

#### SECRETARY OF STATE

(Elections Division)

[Filed December 28, 2007, 3:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-22-030.

Title of Rule and Other Identifying Information: The Cycle 5 Rules of 2007 address issues such as forwarding ballots, redistricting, the voters' pamphlet, the HAVA complaint process, and logic and accuracy tests.

Hearing Location(s): Conference Room, 520 Union Avenue S.E., Olympia, WA 98501, on February 5, 2008, at 1:30 p.m.

Date of Intended Adoption: February 6, 2008.

Submit Written Comments to: Dave Motz, P.O. Box 40220, Olympia, WA 98504-0220, e-mail dmotz@secstate.wa.gov, fax (360) 586-5629, by February 5, 2008.

Assistance for Persons with Disabilities: Contact TTY (800) 422-8683.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules will implement standard procedures statewide and clarify procedures. They address issues such as forwarding ballots, redistricting, the voters' pamphlet, the HAVA complaint process, and logic and accuracy tests.

Reasons Supporting Proposal: Rules must reflect current law and are necessary for uniformity.

Statutory Authority for Adoption: RCW 29A.04.611.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting: David Motz and Katie Blinn, Legislative Building, (360) 725-5786; Implementation and Enforcement: Katie Blinn, Legislative Building, (360) 902-4168.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Changes do not appear to have an impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

December 28, 2007

Steve Excell

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

**WAC 434-250-070 Forwarding ballots.** (1) If the county auditor chooses ~~((not))~~ to forward ballots, ~~((the envelope must clearly indicate the ballot is not to be forwarded.~~

~~((2) If the county auditor chooses to forward absentee ballots, as authorized by RCW 29A.40.091, the county auditor must include with the ballot an explanation of qualifications necessary to vote and)) as authorized by RCW 29A.40.091, the county auditor must utilize postal service endorsements that allow the ballots to be forwarded, allow the county auditor to receive the updated address information, and allow the return of ballots not capable of being forwarded. A voter may only vote a ballot specific to the address where he or she is registered to vote, rather than a ballot specific to a new address. The county auditor must include instructions substantially similar to the following:~~

If you have changed your permanent residence address, please contact your county auditor to ensure the ballot you receive in future elections contains the races and issues for your residential address. If you have any questions about your eligibility to vote in this election, please contact your county auditor.

~~((The above instructions and the explanation required by RCW 29A.40.091 may be provided on the ballot envelope, on an enclosed insert, or on the ballot itself. Auditors must begin to provide the above instruction to voters no later than January 1, 2008. The county auditor must utilize postal service endorsements that allow:~~

~~(a) The ballots to be forwarded;~~

~~(b) The county auditor to receive from the post office the addresses to which ballots were forwarded; and~~

~~(c) The return of ballots that were not capable of being forwarded.)) (2) If the county auditor does not forward ballots, the envelope must clearly indicate the ballot is not to be forwarded. If the county auditor receives updated address information from the post office, the county auditor may send the voter a ballot specific to the address where the voter is registered to vote.~~

~~(3) If a ballot is returned or forwarded, the county auditor must, following certification of the election, either:~~

(a) Transfer the voter registration and send the voter an acknowledgment notice, if the updated address is within the county; or

(b) Place the voter on inactive status and send the voter a confirmation notice to all known addresses, if no updated address information was received or the updated address is outside the county.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

**WAC 434-250-100 Ballot deposit sites and voting centers.** (1) If a location only receives ballots and does not issue any ballots, it is considered a ballot deposit site. Ballot deposit sites may be staffed or unstaffed.

(a) If a ballot deposit site is staffed, it must be staffed by at least two people. Deposit site staff may be employees of the county auditor's office or persons appointed by the auditor. If ~~((two or more))~~ a deposit site ~~((staff are))~~ is staffed by two or more persons appointed by the county auditor, the appointees shall be representatives of different major political parties whenever possible. Deposit site staff shall subscribe to an oath regarding the discharge of their duties. Staffed deposit sites open on election day must be open from 7:00 a.m. until 8:00 p.m. Staffed deposit sites may be open prior to the election according to dates and times established by the county auditor. Staffed deposit sites must have a secure ballot box that is constructed in a manner to allow return envelopes, once deposited, to only be removed by the county auditor or by the deposit site staff. If a ballot envelope is returned after 8:00 p.m. on election day, deposit site staff must note the time and place of deposit on the ballot envelope, and such ballots must be referred to the canvassing board.

(b) Unstaffed ballot deposit sites consist of secured ballot boxes that allow return envelopes, once deposited, to only be removed by authorized staff. Ballot boxes located outdoors must be constructed of durable material able to withstand inclement weather, and be sufficiently secured to the ground or another structure to prevent their removal. From eighteen days prior to election day until 8:00 p.m. on election day, two people who are either employees of or appointed by the county auditor must empty each ballot box with sufficient frequency to prevent damage and unauthorized access to the ballots.

(2) If a location offers replacement ballots, provisional ballots, or voting on a direct recording electronic device, it is considered a voting center. The requirements for staffed ballot deposit sites apply to voting centers. Each voting center must:

(a) Be posted according to standard public notice procedures;

(b) Be an accessible location consistent with chapters 29A.16 RCW and 434-257 WAC;

(c) Be marked with signage outside the building indicating the location as a place for voting;

(d) Offer disability access voting;

(e) Offer provisional ballots, which may be sample ballots that meet provisional ballot requirements;

(f) Record the name, signature and other relevant information for each voter who votes on a direct recording electronic voting device in such a manner that the ballot cannot be traced back to the voter;

(g) Request identification, consistent with RCW 29A.44.205 and WAC 434-253-024, from each voter voting on a direct recording electronic voting device or voting a provisional ballot;

(h) Issue a provisional ballot to each voter who is unable to provide identification in accordance with (g) of this subsection;

(i) Have electronic or telephonic access to the voter registration system consistent with WAC 434-250-095 if voters are voting on a direct recording electronic voting device;

(j) Provide either a voters' pamphlet or sample ballots;

(k) Provide voter registration forms;

(l) Display a HAVA voter information poster;

(m) Display the date of that election;

(n) Provide instructions on how to properly mark the ballot;

(o) Provide election materials in alternative languages if required by the Voting Rights Act; and

(p) Use an accountability form to account for all ballots issued.

(3) Ballot boxes must be locked and sealed at all times, with seal logs that document each time the box is opened ~~((;))~~ and by whom ~~((; and the number of ballots removed))~~. Ballots must be placed into sealed transport carriers and returned to the county auditor's office or another designated location. At exactly 8:00 p.m. on election day, all ballot boxes must be emptied or sealed to prevent the deposit of additional ballots.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

**WAC 434-253-025 Polling place—Items to be posted.**

The following items must be posted or displayed at each polling place while it is open:

(1) United States flag;

(2) HAVA voter information poster;

(3) A sign listing the date of the election and the hours of voting on election day;

(4) Voting instructions printed in at least 16 point bold type;

(5) Either sample ballots or voters' pamphlets;

(6) Voter registration forms;

(7) Election materials in alternative languages, if so required by the ~~((National Voter Registration Act of 1993))~~ Voting Rights Act (42 U.S.C. 1973 ~~((gg))~~ aa et seq.); and

(8) Any other items the county auditor deems necessary.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

**WAC 434-262-015 Canvassing board—Delegation of authority.** The county auditor, prosecuting attorney, and chair of the county legislative authority, or designees as per chapter 29A.60 RCW, shall be responsible for the performance of all duties of the county canvassing board, as set forth in chapters 29A.40 and 29A.60 RCW, and the rules on canvassing adopted by the secretary of state. These duties

shall be performed by the members of the board, or they may delegate in writing representatives to perform these duties. This written delegation of authority shall be filed with the county auditor prior to any person undertaking any action on behalf of the board. In no instance may the members of the county canvassing board delegate the responsibility of certifying the returns of any primary or election, of determining the validity of any challenged ballots, or of rejecting ballots. When considering the validity or rejection of ballots, the canvassing board may review the ballots individually, in batches, or as part of a report of ballots presented to the board. In the event the canvassing board ~~((determines that the signature on an absentee or provisional ballot was not made by the voter to whom the ballot was issued or that a voter attempted to vote more than once, the board must direct the county auditor to))~~ concludes that criminal activity may have occurred, the county auditor must refer the ballot and any relevant material to the county sheriff or county prosecuting attorney.

AMENDATORY SECTION (Amending WSR 06-14-046, filed 6/28/06, effective 7/29/06)

**WAC 434-262-017 Calculating validation figures and results for bonds and levies.** (1) For bonds and levies other than school district levies, before determining a jurisdiction's validation figures, the number of votes cast in the jurisdiction in the last general election must be determined. For levies, the state Constitution states, "...the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty per centum of the total votes cast in such taxing district at the last preceding general election..." For example:

10,000 votes cast in the jurisdiction in the last general election x 40% = 4,000 votes x 3/5 = 2,400 votes

These numbers should be calculated based on the number of voters credited for voting in each jurisdiction, before adding, deleting, or transferring voters following the general election.

(2) When determining the results of a specific bond or levy, county auditors must not include overvotes or undervotes in the calculation. Rounding must not be used to reach ~~((sixty percent))~~ the percentage of "yes" votes required for a bond or levy to pass. For example:

2,980 "yes" votes ÷ 5,000 total votes cast = 59.6%, so the levy would not pass.

AMENDATORY SECTION (Amending WSR 97-21-045, filed 10/13/97, effective 11/13/97)

**WAC 434-262-200 Retention of records.** All records and materials are to be maintained for a period of sixty days after certification of each election. Where the election involves federal offices the records and material must be kept for ~~((the appropriate time frame as set forth in federal statutes))~~ twenty-two months from the date of the election.

AMENDATORY SECTION (Amending WSR 04-16-037, filed 7/27/04, effective 8/27/04)

**WAC 434-263-040 Processing of complaint.** (1) The secretary may process the complaint in any of the following ways:

(a) The secretary may dismiss the complaint, and issue a final determination, if it:

- ~~(i) Does not comply with WAC 434-263-020 ((or if it));~~
- ~~(ii) Does not, on its face, allege a violation of Title III ((with regard to an election)); or~~
- (iii) Alleges a claim for which relief cannot be granted, or for which a remedy is not available;

(b) The secretary may, with the agreement of the parties, resolve the matter informally, and issue a determination without formal proceedings; ~~((or))~~

~~(c) The secretary may resolve the matter informally by agreeing to implement a remedy or corrective action; or~~

(d) The secretary may schedule the matter for a brief adjudicative proceeding. The secretary shall do so if the complaint is not dismissed pursuant to (a) of this subsection and a party so requests.

(2) The secretary must respond within thirty days of the filing of the complaint to acknowledge receipt and explain how the complaint will be processed consistent with subsection (1) of this section.

(3) The secretary may consolidate complaints if they relate to the same actions or events, or if they raise common questions of law or fact.

AMENDATORY SECTION (Amending WSR 04-16-037, filed 7/27/04, effective 8/27/04)

**WAC 434-263-050 Brief adjudicative proceeding.** (1) The secretary shall designate ~~((one or more people))~~ a person to act as a presiding officer ~~((or))~~ of a brief adjudicative hearing. A presiding officer may be:

- (a) The assistant or deputy secretary;
- (b) The director of elections;
- ~~(c) ((The deputy))~~ An assistant director of the elections division;
- (d) Any county auditor; or
- (e) An administrative law judge.

The ~~((designee))~~ presiding officer shall not be from an office named in the complaint.

(2) Before issuing a determination on the complaint, the presiding officer shall give each party an opportunity to explain the party's view of the matter, including an opportunity to be informed of the secretary's view of the matter if applicable. A determination may be based upon written submissions and documents, unless a party or the presiding officer requests a hearing on the record within ten days after the filing of the complaint.

(3) The presiding officer may schedule a hearing on the record:

- (a) In person at a convenient location;
- (b) By conference telephone call; or
- (c) By such other method that permits the parties to hear and participate in the proceeding simultaneously.

Witnesses at a hearing shall be sworn upon oath. A party who requests a hearing but fails to make himself or herself

available for hearing within the time available for initial determination shall be deemed to have waived the hearing.

(4) The presiding officer may permit or solicit the submission of written materials or oral presentations by persons who are not parties if the presiding officer determines that such submissions would be helpful in evaluating the complaint.

(5) The secretary shall establish and maintain the record of the proceedings as required by RCW 34.05.494. If a hearing on the record is conducted, the record shall include a transcript or audio recording of the hearing.

AMENDATORY SECTION (Amending WSR 04-16-037, filed 7/27/04, effective 8/27/04)

**WAC 434-263-060 Initial determination and remedies.** (1) The presiding officer shall render a written initial decision within ~~((forty-five))~~ seventy days after the complaint is filed, unless the complainant consents to a longer period. The determination shall include a statement as to whether, based upon a preponderance of the evidence, a violation of Title III has been established with regard to an election. If the presiding officer determines that a violation has occurred, the determination shall specify the appropriate remedy, if one exists. If the presiding officer determines that no violation has been established, the complaint shall be dismissed.

(2) The remedy awarded under this section shall be directed to the improvement of processes or procedures governed by Title III and must be consistent with state law. Remedies may include written findings that a violation of Title III has occurred and strategies for insuring that the violation does not occur again, as well as any other remedy available to the secretary under law. The remedy may not include any award of monetary damages, costs, penalties or attorney fees, and may not include the invalidation of any vote~~(s)~~ or ballot, or the invalidation, cancellation, or delay of any primary or election. Remedies addressing the validity of any primary or election or of any ballot or vote may be obtained only as otherwise provided by law.

(3) The initial determination shall include a summary of the process for obtaining an administrative review and shall include notice that judicial review may be available.

AMENDATORY SECTION (Amending WSR 04-16-037, filed 7/27/04, effective 8/27/04)

**WAC 434-263-080 Alternative dispute resolution.** (1) If a final determination is not rendered within ~~((forty-five))~~ ninety days after the filing of the complaint, or within such additional time to which the complainant may consent, then the complaint shall be transferred to a board of arbitration, which must resolve the complaint within sixty additional days, which may not be extended. The board of arbitration shall be composed of three members, designated by the secretary, at least two of whom must be county auditors or election managers. No two members of the panel may be employed by the same office, agency or other employer.

(2) The arbitrators shall review the record compiled in proceedings prior to the transfer, including the tape or transcript of any hearing, but may not conduct any further hear-

ing or receive any additional testimony, evidence, or other submissions. The arbitrators shall determine the appropriate resolution of the complaint by majority vote. No further administrative review is available, but the arbitrator's final determination shall include notice that judicial review may be available.

AMENDATORY SECTION (Amending WSR 04-16-037, filed 7/27/04, effective 8/27/04)

**WAC 434-263-090 Publication.** All final determinations pursuant to WAC 434-263-070 shall be posted on the secretary's web site ~~((, lodged with the state library or state archives, and distributed to others upon request and upon payment of copying costs. Copies shall be provided to the parties at no cost))~~ for at least ninety days.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

**WAC 434-335-070 Additional information and equipment required.** The vendor shall provide a working model of the equipment under review for the duration of the examination. ~~((The secretary of state may, at the expense of the applicant, contract with independent testing authorities or laboratories, or experts in mechanical engineering, electrical engineering, or data processing to assist in the examination of the equipment.))~~

NEW SECTION

**WAC 434-335-090 Voting systems review board evaluation.** The voting systems review board evaluation must include, but is not limited to:

- (1) A review of statutory requirements;
- (2) A review of applicable federal standards;
- (3) A review of the approved qualification test results released directly to the secretary of state by the federally approved independent testing authority;
- (4) If applicable, a review of reports or other materials from prior hearings on the proposed system, procedure, or modification, either in whole or in part;
- (5) A review of the report produced by the secretary of state upon completion of the examination of the voting system;
- (6) If applicable, a review of any procedures manuals, guidelines, or other materials issued for use with the system;
- (7) A review of any effect the application will have on the security of the voting system;
- (8) A review of any effect the application will have on the accuracy of the voting system;
- (9) A review of any effect the application will have on the ease and convenience with which voters use the system;
- (10) A review of any effect the application will have on the timeliness of vote reporting; and
- (11) A review of any effect the application will have on the overall efficiency of the voting system.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-335-080 Deposit for examination expenses.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

**WAC 434-335-270 Definition of official logic and accuracy test.** As used in this chapter, "official logic and accuracy test" means the test performed in accordance with RCW 29A.12.130 for all voting systems used.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

**WAC 434-335-300 Logic and accuracy testing of voting systems and equipment**~~((—State primary and general election))~~. (1) At least three days before each state primary or general election, the office of the secretary of state must test the programming of the vote tabulating system to be used at that primary or election. The test must verify that the system will correctly count the votes cast for all candidates and all measures appearing on the ballot. The test must also verify that the machines are functioning to specifications.

(2) County auditors must conduct the test in the same manner as subsection (1) of this section for special elections not held in conjunction with a state primary or general election. The secretary of state is not represented at the tests for special elections.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

**WAC 434-335-310 Procedure for conduct of**~~((delayed))~~ **primary or general election emergency logic and accuracy test.** If the official logic and accuracy test cannot be completed at the scheduled time and place, an emergency test must be scheduled by the county auditor. The emergency test must be conducted and properly completed prior to the processing of any official ballots through the tabulating system. If no representative of the office of the secretary of state is able to attend the emergency test, the county auditor and another member of the county canvassing board or their designated representative must observe the test and certify the results. Observers and notification must be provided pursuant to WAC 434-335-290 and 434-335-320.

AMENDATORY SECTION (Amending WSR 06-14-048, filed 6/28/06, effective 7/29/06)

**WAC 434-335-320 Logic and accuracy test scheduling and preparation—State primary and general election.** Prior to each state primary and general election, the office of the secretary of state must prepare a schedule of logic and accuracy tests. The office of the secretary of state must ~~((notify))~~ contact each county ~~((of the date and time of))~~ auditor at least thirty days before the primary or general election to schedule the test ~~((at least thirty days before the primary or~~

election)). The county auditor must notify the parties, press, public, and candidates of the date and time of the test.

AMENDATORY SECTION (Amending WSR 06-14-048, filed 6/28/06, effective 7/29/06)

**WAC 434-335-330 Logic and accuracy test certification**~~((—State primary and general election))~~. (1) The county auditor or deputy, the secretary of state representative, and any political party observers must certify that the test of voting systems that will be used in the primary or general election was conducted in accordance with RCW 29A.12.-130. This certification must include verification that the version numbers for all software, firmware, and hardware of the voting system used have not changed from the certified versions. Copies of this certification must be retained by the secretary of state and the county auditor and may be posted by electronic media. All ~~((programming materials,))~~ test results, ~~((and))~~ test ballots, and a copy of the tabulation programming or the actual tabulation equipment must be kept in secure storage employing the use of numbered seals and logs or other security measures that will detect any inappropriate access to the materials until the day of the primary or election. These items may be sealed and stored separately.

(2) For special elections not held in conjunction with a state primary or general election, the secretary of state is not represented and does not retain a copy of the certification. The county auditor or deputy and any political party observers must certify that the test of voting systems that will be used in the special election was conducted in accordance with RCW 29A.12.130. This certification must include verification that the version numbers for all software, firmware, and hardware of the voting system used have not changed from the certified versions. Copies of this certification must be retained by the county auditor and may be posted by electronic media. All test results, test ballots, and a copy of the tabulation programming must be kept in secure storage, employing the use of numbered seals and logs or other security measures that will detect any inappropriate access to the materials until the day of the primary or election. These items may be sealed and stored separately.

(3) If, for any reason, any changes are made to the ballot counting programming after the official logic and accuracy test, an emergency logic and accuracy test must be conducted pursuant to WAC 434-335-310.

**OPTICAL AND DIGITAL SCAN SYSTEMS**

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

**WAC 434-335-430 Definition((s)).** ~~((For optical scan voting systems:~~

(1) ~~((Voting response area))~~ "Target area" means the area on the ballot for optical and digital scan voting systems, as specified in the instructions, in which the voter may place a mark to indicate a vote.

~~((2))~~ "Scanning area" means ~~((the portions of the ballot that the system scans in order to read the vote marks made by voters.~~



(3) "~~Ballot marking code~~" means the ~~coded patterns printed on the ballot intended to identify the ballot style to the ballot counting system.~~)

AMENDATORY SECTION (Amending WSR 06-14-048, filed 6/28/06, effective 7/29/06)

**WAC 434-335-440 Logic and accuracy (~~test deck preparation~~) pretest—State primary and general election—Optical and digital scan systems.** The county is responsible for preparing and testing the vote tabulating system prior to the official logic and accuracy test. This pretesting must be completed prior to the official logic and accuracy test and prior to using the equipment to process ballots. ~~((Information describing the candidates, offices, ballot styles, number of appearances of each office, method used to mark the test deck, a copy of the anticipated results, and all other information required to create the test decks must be sent to the office of the secretary of state by the 20th day prior to the primary or election. If a county is delayed, the county must advise the office of the secretary of state before the 20th day prior to the primary or election.))~~

AMENDATORY SECTION (Amending WSR 06-14-048, filed 6/28/06, effective 7/29/06)

**WAC 434-335-445 The preparation of logic and accuracy test decks.** (1) Each county shall produce a test deck of ballots to be used in ~~((the pretest and))~~ the official logic and accuracy test to verify that the vote tabulating system is programmed to correctly count the ballots.

~~((When a race has five or fewer candidates, the))~~ (2) The pattern to mark the test deck shall begin by giving the first candidate in each race one vote, the second candidate in each race two votes, the third candidate in each race three votes, etc. ((When a race has more than five candidates the pattern may be repeated.)) Once the pattern is completed for each race and issue, each remaining precinct or ballot style must be tested by using ((at least)) a minimum of one ballot that has a first choice marked for each race and issue. Additional votes may be added to ensure all responses for a race or issue have unique results. Another pattern may be used if it meets the requirements outlined in this section and is approved by the secretary prior to marking the test deck.

(3) The test deck must also test that the vote tabulating system is programmed to accurately count write-in votes, overvotes~~((, undervotes,))~~ and blank ballots. ~~((In addition, if ballot on demand systems will be used during the election,))~~ The test deck must also include a sampling of all ballots ((printed from the ballot on demand system)) that will be used during the election, including ballot on demand, alternative language ballots, and ballots marked with an electronic ballot marker.

(4) In a partisan primary:

(a) When a consolidated ballot is used, the test deck must test that the partisan and nonpartisan votes are counted properly for situations where just one party is selected, no party is selected, and both parties are selected; and

(b) When separate ballots are used, a test deck for each party must be prepared in addition to a test deck for nonpartisan races.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

**WAC 434-335-450 Optical and digital scan test ballot selection—State primary and general elections.** A matrix of a county's test deck and a sample ballot must be sent to the office of the secretary of state by the fourteenth day prior to the official logic and accuracy test. Prior to the ~~((official logic and accuracy))~~ test, the office of the secretary of state must review the provided ~~((election materials with the county and select a representative sample of ballot styles sufficient to cover all offices and issues appearing in the election. If the office of the secretary of state prepares the test deck, the county auditor must send to the secretary of state blank ballots of the selected ballot styles as soon as the ballots are available. The representative sample constitutes the official logic and accuracy test, unless conditions warrant the office of the secretary of state to conduct a complete test of every precinct))~~ matrix to determine if it is prepared in accordance with WAC 434-335-445 and if the representative ballot sample of ballot styles is sufficient to cover all offices and issues appearing in the election.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

**WAC 434-335-490 Poll site-based optical scan ballot counter preparation and testing.** (1) The logic and accuracy test of a poll site-based optical scan ballot counter must be performed by the county during preparation of the counter prior to distribution. ~~((As the ballot counter is programmed and prepared for distribution, a test of the ballot counter and the ballot styles must be performed.))~~ This test must establish that the ballot counter is functioning within system standards. All ballot styles programmed for the ballot counter must be processed by the ballot counter in order to ~~((insure))~~ ensure that it is correctly counting and accumulating every office. The test must also establish that the ~~((printed voter response))~~ target areas on the ballot are correctly aligned with the ((scanning)) scanned target area. After all tests are performed and the ballot counter is ready for distribution, the ballot counter must be sealed and the seal number recorded. These tests serve as the official logic and accuracy test of poll site-based optical scan ballot counters.

(2) A log must be created during the testing of a poll-site based optical scan ballot counter. The log must record the time of each test, the precinct numbers, the seal number, the machine number of each ballot counter, and the initials of each person testing the system. The log must be included in the official logic and accuracy test materials. This process is open to observation and subject to all notices and observers pursuant to WAC 434-335-290 and 434-335-320.

**((DIRECT RECORDING))  
ELECTRONIC VOTING SYSTEMS**

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

**WAC 434-335-510 Definitions.** ~~((For direct recording electronic voting systems:))~~

"Access device" is the device that is used by the voter to access the ballot at a direct recording electronic voting device. It may be a card or other media.)

"Calibration" is the touch screen setting on a (~~direct recording electronic voting system~~) disability access unit with touch screen capability that controls the (~~voter response~~) target area.

("Controller" is a component of a ~~direct recording electronic voting system~~ that allows the poll worker to add information to an access device to allow a voter to access the correct ballot style.

"Parallel monitoring" is a process designed to detect the potential presence of malicious code in the software of a voting machine. It requires a specific number of voting machines to be removed from random poll sites before voting begins. These machines are then test voted throughout election day.

~~Response~~) "Direct recording electronic device" is a device that records a voter's responses electronically.

"Electronic ballot marker" is a device that marks a voter's responses on a preprinted paper ballot.

"Target area" is the area on the ballot face that records the voter's choice.

"Touch screen" is a type of computer interface on a voting device that allows the voter to select a choice by touching the screen.

~~("Voter verified paper record" is a paper record of a voter's choices. The paper record may be verified by the voter before the vote is cast.)~~

AMENDATORY SECTION (Amending WSR 06-14-048, filed 6/28/06, effective 7/29/06)

**WAC 434-335-520 Logic and accuracy test plan preparation—**~~(State primary and general election—)~~**Disability access units.** (1) The test plan used for the official logic and accuracy test (~~prior to a state primary or election~~) for disability access units must be prepared by the county in the same manner as for optical and digital scan ballots. The official testing must be completed before a (~~direct recording device~~) disability access unit may be used for marking or casting ballots. Counties must complete the testing to have in-person disability access voting available starting twenty days before the day of a primary or election. (~~Information describing the candidates, offices, ballot formats, ballot styles, number of appearances of each office, and all other information required to create the test plan must be sent to the office of the secretary of state by the 20th day prior to the primary or election. If a county is delayed, the county auditor must advise the office of the secretary of state before the 20th day prior to the primary or election.~~)

(2) This test serves as the official logic and accuracy test of poll site-based optical scan ballot counters. A log must be created during the test, recording the time of each test, the precinct numbers, the seal number, the machine number, and the initials of each person testing the system. The log must be included in the official logic and accuracy test materials. This process is open to observation and subject to all notices and observers pursuant to WAC 434-335-290 and 434-335-320.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

**WAC 434-335-540** ~~(Direct recording electronic)~~ **Touch screen calibration adjustment standards and tests.** Prior to each state primary and election, the calibration settings of each (~~direct recording electronic~~) device using touch screen technology must be tested to (~~insure~~) ensure that the (~~response~~) target areas are functioning within system standards.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

**WAC 434-335-550 Direct recording electronic** ~~(voting response)~~ **target area tests.** (~~Prior to the official logic and accuracy test, and prior to the programming of the poll-site direct recording electronic devices,~~) Each county employing a direct recording electronic balloting system must conduct a test to confirm that the (~~voting response~~) target area indicated on each ballot face is programmed correctly. The county must test all ballot styles on at least one device to (~~insure~~) ensure that the programming is correctly counting and accumulating every office, measure, and (~~candidate~~) selection by the voter.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

**WAC 434-335-560** ~~(Direct recording electronic ballot marking code program)~~ **Electronic ballot marker test.** (~~Prior to the official logic and accuracy test, each county employing a direct recording electronic balloting system to confirm that the voting response areas indicated on all ballot faces are programmed correctly. The county must test all ballot styles on at least one device to insure that the programming is correctly counting and accumulating every office and candidate.~~) Each county employing an electronic ballot marker must conduct a test to confirm the target area indicated on each ballot face is programmed correctly. The county must test all ballot styles on at least one device to ensure the programming is correctly marking the target area for every office, measure, and selection by the voter.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-335-340	Logic and accuracy testing of voting systems and equipment—Special elections.
WAC 434-335-350	Logic and accuracy test deck preparation—Special elections.
WAC 434-335-360	Logic and accuracy test scheduling and preparation—Special election.
WAC 434-335-370	Logic and accuracy test certification—Special election.

WAC 434-335-460	Optical scan read head adjustment standards and tests.
WAC 434-335-470	Optical scan test ballot scan area alignment tests.
WAC 434-335-480	Optical scan ballot marking code program test.
WAC 434-335-500	Poll site-based optical scan ballot counter test notices, observers, and log of process.
WAC 434-335-530	Direct recording electronic test ballot selection—State primary and general election.
WAC 434-335-570	Direct recording electronic system logic and accuracy test notices, and observers.
WAC 434-335-580	Poll site-based direct recording electronic voting device preparation and testing.
WAC 434-335-590	Poll site-based direct recording electronic device test notices, observers, and log of process.

**AMENDATORY SECTION** (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

**WAC 434-369-005 Authority and purpose.** These rules are adopted under authority of RCW 29A.04.611 to implement RCW 29A.76.040 (~~((pursuant to chapter 34.05 RCW to establish and govern the procedures in))~~), the census mapping project administered by the secretary of state for the U.S. Census Bureau.

**AMENDATORY SECTION** (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

**WAC 434-369-010 Definitions.** As used in (~~these regulations~~) this chapter:

(1) "Census mapping project" includes all functions performed by the secretary of state and each county auditor in the preparation, maintenance, distribution, and filing of precinct maps, detail maps, and census correspondence listings pursuant to RCW 29A.76.040.

(2) "Secretary of state" includes the secretary of state, assistant secretary of state, deputy secretary of state, or any other person authorized by the secretary of state to act in his or her behalf in the census mapping project.

(3) "County auditor" includes each county auditor, county elections official, or any other person authorized by the county auditor to act in his or her behalf in the census mapping project.

(4) "Census maps" refers to the maps provided by the U.S. Census Bureau which indicate census unit boundaries and numeric identification of such census units.

(5) "Census units" refers to the census geographic area designations for which the population count will be reported

including census tracts, block groups, blocks, enumeration districts, and county census divisions.

(6) "Precinct maps" refers to the maps prepared by each county auditor pursuant to RCW 29A.76.040 which indicate the boundaries and numeric identification of each precinct in that county.

(7) "Precinct lists" refers to the lists prepared by each county auditor pursuant to RCW 29A.16.050(3) which indicate the names and consecutively assigned numbers of each precinct in that county.

(8) "Base maps" refers to the (~~(sets of mylar))~~) maps of each county which are provided by the secretary of state on which final detail maps will be prepared.

(9) "Census overlay maps" refers to the (~~(mylar))~~) overlay maps prepared by the secretary of state which indicate census unit boundaries and numeric identification for the area covered by each base map.

(10) "Precinct overlay maps" refers to the (~~(mylar))~~) overlay maps prepared by each county auditor which indicate precinct boundaries and numeric identification for the area covered by each base map.

(11) "Detail map" refers to the sets of maps produced by the combination of the base maps with the corresponding census and precinct overlay maps for each county.

(12) "Census correspondence listings" refers to the lists prepared by each county auditor pursuant to RCW 29A.76.-040 which indicate the census units or portions of census units contained in each precinct in that county.

**AMENDATORY SECTION** (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

**WAC 434-369-020 Precinct maps—(~~Availability and~~) Distribution.** (1) (~~(Pursuant to the provisions of RCW 29A.76.040, on or before July 1, 1980, each county auditor shall prepare for public inspection and use))~~ Each county auditor shall maintain precinct maps of that county.

(2) (~~(On or before July 18, 1980))~~ Upon request, each county auditor shall transmit to the secretary of state one complete set of precinct maps of that county.

(~~(3) Each county auditor shall also send one copy of the precinct maps of each city or town in that county to the clerk of that city or town.~~)

**AMENDATORY SECTION** (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

**WAC 434-369-030 Precinct lists—Preparation and filing.** (~~(On or before July 18, 1980))~~ Upon request, each county auditor shall prepare and transmit to the secretary of state a precinct list of that county. Precinct names shall be listed in alphabetical order (~~(and shall also be))~~ or numbered consecutively.

**AMENDATORY SECTION** (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

**WAC 434-369-040 Base maps, census overlay maps, and related information—Duties of the secretary of state.** (~~(On or before September 15, 1980,))~~ The secretary of state

shall prepare and transmit to each county auditor the following:

- (1) A set of base maps of that county;
- (2) A set of census overlay maps for each base map of that county; and
- (3) A sequential census unit listing, provided by the U.S. Census Bureau, which indicates all census units delineated on the census and base maps of that county.

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

**WAC 434-369-050 Precinct overlay maps—Preparation.** Pursuant to the provisions of RCW 29A.76.040, each county auditor shall prepare precinct overlay maps for each base map of the county and each city and town within that county (~~according to the following procedures:~~

- ~~(1) Precinct overlay maps shall be prepared on the reproducible mylar overlays provided by the secretary of state; (2) each county auditor shall transfer all precinct boundaries and numeric identification in red ink onto the mylar overlay for each base map of that county; and (3) each overlay map shall include the following identification in the lower left hand corner: (a) The name of the area covered by the map; (b) an arrow indicating north; and (c) the preparation date of the precinct overlay map).~~

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

**WAC 434-369-060 Census correspondence listings—Preparation.** Pursuant to the provisions of RCW 29A.76.040, each county auditor shall prepare a census correspondence listing according to the following procedures:

- (1) Record the census tracts or county census divisions (CCD) and the smallest census units in each area for which population counts are to be reported from the sequential census unit listing supplied by the U.S. Census Bureau. ~~((f))~~The order of census information on the census correspondence listing shall be identical to the sequential census unit listing. ~~((g))~~
- (2) Record the number or numbers, as assigned pursuant to RCW 29A.16.050(3), of each precinct ~~((which))~~ that is wholly or partially coextensive with the census unit ~~((s))~~.
- (3) ~~((wherever))~~ Where census unit or precinct boundaries are not coincident, estimate for each portion of a split census unit, the proportion of the total number of registered voters residing in each precinct containing a portion of the split census unit. ~~((f))~~Each county auditor shall refer to current voter registration lists and other available information to determine such estimated proportion of registered voters. Such estimates shall be expressed to at least the nearest 10 percent of the total number of registered voters within the precinct. ~~((g))~~

~~The census correspondence listings shall be prepared in substantially the following form:~~

~~STRICKEN GRAPHIC~~

County \_\_\_\_\_ Map sheets \_\_\_\_\_

Census Tract CCD	Block ED	Precinct Number	% of Registered Voters

~~STRICKEN GRAPHIC~~

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

**WAC 434-369-070 Detail maps and census correspondence listings—Maintenance, distribution, and filing.** (1) ~~((On or before November 1, 1980))~~ Upon request, each county auditor shall send to the secretary of state the complete set of ~~((mylar))~~ detail maps and census correspondence listings for that county;

(2) The secretary of state shall maintain the original sets of ~~((mylar))~~ detail maps of each county;

(3) The secretary of state shall reproduce and distribute copies of detail maps to each county auditor for the actual cost of reproduction; and

(4) Each county auditor shall maintain copies of precinct maps, detail maps, and census correspondence listings of the county. Such maps shall be available for public inspection during normal office hours. Copies shall be made available to the public ~~((for a fee necessary to cover the cost of reproduction under such rules as the county auditor has adopted pursuant to RCW 42.17.260))~~ at actual reproduction cost.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-369-080	Compensation to county auditors for direct expenses.
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## Chapter 434-381 WAC

STATE VOTERS' PAMPHLET

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

**WAC 434-381-120 Deadlines.** (1) Candidate statements and photographs shall be submitted to the secretary of state:

(a) For candidates who filed during the regular filing period, within ~~((three business))~~ seven calendar days after filing their declaration of candidacy;

(b) For candidates who filed during a special filing period, or were selected by a political party pursuant to either RCW 29A.52.010 or 29A.24.140, within ~~((three business))~~ seven calendar days after the close of the special filing period or selection by the party.

(2) For ballot measures, including initiatives, referendums, alternatives to initiatives to the legislature, and constitutional amendments, the following documents shall be filed with the secretary of state on or before the following deadlines:

(a) Appointments of the initial two members of committees to prepare arguments for and against measures:

(i) For an initiative to the people or referendum measure: Within ten business days after the submission of signed petitions to the secretary of state;

(ii) For an initiative to the legislature, with or without an alternative, constitutional amendment or referendum bill, within ten business days after the adjournment of the regular or special session at which the legislature approved or referred the measure to the ballot:

(b) Appointment of additional members of committees to prepare arguments for and against ballot measures, not later than the date the committee submits its initial argument to the secretary of state;

(c) Arguments for or against a ballot measure, no later than twenty calendar days following appointment of the initial committee members;

(d) Rebuttals of arguments for or against a ballot measure, by no later than fourteen calendar days following the transmittal of the final statement to the committees by the secretary. The secretary shall not transmit arguments to opposing committees for the purpose of rebuttals until both arguments are complete.

(3) If a ballot measure is the product of a special session of the legislature and the secretary of state determines that the deadlines set forth in subsection (2) of this section are impractical due to the timing of that special session, then the secretary of state may establish a schedule of deadlines unique to that measure.

(4) The deadlines stated in this rule are intended to promote the timely publication of the voters pamphlet. Nothing in this rule shall preclude the secretary of state from accepting a late filing when, in the secretary's judgment, it is reasonable to do so.

AMENDATORY SECTION (Amending WSR 02-02-067, filed 12/28/01, effective 1/28/02)

**WAC 434-381-160 Listing committee names and contact information.** Committee names and contact information shall be submitted to the secretary of state.

(1) Names for publication in the voters pamphlet shall be listed in the order submitted by the committee;

(2) Each committee member may use up to eight words as a title or identification. (~~"Title or identification" means a formal or informal description of the present or past occupation, role within an organization, educational qualification, or office of an individual, but does not include any expression of opinion or motivation;~~) No words that are obscene or otherwise prohibited for distribution through the mail may be used;

(3) The secretary will make every effort to maintain consistency in form and style for publications;

(4) State legislators will be identified in the following manner: State representative or state senator, with each title constituting two words;

(5) State elected officials will be identified as follows: Governor, lieutenant governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, commissioner of public lands and insurance commissioner, with each title counting as many words as in that title;

(6) Additional titles or descriptions may be added to reach the maximum title length; and

(7) Each committee may submit contact information for inclusion in the voters pamphlet consisting of: A telephone number, an e-mail, and an internet address which will not count toward the maximum word allowance.

**WSR 08-02-080****PROPOSED RULES****DEPARTMENT OF LICENSING**

[Filed December 31, 2007, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-08-032.

Title of Rule and Other Identifying Information: WAC 308-124A-130 Salesperson, associate brokers—Termination of services.

Hearing Location(s): 2000 4th Avenue West, 2nd Floor Conference Room, Olympia, WA, on February 8, 2008, at 10:00 a.m.

Date of Intended Adoption: March 4, 2008.

Submit Written Comments to: Jerry McDonald, P.O. Box 2445, Olympia, WA 98507, e-mail Jmcdonald@dol.wa.gov, fax (360) 570-7051, by February 7, 2008.

Assistance for Persons with Disabilities: Contact Gale Mitchell by February 7, 2008, TTY (360) 664-8885 or (360) 664-6526.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarify procedures and notify responsible broker and salesperson/associate broker of a requested discontinued affiliation with the real estate firm.

Reasons Supporting Proposal: To ensure that the licensees notify the broker when terminating services and that the broker notify the affiliated licensees when terminating their services.

Statutory Authority for Adoption: RCW 18.85.040.

Statute Being Implemented: RCW 18.85.320.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jerry McDonald, 2000 4th Avenue West, Olympia, WA, (360) 664-6524.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is for individual applicants and not small business enterprises. The department of licensing is not one of the named agencies under this RCW.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed changes have no financial impact on the department.

December 31, 2007

Jerry McDonald  
Assistant Administrator

AMENDATORY SECTION (Amending Order PM 711, filed 3/1/88)

**WAC 308-124A-130 Salesperson, associate brokers—Termination of services.** (1) A person licensed as salesperson or associate broker may perform duties and activities as licensed only under the direction and supervision of a licensed individual broker or designated broker and as a representative of such broker. This relationship may be terminated unilaterally by either the broker or salesperson or associate broker. ((Notice of such))

(a) All terminations shall be by written notice by the salesperson or associate broker to the designated broker or the broker's authorized representative; or by the designated broker to the salesperson or associate broker.

(b) All notices of termination shall be given by the broker to the director without delay and such notice shall be accompanied by and include the surrender of the salesperson's or associate broker's license.

(c) The broker may not condition his or her surrender of license to the director upon performance of any act by the salesperson or associate broker.

(d) Notice of termination shall be provided by signature of the broker, or a person authorized by the broker to sign for the broker, on the surrendered license of the salesperson or associate broker or surrender of the license by the licensee to the department.

(e) The termination date shall be the postmark date or date the license is hand delivered to the department.

(2) If the license cannot be surrendered to the department because the license has been lost, the salesperson or associate broker and the broker shall complete an affidavit of lost license on a form provided by the department.

(a) No license transfers shall be permitted unless the license is surrendered or the affidavit of lost license is completed and filed with the department.

(b) If the license cannot be surrendered because the broker is conditioning the surrender of the license, the associate broker or salesperson shall so advise the department in writing and cooperate in full with the investigation of the broker's failure to comply with this rule.

(c) Upon receipt of the salesperson or associate broker's written statement about broker conditioning the release of the license, the department shall process the license transfer.

## WSR 08-02-082

### PROPOSED RULES

## WASHINGTON STATE PATROL

[Filed December 31, 2007, 11:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-19-051.

Title of Rule and Other Identifying Information: Fire marshal standards, chapter 212-12 WAC.

Hearing Location(s): General Administration Building, Room G-3, 210 11th Avenue S.W., Olympia, WA 98504, (360) 570-3139, on February 6, 2008, at 8:00 a.m.

Date of Intended Adoption: February 7, 2008.

Submit Written Comments to: Brandon LeMay, 210 11th Avenue S.W., Olympia, WA 98504, e-mail Brandon.lemay@wsp.wa.gov, fax (360) 570-3136, by February 5, 2008.

Assistance for Persons with Disabilities: Contact Brandon LeMay by February 5, 2008, (360) 570-3139.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This chapter has been updated to correspond with the 2006 building and fire codes and to most accurately reflect the state fire marshal's procedures.

Statutory Authority for Adoption: RCW 18.20.130, 18.46.110, 18.51.140, 41.12.485, 48.48.030, 48.48.045, 70.62.290, 74.15.050.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Brandon LeMay, General Administration Building, P.O. Box 42600, Olympia, WA 98504-2600, (360) 570-3139.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

December 28, 2007

Paul S. Beckley  
for John R. Batiste  
Chief

AMENDATORY SECTION (Amending WSR 02-16-023, filed 7/29/02, effective 8/29/02)

**WAC 212-12-001 ((Purpose-)) Statement of authority.** ((The purpose of this chapter is to prescribe regulations consistent with nationally recognized good practice for the safeguarding of life and property from the hazards of fire, explosion, and panic. The director of fire protection is authorized to administer and enforce this chapter.)) The state director of fire protection is authorized to administer and enforce the provisions of this chapter.

AMENDATORY SECTION (Amending WSR 02-16-023, filed 7/29/02, effective 8/29/02)

**WAC 212-12-005 Definitions.** ((Unless otherwise clarified in this section, definitions in the State Building Code shall apply to this chapter. The following definitions shall also apply to this chapter:

(1) "Adult residential rehabilitation center" means a residence, place, or center, including private adult treatment homes, licensed by the department of health under chapter 71.12 RCW and chapter 246-325 WAC. Adult residential rehabilitation facilities shall be classified as a Group LC Occupancy.

(2) "Alcoholism hospital" means facilities or institutions licensed by the department of health under chapter 71.12 RCW and chapter 246-322 WAC. Alcoholism hospitals shall be classified as a Group I, Division 1.1 Occupancy.

(3) "Alcoholism intensive inpatient treatment services" means those services licensed by the department of health under chapter 71.12 RCW and chapter 246-326 WAC. Alcoholism intensive inpatient treatment services shall be classified as a Group LC Occupancy.

(4) "Alcoholism treatment facility" means a facility operated primarily for the treatment of alcoholism licensed by the department of health under chapter 71.12 RCW and chapter 246-362 WAC. Alcoholism treatment facilities shall be classified as follows:

(a) "Alcoholism detoxification services":

(i) Acute: Group I, Division 1.1.

(ii) Sub-acute: A Group LC Occupancy.

(b) "Alcoholism long term treatment services": Alcoholism long term treatment services shall be classified as a Group LC Occupancy.

(c) "Alcohol recovery house services": Alcohol recovery house services shall be classified as a Group LC Occupancy.

(5) "Ambulatory" means physically and mentally capable of walking or traversing a normal path to safety, including the ascent and descent of stairs, without the physical assistance of another person.

(6) "Approved" refers to approval by the director of fire protection as a result of investigation and tests conducted by the director of fire protection or by reason of accepted principles or tests by national authorities, or technical or scientific organizations.

(7) "Authority having jurisdiction" is the director of fire protection or authorized deputy or designee.

(8) "Assistant state fire marshal" means the assistant state fire marshal who manages a specific division within the

fire protection bureau or as designated by the director of fire protection.

(9) "Bed and breakfast": See transient accommodation definition in this section.

(10) "Boarding home" means any home or other institution licensed by the department of health under chapter 18.20 RCW and chapter 388-78A WAC. Boarding homes shall be classified as a Group LC Occupancy.

(11) "Building official" means the designated authority appointed by the governing body of each city or county who is in charge of the administration and enforcement of the Uniform Building Code.

(12) "Child birth center" means a facility or institution licensed by the department of health under chapter 18.46 RCW and chapter 246-329 WAC. Child birth centers shall be classified as a Group B Occupancy.

(13) "Child day care center" means an agency which provides child day care outside the abode of the licensee or for thirteen or more children in the abode of the licensee. Such facilities are licensed by the department of social and health services under chapter 74.15 RCW and chapter 388-150 WAC. Child day care centers shall be classified as a Group E, Division 3 Occupancy.

(14) "Director of fire protection" means the director of the fire protection bureau in the Washington state patrol or authorized deputy or designee.

(15) "Evaluation process" means the initial steps in the informal appeals process established by the director of fire protection under the authority of RCW 34.05.060.

(16) "Family child day care home" means a child day care facility located in the family abode of the person or persons under whose direct care and supervision the child is placed, for the care of twelve or fewer children, including children who reside at the home. Such facilities are licensed by the department of social and health services under chapter 74.15 RCW and chapter 388-155 WAC. Family child day care homes shall be classified as a Group R, Division 3 Occupancy.

(17) "Fire official" means the person or other designated authority appointed by the city or county for the administration and enforcement of the Uniform Fire Code.

(18) "Group care facility" means a facility licensed by the department of social and health services under chapter 74.15 RCW and chapter 388-73 WAC. Group care facilities shall be classified as a Group LC Occupancy.

(19) "Group care facilities for severely and multiply handicapped children" means facilities which are maintained and operated for the care of a group of children as licensed by the department of social and health services under chapter 74.15 RCW and chapter 388-73 WAC. Group care facilities for severely and multiply handicapped children shall be classified as:

(a) A Group LC Occupancy.

(b) Group I, Division 1.1 Occupancy when accommodating more than sixteen nonambulatory clients or residents, excluding staff.

(c) Group I, Division 3 Occupancy when accommodating any number of restrained persons.

(20) "Hospice care center" means any building, facility, or place licensed by the department of health under chapter

70.41 RCW and chapter 246-321 WAC. Hospice care centers shall be classified as a Group I, Division 1.1 Occupancy.

(21) "Hospital" means an institution, place, building, or agency licensed by the department of health under chapter 70.41 RCW and chapter 246-318 WAC. Hospitals shall be classified as a Group I, Division 1.1 Occupancy.

(22) "Nonambulatory" means physically or mentally unable to walk or traverse a normal path to safety without the physical assistance of another person.

(23) "Nursing home" means any home, place, or institution licensed by the department of social and health services under chapter 18.51 RCW and chapter 248-14 WAC. Nursing homes shall be classified as a Group I, Division 1.1 Occupancy.

(24) "Private adult treatment home" means the same as an adult residential rehabilitation center as defined in (1) of this section.

(25) "Psychiatric hospital" means an institution licensed by the department of health under chapter 71.12 RCW and chapter 246-322 WAC. Psychiatric hospitals shall be classified as a Group I, Division 3 Occupancy.

(26) "Residential treatment facility for psychiatrically impaired children and youth" means a residence, place, or facility licensed by the department of health under chapter 71.12 RCW and chapter 246-323 WAC. Residential treatment facilities for psychiatrically impaired children and youth shall be classified as:

(a) A Group LC Occupancy.

(b) Group I, Division 1.1 Occupancy when accommodating more than sixteen nonambulatory, nonrestrained clients or residents, excluding staff.

(c) Group I, Division 3 Occupancy when accommodating any number of restrained persons.

(27) "State fire marshal" means the director of fire protection or authorized deputy or designee.

(28) "Transient accommodation" means any facility licensed by the department of health under chapter 70.62 RCW and chapter 246-360 WAC and shall include bed and breakfast inns. Transient accommodations shall be classified as a Group R, Division 1 Occupancy when accommodating more than ten persons and a Group R, Division 3 Occupancy when accommodating ten or less persons.) Unless otherwise provided in this section, definitions in the Washington State Building Code, chapter 19.27 RCW, and 42 CFR Ch. IV § 483.70, National Fire Protection Association, standard 101 "Life Safety Code" 2000 edition, as adopted by CMS (Center for Medicare/Medicaid Services) shall apply to this chapter. The following definitions shall also apply to this chapter:

(1) "State director of fire protection" means the director of fire protection within the Washington state patrol, the state fire marshal or authorized deputy or designee.

(2) "New facility" means any facility that is being occupied for the first time, vacated for more than thirty days and reoccupied, or for which the license has expired, shall be considered a new facility and shall meet the current codes and standards as adopted. Except for boarding homes which may be vacated for more than thirty days if approved by the director of fire protection and the department of social and health services.

AMENDATORY SECTION (Amending WSR 02-16-023, filed 7/29/02, effective 8/29/02)

**WAC 212-12-010 Adoption of ((fire safety)) codes and standards.** ~~((1) Application.~~ This regulation shall apply to:

(a) Transient accommodations (RCW 70.62.290).

(b) Nursing homes (RCW 18.51.140).

(c) Hospitals (RCW 70.41.080).

(d) Boarding homes (RCW 18.20.130).

(e) Private establishments; i.e. private, mental, and alcoholic hospitals (RCW 71.12.485).

(f) Child birth center (RCW 18.46.110).

(g) Agencies licensed by the department of social and health services pursuant to chapter 74.15 RCW, RCW 74.32-040 through 74.32.055, and 74.13.031, except foster family homes and child placing agencies.

(h) Schools under the jurisdiction of the superintendent of public instruction and the state board of education (RCW 48.48.045).

(2) **Purpose.** The purpose of these standards is to specify measures which will provide a reasonable degree of public safety from fire without involving hardship or interference with the normal use and occupancy of a building.

(3) **Fire safety standards.** The fire safety standards of the director of fire protection shall be as follows:

(a) The fire safety standards or applicable portions thereof as found or referenced in the State Building Code Act, chapter 19.27 RCW.

(b) The 1985 edition of the National Fire Protection Association Life Safety Code 101.

(c) Those standards of the National Fire Protection Association applicable to and expressly or impliedly referenced in the Life Safety Code.

(4) **Enforcement.** Enforcement of these fire safety standards shall be as follows:

(a) New construction or major remodeling shall be in conformance with the Uniform Building Code and the Uniform Fire Code, as administered by state and local officials having jurisdiction.

(b) Operation and maintenance shall be in conformance with the Uniform Fire Code, as administered by state and local officials having jurisdiction.

(c) Existing licensed occupancies previously approved by the state fire marshal as in conformance with the standards then in effect shall have their existing use or occupancy continued, provided such continued use is not dangerous to life and is acceptable to the local fire and building officials having jurisdiction.

(d) Occupancies, operations or processes not specifically covered elsewhere, in which the director of fire protection has responsibilities for the removal of fire hazards, shall be conducted and/or maintained in accordance with the latest edition of the National Fire Protection Association Fire Codes which shall be deemed prima facie evidence of good practice.) The following administrative codes and regulations are hereby adopted by reference as if set forth fully herein:

(1) Chapter 51-50 WAC, State Building Code adoption and amendment of the International Building Code.



(2) Chapter 51-51 WAC, State Building Code adoption and amendment of the International Residential Code.

(3) Chapter 51-52 WAC, State Building Code adoption and amendment of the International Mechanical Code.

(4) Chapter 51-54 WAC, State Building Code adoption and amendment of the International Fire Code.

(5) Chapter 51-56 WAC, State Building Code adoption and amendment of the Uniform Plumbing Code.

(6) Chapter 51-57 WAC, State Building Code adoption and amendment of Appendix A, B and Appendix I of the Uniform Plumbing Code.

(7) 42 CFR Ch. IV § 483.70, National Fire Protection Association, standard 101, "Life Safety Code," 2000 edition adopted by CMS (Center for Medicare/Medicaid Services) for application in nursing homes and hospitals.

AMENDATORY SECTION (Amending WSR 02-16-023, filed 7/29/02, effective 8/29/02)

WAC 212-12-015 ((~~Compliance~~)) **Applicability.** ((~~1~~)) The director of fire protection has the responsibility under WAC 212-12-010, chapters 19.27 and 48.48 RCW, and chapters 51-40, 51-42, 51-44, and 51-45 WAC to require occupancies, operations, or processes to be conducted and/or maintained so as not to pose a hazard to life or property and for the removal of fire and life safety hazards.

(2) New construction or remodeling shall be in conformance with the State Building Code Act and chapters 19.27 and 48.48 RCW.

(3) All occupancies, operations, or processes in which the director of fire protection has responsibility shall comply with the provisions of this chapter.)) The provisions of this chapter apply to all facilities for which the director of fire protection is responsible for fire protection and enforcement including:

Adult rehabilitation center.

Alcoholism hospital.

Alcoholism intensive inpatient treatment services.

Alcoholism treatment facility.

Psychiatric hospital.

Boarding home.

Birthing center.

Child care occupancies.

Group care facility.

Group care facilities for severely and multiply handicapped children.

Hospital.

Nursing home.

Transient accommodation.

Public buildings.

Enhanced services facilities.

Examination of premises.

Standard of safety.

Schools—Standards for fire prevention and safety—

Plan review and construction inspection.

Removal of fire hazards—Appeal of order—Penalty.

Reports and investigations of fire—Police powers.

Statistical information and reports.

Examination of witnesses.

Criminal prosecution.

Record of fires.

Premises with guard animals—Registration, posting—Acts permitted fire fighters—Liability for injury to fire fighters.

Hazardous liquid and gas pipeline accidents—Preparedness of local first responders.

AMENDATORY SECTION (Amending WSR 02-16-023, filed 7/29/02, effective 8/29/02)

WAC 212-12-020 ((~~Inspection~~)) **Additional boarding home requirements.** ((~~1~~)) The director of fire protection shall have the authority to:

(a) Enter upon and examine any building or premises where any fire has occurred and other buildings and premises adjoining or near thereto per RCW 48.48.030(1), 48.48.060, 48.48.070, and 48.48.080.

(b) Enter upon and examine any public building or premises to inspect for fire hazards per RCW 48.48.030(2), 48.48.040, 48.48.045, and 48.48.050.

(c) Collect and disseminate statistical information and reports per RCW 48.48.065.

(2) The director of fire protection may designate another person or agency to conduct the inspection.)) (1) **Boarding home resident evacuation capability levels.**

(a) Evacuation capability is the ability of the resident of a boarding home licensed by the department of social and health services under chapter 18.20 RCW to respond to an emergency situation and either evacuate the boarding home or move to a point of safety.

(b) Residents shall be classified in one of the following evacuation levels:

(i) Level I - persons physically and cognitively capable of walking or traversing a normal pathway to safety, including the ascent and descent of stairs, and capable of self-preservation, without the physical assistance of another person.

(ii) Level II - persons physically and cognitively capable of traversing a normal path to safety with the use of mobility aids, but unable to ascend or descend stairs without the physical assistance of another person.

(iii) Level III - persons physically or cognitively unable to walk or traverse a normal path to safety without the physical assistance of another person.

(2) Residents with evacuation capabilities of Level II or Level III must reside on the grade level floor unless the boarding home receives written approval by the director of fire protection to house these residents on other floor levels.

(3) The boarding home must not admit or retain more than two residents with evacuation capabilities of Level II or Level III unless:

(a) The boarding home receives written approval by the director of fire protection to care for more than two residents with evacuation capabilities of Level II or Level III;

(b) The boarding home is divided into at least two smoke barrier compartments on each floor; and

(c) The boarding home has an operational automatic sprinkler system throughout the facility, unless the boarding home was initially licensed prior to July 1, 2007, and is licensed for six or fewer residents.

AMENDATORY SECTION (Amending WSR 02-16-023, filed 7/29/02, effective 8/29/02)

**WAC 212-12-025 ((Right of appeal.)) Fire reporting.**  
 ((Any person may appeal any decision made by fire protection bureau under this chapter through the following procedure:

(1) The first level of appeal is to the assistant state fire marshal. The appeal must be submitted in writing to the assistant state fire marshal within thirty days of receipt of the decision in question. The assistant state fire marshal shall reply to the appellant within ten days of receipt of such appeal.

(2) The second level of appeal is to the director of fire protection. If the appellant wishes to appeal the decision of the assistant state fire marshal, he/she shall, within ten days of the receipt of that decision, submit a written appeal to the director of fire protection. The director of fire protection shall reply to the appellant within ten days of receipt of such appeal.

(3) Should this process not satisfy the appellant, he or she may further appeal per chapter 34.05 RCW.) Any facility licensed by the department of health or the department of social and health services, and inspected by the office of the state fire marshal, shall report within twenty-four hours to the office of the state fire marshal any accidental or unintentional fire, any deliberately set improper fire, any unusual incident that required implementation of the facility disaster plan, including any evacuation of all or part of the resident population to another area within the facility or to another address, and any circumstance which threatened or could have threatened the ability of the facility to ensure continuation of normal services to the residents.

AMENDATORY SECTION (Amending WSR 02-16-023, filed 7/29/02, effective 8/29/02)

**WAC 212-12-030 ((Standards.)) Right of appeal for state cited facilities.** ((The fire and life safety standards of the fire protection bureau shall include the following:

(1) Chapter 51-40 WAC, State Building Code adoption of the 1997 edition of the Uniform Building Code, standards and amendments:

(2) Chapter 51-42 WAC, State Building Code adoption of the 1997 edition of the Uniform Mechanical Code, standards and amendments:

(3) Chapter 51-44 WAC, State Building Code adoption of the 1997 edition of the Uniform Fire Code, and amendments:

(4) Chapter 51-45 WAC, State Building Code adoption of the 1997 edition of the Uniform Fire Code Standards.) The following procedure will apply to appeals of orders, decisions or citations made by the state fire marshal's office:

(1) Administrative appeal (step 1) - A facility will have an opportunity to dispute cited deficiencies with a chief deputy state fire marshal. The purpose of this informal process is to give the facility an opportunity to refute cited deficiencies after an inspection. A written request with an explanation of the specific deficiencies that are being disputed shall be submitted within ten days of receipt of the correction notice. All submittals shall be sent to WSP-Fire Protection Bureau, P.O. Box 42600, Olympia, WA 98504-2600. If a facility is suc-

cessful in demonstrating that a deficiency should not have been cited, the chief deputy state fire marshal will remove or make the appropriate corrections to the citation. If a facility is unsuccessful in demonstrating that a deficiency should not have been cited, the facility will be notified in writing that the citation will remain unchanged. The facility will then have the option to proceed to step #2 in the administrative appeal process.

(2) Administrative appeal (step 2) - If a facility is not satisfied with the decision made during the administrative appeal (step 1), they may appeal the decision in writing within seven days of receipt of the written decision to the prevention division assistant state fire marshal. If a facility is successful in demonstrating that a deficiency should not have been cited, the assistant state fire marshal will remove or make the appropriate corrections to the citation. If a facility is unsuccessful in demonstrating that a deficiency should not have been cited, the facility will be notified in writing that the citation will remain unchanged. The facility will then have the option to proceed to step #3 in the administrative appeal process.

(3) Administrative appeal (step 3) - If a facility is not satisfied with the decision made during the administrative appeal (step 2), they may appeal the decision in writing within seven days of receipt of the written decision to the director of fire protection. If a facility is successful in demonstrating that a deficiency should not have been cited, the director of fire protection will remove or make the appropriate corrections to the citation. If a facility is unsuccessful in demonstrating that a deficiency should not have been cited, the facility will be notified in writing that the citation will remain unchanged.

(4) This is a final agency action.

AMENDATORY SECTION (Amending WSR 02-16-023, filed 7/29/02, effective 8/29/02)

**WAC 212-12-040 Fire emergency plan.** All Group I, Group E, ((Group LC)) and Group ((R)) R2 Occupancies shall develop and maintain a written fire emergency plan. The plan shall include the following:

(1) Action to take by the person discovering a fire.

(2) Method of sounding an alarm on the premises.

(3) Actions to take for evacuation and assuring accountability of the occupants.

(4) An evacuation floor plan identifying exits.

(5) In Group R, Division 1 Occupancies and Group R, Division 3 Occupancies used as transient accommodations, a copy of the written evacuation plan shall be posted in each guest room.

AMENDATORY SECTION (Amending WSR 02-16-023, filed 7/29/02, effective 8/29/02)

**WAC 212-12-044 Fire drills.** In all Group I, Group E, ((Group LC;)) and Group ((R)) R2 Occupancies licensed by the state, at least twelve planned and unannounced fire drills shall be held every year. Drills shall be conducted quarterly on each shift in Group I((;)) and Group ((R)) R2, ((and Group LC)) Occupancies and monthly in Group E Occupancies to familiarize personnel with signals and emergency action

required under varied conditions. A detailed written record of all fire drills shall be maintained and available for inspection at all times. When drills are conducted between 9:00 p.m. and 6:00 a.m., a coded announcement may be used instead of audible alarms. Fire drills shall include the transmission of a fire alarm signal and simulation of emergency conditions. The fire alarm monitoring company shall be notified prior to the activation of the fire alarm system for drill purposes and again at the conclusion of the transmission and restoration of the fire alarm system to normal mode.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 212-12-011            Applicability.
- WAC 212-12-200           Purpose.
- WAC 212-12-210           Definitions.
- WAC 212-12-220           Applicability.
- WAC 212-12-230           Compliance.
- WAC 212-12-240           Inspection.
- WAC 212-12-250           Approval.
- WAC 212-12-260           Right of appeal.
- WAC 212-12-270           Local codes.
- WAC 212-12-280           Standards.
- WAC 212-12-290           Construction requirements.
- WAC 212-12-300           Modernization or renovation.
- WAC 212-12-310           Additions.
- WAC 212-12-320           Design, operation.
- WAC 212-12-330           Staffing requirements.
- WAC 212-12-340           Fire extinguishers.
- WAC 212-12-350           Lighting.
- WAC 212-12-360           Protection from hazards.
- WAC 212-12-370           Sprinkler systems.
- WAC 212-12-380           Fire alarm.
- WAC 212-12-390           Smoke detection.
- WAC 212-12-400           Equipment, inspection, testing and maintenance.
- WAC 212-12-410           Severability.

**WSR 08-02-084**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**  
 (By the Code Reviser's Office)  
 [Filed January 2, 2008, 9:17 a.m.]

WAC 220-56-255, proposed by the department of fish and wildlife in WSR 07-13-045 appearing in issue 07-13 of the State Register, which was distributed on July 5, 2007, is withdrawn by the code reviser's office under RCW 34.05.335 (3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
 Washington State Register

**WSR 08-02-088**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
 (Nursing Care Quality Assurance Commission)  
 [Filed January 2, 2008, 10:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-21-079.

Title of Rule and Other Identifying Information: Amending WAC 246-840-010, 246-840-020, 246-840-030, 246-840-050, 246-840-060, 246-840-090 and 246-840-760; adopting new WAC 246-840-025, 246-840-035 and 246-840-045; and repealing WAC 246-840-040, 246-840-070, 246-840-080, and 246-840-299. These rules pertain to definitions, application, and licensure of nurses (RNs, LPNs, and ARNPs).

Hearing Location(s): Phoenix Inn, 415 Capitol Way North, Olympia, WA 98501, on February 5, 2008, at 1:00 p.m.

Date of Intended Adoption: February 5, 2008.

Submit Written Comments to: Kendra Pitzler, P.O. Box 47864, Olympia, WA 98504-7864, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4738, by January 29, 2008.

Assistance for Persons with Disabilities: Contact Kendra Pitzler by January 28, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal is expected to help the public and the nursing profession better understand the rules. It removes outdated requirements and barriers to licensure allowing easier access for qualified applicants. It removes limits for retaking examinations, and allows applicants from international schools to use any commission-approved English language examination. It removes specified timeframe requirements for receiving application documents, notarized transcripts, and a picture of applicants. Rules related to RN applicants who have graduated from nontraditional programs are changed to be consistent with the law. Changes are made to clarify the definitions of client advocate, delegation, supervision, and those related to substance abuse monitoring program and nursing program approval.

Reasons Supporting Proposal: The commission wishes to assure that those required to comply with these rules can easily understand them. It is also important to make the licensure process quick and easy so that qualified nurses can serve the public. The proposed rules will reduce barriers to licensing nurses. The rules are changed to align with section 7, chapter 262, Laws of 2004.

Statutory Authority for Adoption: RCW 18.79.110.

Statute Being Implemented: RCW 18.79.110 and 18.79.380.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health (DOH), nursing care quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kendra Pitzler, Department of Health, P.O. Box 47864, Olympia, WA 98504-7864, (360) 236-4723.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DOH has reviewed the proposal and determined that no small business economic impact statement is required because the proposed rules do not impose more than minor costs on businesses within the industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kendra Pitzler, Department of Health, P.O. Box 47864, Olympia, WA 98504-7864, phone (360) 236-4723, fax (360) 236-4738, e-mail kendra.pitzler@doh.wa.gov. Per RCW 34.05.328 (5)(b)(iii), the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law.

January 2, 2008

Judith Personett Ed.D, RN, Chair

Nursing Care Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 04-13-053, filed 6/11/04, effective 6/11/04)

**WAC 246-840-010 Definitions.** (1) (~~"Auxiliary services" are all nursing services provided to patients by persons other than the licensed practical nurse, the registered nurse and the nursing student.~~

(2) ~~"Beginning practitioner" means a newly licensed nurse beginning to function in the nurse role.~~

(3) ~~"Behavioral objectives" means the measurable outcomes of specific content.~~

(4) ~~"Client" means the person who receives the services of the practical nurse or registered nurse.~~

(5)) An "advanced registered nurse practitioner (ARNP)" is a registered nurse who has had formal graduate education and has achieved national specialty certification for the nurse practitioner, nurse anesthetist, or nurse midwife role. A nurse with this preparation may qualify as an ARNP as described in WAC 246-840-300.

(2) "Advanced nursing practice" is the delivery of nursing care by registered nurses who have acquired experience and formal education that prepares them for independent practice.

(3) "Client advocate" means ((a supporter of client rights and choices)) a licensed registered nurse or practical nurse who actively supports client's rights and choices, including the client's right to receive safe, high quality care, and who facilitates the client's ability to exercise those rights and/or choices by providing the client has adequate information about their care and options.

((6)) (4) "Commission" means the Washington state nursing care quality assurance commission.

((7)) ~~"Competencies" means the tasks necessary to perform the standards.~~

(8) ~~"Conceptual framework" means the theoretical base around which the curriculum is developed.~~

(9)) (5) "Competency" means demonstrated knowledge, skill and ability in the practice of nursing.

(6) "Conditional approval" of a school of nursing is the approval given a school of nursing that has ((failed to meet)) not met the requirements of the law and the rules and regulations of the commission((, and it specifies)); conditions are specified that must be met within a designated time to rectify the ((failure)) deficiency.

((10)) (7) "Delegation" means the licensed practical nurse or registered nurse transfers the performance of selected nursing tasks to competent individuals in selected situations. The licensed practical nurse or registered nurse delegating the task retains the responsibility and accountability for the nursing care of the client. The licensed practical nurse or registered nurse delegating the task supervises the performance of the unlicensed person((;)).

(a) Nursing acts delegated by the licensed practical nurse or registered nurse shall:

(i) Be within the area of responsibility of the licensed practical nurse or registered nurse delegating the act;

(ii) Be such that, in the opinion of the licensed practical nurse or registered nurse, it can be properly and safely performed by the unlicensed person without jeopardizing the patient welfare;

(iii) Be acts that a reasonable and prudent licensed practical nurse or registered nurse would find are within the scope of sound nursing judgment;

(iv) Be defined by WAC 246-840-910 through 246-840-970 in community-based and in-home care settings.

(b) Nursing acts delegated by the licensed practical nurse or registered nurse shall not require the unlicensed person to exercise nursing judgment nor perform acts which must only be performed by a licensed practical nurse or registered nurse, except in an emergency situation (RCW 18.79.240 (1)(b) and (2)(b)).

(c) When delegating a nursing act to an unlicensed person it is the registered nurse who shall:

(i) Make an assessment of the patient's nursing care need before delegating the task;

(ii) Instruct the unlicensed person in the delegated task or verify competency to perform or be assured that the person is competent to perform the nursing task as a result of the systems in place by the health care agency;

(iii) Recognize that some nursing interventions require nursing knowledge, judgment, and skill and therefore may not lawfully be delegated to unlicensed persons.

~~((11))~~ Direction and Supervision:

~~(a) "Supervision" of licensed or unlicensed nursing personnel means the provision of guidance and evaluation for the accomplishment of a nursing task or activity with the initial direction of the task or activity; periodic inspection of the actual act of accomplishing the task or activity; and the authority to require corrective action.~~

~~(b) "Consulting capacity" means the recommendations to a professional entity, employed at that facility, which may be accepted, rejected, or modified. These recommendations shall not be held out as providing nursing services by the consulting nurse to the patient or public.~~

~~(c) "Direct supervision" means the licensed registered nurse is on the premises, is quickly and easily available and the patient has been assessed by the licensed registered nurse prior to the delegation of the duties to any caregiver.~~

~~(d) "Immediate supervision" means the registered nurse is on the premises and is within audible and visual range of the patient and the patient has been assessed by the registered nurse prior to the delegation of duties to any caregiver.~~

~~(e) "Indirect supervision" means the registered nurse is not on the premises but has given either written or oral instructions for the care and treatment of the patient and the patient has been assessed by the registered nurse prior to the delegation of duties to any caregiver.~~

~~(12) "Extended learning sites" refers to any area external to the parent organization selected by faculty for student learning experiences.~~

~~((13)) (8) "Faculty" means persons who are responsible for the educational ((program of the school of)) nursing program and who hold faculty appointment in the school.~~

~~((14)) (9) "Full approval" of a school of nursing is the approval ((given)) signifying that a ((school of)) nursing ((that)) program meets the requirements of the law and the rules and regulations of the commission.~~

~~((15)) (10) "Good cause" as used in WAC ((246-840-990)) 246-840-860 for extension of a nurse technician registration means that the nurse technician has had undue hardship such as difficulty scheduling the examination through no fault of their own, receipt of the examination results after thirty days after the nurse technician's date of graduation, or an unexpected family crisis which caused him or her to delay sitting for the examination. Failure of the examination is not "good cause."~~

~~((16)) (11) "Good standing" as applied to a nursing technician, means the nursing technician is enrolled in a registered nursing program approved by the commission and is successfully meeting all program requirements.~~

~~((17)) (12) "Immediately available" as applied to nursing technicians, means that a registered nurse who has agreed to act as supervisor is on the premises and is within audible range and available for immediate response as needed. This may include the use of two-way communication devices which allow conversation between the nursing technician and a registered nurse who has agreed to act as supervisor.~~

(a) In a hospital setting, a registered nurse who has agreed to act as supervisor is on the same patient care unit as the nursing technician and the patient has been assessed by the registered nurse prior to the delegation of duties to the nursing technician.

(b) In a nursing home setting, a registered nurse who has agreed to act as supervisor is in the same building and on the same floor as the nursing technician and the patient has been assessed by the registered nurse prior to the delegation of duties to the nursing technician.

~~((18) "Minor nursing services." The techniques and procedures used by the nursing profession are extremely difficult to categorize as major or minor nursing services. The important factor with which this law is concerned is the determination of which nursing person and at what level of preparation that person may perform said technique or procedure in relation to the condition of a given patient, and this kind of determination rests with the registered nurse.~~

~~((19)) (13) "Initial approval" of nursing programs is the approval given a new nursing program based on its proposal prior to the graduation of its first class.~~

~~(14) "Limited educational authorization" is an authorization to perform clinical training through a commission approved refresher course. This authorization does not permit practice for employment. A limited educational authorization may be issued to:~~

~~(a) A person whose Washington state license has been expired or inactive for three years or more and who applies for reinstatement and enrolls in a refresher course; or~~

~~(b) An applicant endorsing from another state or territory if the applicant's license from that jurisdiction is on inactive or expired status. The applicant must be enrolled in a refresher course.~~

~~(15) "Minimum standards of competency" means the ((functions)) knowledge, skills and abilities that are expected of the beginning ((level nurse)) practitioner.~~

~~((20)) (16) "Nontraditional program of nursing" means a school that has a curriculum which does not include a faculty supervised teaching/learning component in clinical settings.~~

(17) "Nurse administrator" is an individual who meets the qualifications contained in WAC 246-840-555 and who has been designated as the person primarily responsible for the direction of the program in nursing. Titles for this position may include, among others, dean, director, coordinator or chairperson.

~~((21)) (18) "Nursing technician" means a nursing student preparing for registered nurse licensure who is employed in a hospital licensed under chapter 70.41 RCW or a nursing home licensed under chapter 18.51 RCW, and who:~~

(a) Is currently enrolled in good standing and attending a nursing program approved by the commission and has not graduated; or

(b) Is a graduate of a nursing program approved by the commission who graduated:

(i) Within the past thirty days; or

(ii) Within the past sixty days and has received a determination that there is good cause to continue the registration period.

(c) Approved schools for nursing technicians include the list of registered nursing programs (schools) approved by state boards of nursing as preparation for the NCLEX registered nurse examination, and listed in the NCLEX bulletin as meeting minimum standards. Approved schools do not

include nontraditional schools as defined in (~~WAC 246-840-030(3)~~) subsection (16) of this section.

~~((22))~~ (19) "Philosophy" means the beliefs and principles upon which the curriculum is based.

~~((23))~~ (20) "Program" means a division or department within a state supported educational institution, or other institution of higher learning charged with the responsibility of preparing persons to qualify for the licensing examination.

~~((24) "Provisional approval" of schools of nursing is the approval given a new school of nursing based on its proposed program prior to the admission of its first class.~~

~~(25))~~ (21) "Registered nurse" as used in these rules shall mean a nurse as defined by RCW 18.79.030(1).

~~((26) "School" means an educational unit charged with the responsibility of preparing persons to practice as practical nurses or registered nurses. Three types of basic schools of nursing are distinguished by the certificate awarded to the graduate. Schools of nursing within colleges and universities award the associate degree or baccalaureate degree. Schools of nursing sponsored by a hospital award a diploma.~~

(27) "Standards" means the overall behavior which is the desired outcome.

(28) "Terminal objectives" means the statements of goals which reflect the philosophy and are the measurable outcomes of the total curriculum.

(29) An "unapproved school of nursing" is a school of nursing that has been removed from the list of approved schools for failure to meet the requirements of the law and the rules and regulations of the commission or a school that has never been approved by the commission.)) (22) "Supervision" of licensed or unlicensed nursing personnel means the provision of guidance and evaluation for the accomplishment of a nursing task or activity with the initial direction of the task or activity; periodic inspection of the actual act of accomplishing the task or activity; and the authority to require corrective action.

(a) "Direct supervision" means the licensed registered nurse who provides guidance to nursing personnel and evaluation of nursing tasks is on the premises, is quickly and easily available, and has assessed the patient prior to the delegation of the duties.

(b) "Immediate supervision" means the licensed registered nurse who provides guidance to nursing personnel and evaluation of nursing tasks is on the premises, is within audible and visual range of the patient, and has assessed the patient prior to the delegation of duties.

(c) "Indirect supervision" means the licensed registered nurse who provides guidance to nursing personnel and evaluation of nursing tasks is not on the premises but has given either written or oral instructions for the care and treatment of the patient and the patient has been assessed by the registered nurse prior to the delegation of duties.

(23) "Traditional program of nursing" means a program that has a curriculum which includes a faculty supervised teaching/learning component in clinical settings.

AMENDATORY SECTION (Amending WSR 99-10-079, filed 5/4/99, effective 6/4/99)

**WAC 246-840-020 Documents issued to nurses in Washington.** The following ~~((documents are the only documents))~~ credentials are issued to nurses in Washington.

(1) Active status license. A license is issued upon completion of all requirements for licensure~~((, confers the right to))~~. The license holder may use the title licensed practical nurse or ~~((licensed))~~ registered nurse and the use of its abbreviation, ~~((L.P.N. or R.N., and to))~~ LPN or RN. The license allows practice as a licensed practical nurse or registered nurse in the state of Washington.

A student who has graduated from a basic professional nursing course and who is pursuing a baccalaureate degree in nursing, an advanced degree in nursing or an advanced certification in nursing ~~((shall))~~ must hold an active Washington RN license before participating in the practice of nursing as required to fulfill the learning objectives in a clinical course.

~~((Exception to this requirement may be granted by the commission on an individual basis upon a petition submitted by the dean or director of a school of nursing, on a case-by-case basis.~~

(a) ~~The exception allows the student to practice in a clinical setting only under the direct supervision of an RN faculty member. The commission requires that any RN faculty member supervising these students meet the requirements of direct supervision as defined in WAC 246-840-010 (13)(c)(ii) and, in addition, that supervising faculty document that all clients under the care of the student be assessed by the RN faculty each clinical day.~~

(b) ~~The dean or director of the school of nursing shall ensure that each faculty member who supervises these students be provided a copy of these rules and be assigned in a manner that allows for direct supervision.~~

(c) ~~Nursing students who participate in clinical courses under this section are not eligible for the nursing technician role.)~~

(2) Inactive status license. A license issued to a person previously holding an active license in this state, is in good standing, and does not practice in Washington state. Refer to chapter 246-12 WAC, Part 4.

~~(3) ((Limited educational license. A limited educational license may be issued to a person who has been on inactive or lapsed status for three years or more and who wishes to return to active status. A limited educational license does not authorize practice for employment.~~

~~(4))~~ Advanced registered nurse practitioner (ARNP) ~~((recognition document))~~ license. An ARNP ~~((recognition document))~~ license may be issued to any person who meets the requirements of the commission as contained in WAC 246-840-300 through 246-840-365. Only persons holding this ~~((recognition document shall))~~ license have the right to use the title "advanced registered nurse practitioner" or the abbreviation "ARNP" or any title or abbreviation which ~~((may))~~ indicates that the person is entitled to practice at an advanced and specialized ~~((level))~~ role as a nurse practitioner, ~~((a specialized nurse practitioner,))~~ a nurse midwife, or a nurse anesthetist. ~~((This document authorizes))~~ The ARNP ~~((to))~~ may engage in the scope ~~((of practice))~~ allowed for his or her ~~((specialty))~~ area ~~((and))~~ of national certification as

approved by the commission. The license is valid only with a current registered nurse license. The ARNP's scope of practice is defined by national certification standards and approved by the commission.

~~((5) ARNP interim permit. An interim permit may be issued following satisfactory completion of an advanced formal education program, registration for the first certification examination of an approved program following completion of the education and filing of an application, fee and requested documentation. If the applicant passes the examination the department shall grant advanced registered nurse practitioner status. If the applicant fails the examination, the interim permit shall expire upon notification and is not renewable.~~

~~(6) ARNP prescriptive authorization. A notation of prescriptive authorization may be placed on the ARNP recognition document issued to any person who meets the requirements of the commission as contained in WAC 246-840-410. This authorizes the ARNP to prescribe drugs within his or her scope of practice and is valid only with a current registered nurse license.))~~

#### NEW SECTION

**WAC 246-840-025 Initial licensure for registered nurses and practical nurses—Commission approved Washington state nursing education program.** Registered nursing and practical nursing applicants' educated in a commission approved Washington state nursing education program and applying for initial licensure must:

(1) Successfully complete a commission approved nursing education program. For applicants from a commission approved registered nurse program who are applying for a practical nurse license:

(a) Complete all course work required of commission approved practical nurse programs as listed in WAC 246-840-575(2). Required courses not included in the registered nurse program may be accepted if the courses were obtained through a commission approved program.

(b) Be deemed as capable to safely practice within the scope of practice of a practical nurse by the nurse administrator of the candidate's program.

(2) Complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(3) Successfully pass the commission approved licensure examination as provided in WAC 246-840-050. Testing may be allowed upon receipt of a certificate of completion from the administrator of the nursing education program.

(4) Submit the following documents:

(a) A completed licensure application with the required fee as defined in WAC 246-840-990.

(b) An official transcript sent directly from the applicant's nursing education program to the commission. The transcript must include course names and credits accepted from other programs. Transcripts must be received within ninety days of the applicant's first taking of the examination. The transcript must show:

(i) The applicant has graduated from an approved nursing program or has successfully completed the prelicensure

portion of an approved graduate-entry registered nursing program; or

(ii) That the applicant has completed all course work required in a commission approved practical nurse program as listed in WAC 246-840-575(2).

(c) Applicants from a commission approved registered nurse program who are applying for a practical nurse license must also submit an attestation sent from the nurse administrator of the candidate's nursing education program indicating that the applicant is capable to safely practice within the scope of practice of a practical nurse.

AMENDATORY SECTION (Amending WSR 99-01-098, filed 12/17/98, effective 1/17/99)

**WAC 246-840-030 (~~Examination and licensure~~)**  
**Initial licensure for registered nurses and practical nurses—Out-of-state traditional nursing education program approved by another United States nursing board.**

~~((1) Graduates from Washington state board approved schools of nursing holding a degree/diploma from such a school shall be eligible to write the examination provided all other requirements are met.~~

~~(2) Graduates from a nursing school approved by a board of nursing in another U.S. jurisdiction shall be eligible to take the examination provided that:~~

~~(a) The nursing school meets the minimum standards approved for state board school of nursing in Washington at the time of the applicant's graduation;~~

~~(b) Graduate has completed all institutional requirements for the degree/diploma in nursing education per attestation from the administrator of the approved nursing education program;~~

~~(c) All other requirements of the statute and regulations shall be met.~~

~~(3) Graduates of a nontraditional school of nursing which meet the requirements of subsection (2)(a), (b) and (c) of this section, are eligible to take the registered nurse examination provided that the following conditions are met: (For purposes of this section, nontraditional schools of nursing are defined as schools that have curricula which do not include a faculty supervised teaching/learning component in clinical settings.)~~

~~(a) The candidate is a licensed practical nurse in Washington state; and~~

~~(b) There is documentation of at least two hundred hours of supervised clinical experience (preceptorship) in the role of a registered nurse. The required elements of a preceptorship are as follows:~~

~~(i) Acceptable clinical sites—Acceptable clinical sites include acute care or subacute care settings or skilled nursing facilities. Other sites must be approved by the commission.~~

~~(ii) Qualifications of preceptor (instructor)—The preceptor must be a licensed registered nurse in Washington state with at least two years experience in a practice setting and have no history of disciplinary actions. The candidate must provide documentation that the preceptor meets these requirements when he/she applies for licensure and must also provide a written agreement between the candidate and the~~

preceptor (or facility) that preceptorship supervision will occur.

(iii) Experiences in the preceptorship – Experiences must include delegation and supervision, decision making and critical thinking, patient assessment as part of the nursing process and evaluation of care. A checklist, provided by the commission, must be completed by the preceptor which indicates the candidate's satisfactory completion of the identified skills. This checklist must be submitted with the candidate's application for licensure; and

(e) The candidate receives a satisfactory evaluation from their preceptor meeting commission requirements as previously identified ((b)(iii) of this subsection); and

(d) All other requirements of the nursing statute and regulations are met.

(4) In order to be eligible for licensure by examination the applicant shall have satisfactorily completed an approved practical nursing program, fulfilling all the basic course content as stated in WAC 246-840-575, or its equivalent as determined by the board. Every applicant must have satisfactorily completed an approved practical nursing program within two years of the date of the first examination taken or the applicant must meet other requirements of the board to determine current theoretical and clinical knowledge of practical nursing practice.

(5) An applicant who has not completed an approved practical nurse program must establish evidence of successful completion of nursing and related courses at an approved school preparing persons for licensure as registered nurses, which courses include personal and vocational relationships of the practical nurse, basic science and psychosocial concepts, theory and clinical practice in medications and the nursing process, and theory and clinical practice in medical, surgical, geriatric, pediatric, obstetric and mental health nursing. These courses must be equivalent to those same courses in a practical nursing program approved by the board.

(6) A notice of eligibility for admission to the licensing examination may be issued to all new graduates from board approved practical nursing programs after the filing of a completed application, payment of the application fee, and official notification from the program certifying that the individual has satisfactorily completed all requirements for the diploma/certification.

(7) All other requirements of the statute and regulations shall be met.)) Registered nursing and practical nursing applicants educated in a traditional nursing education program approved by another United States nursing board and applying for initial licensure must:

(1) Successfully complete a board approved nursing education program. Applicants from a board approved registered nurse program who are applying for a practical nurse license:

(a) Complete all course work required of board approved practical nurse programs as listed in WAC 246-840-575(2). Required courses not included in the registered nurse program may be accepted if the courses were obtained through a commission approved program.

(b) Be deemed as capable to safely practice within the scope of practice of a practical nurse by the nurse administrator of the applicant's nursing education program.

(2) Complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(3) Successfully pass the commission approved licensure examination as provided in WAC 246-840-050.

(4) Submit the following documents:

(a) A completed licensure application with the required fee as defined in WAC 246-840-990.

(b) An official transcript sent directly from the applicant's nursing education program to the commission. The transcript must include course names and credits accepted from other programs. The transcript must show:

(i) The applicant has graduated from an approved nursing program or has successfully completed the preclicensure portion of an approved graduate-entry registered nursing program; or

(ii) That the applicant has completed all course work required in a commission approved practical nurse program as listed in WAC 246-840-575(2).

(c) Applicants from a board approved registered nurse program who are applying for a practical nurse license must also submit an attestation sent from the nurse administrator of the applicant's nursing education program indicating that the applicant is capable to safely practice within the scope of practice of a practical nurse.

#### NEW SECTION

**WAC 246-840-035 Initial licensure for registered nurses—Out-of-state nontraditional nursing education program approved by another United States nursing board as defined by WAC 246-840-010(16).** Registered nursing applicants educated in a nontraditional nursing education program approved by a United States board of nursing and applying for initial licensure must:

(1) Successfully complete the board or commission approved practical nurse program which included multiple clinical experiences supervised by nursing faculty and possess a current Washington state practical nurse license which is in good standing. The commission may verify that this requirement is met through review of documents previously submitted to the commission.

(2) Successfully complete a board approved nontraditional registered nursing program.

(3) Complete at least two hundred hours of supervised clinical experience (preceptorship) in the role of a registered nurse. The preceptorship must be accomplished within six months following completion of the applicant's nursing education program. The required elements of a preceptorship are:

(a) Clinical sites may include acute care or subacute care settings or skilled nursing facilities. Other sites must be approved by the commission.

(b) The preceptor must be a licensed registered nurse with at least two years experience in a clinical practice setting that is the same type of practice setting where the preceptorship will occur.

(c) The preceptor shall not have a history of disciplinary actions.

(d) There must be a written agreement between the applicant and the preceptor (or facility) that preceptorship supervi-



sion will occur. The written agreement shall state that the registered nurse agrees to act as preceptor and understands that the practical nurse is practicing under the preceptor's registered nurse license. The written agreement must be signed before the preceptorship begins.

(e) A checklist, on a form provided by the commission, must be completed by the preceptor indicating satisfactory completion by the applicant of identified skills.

(f) Skills performed by the applicant within the role of a registered nurse, under the immediate supervision of the RN preceptor, must include: Delegation and supervision, decision making and critical thinking, patient assessment and evaluation of care and communication with health team members.

(4) Complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(5) Successfully pass the commission approved registered nurse licensure examination.

(6) Submit the following documents:

(a) A completed licensure application with the required fee as described in WAC 246-840-990.

(b) An official transcript sent directly from the applicant's nursing education program to the commission. The transcript must contain adequate documentation to demonstrate that the applicant has graduated from an approved nursing program.

The transcripts shall include course names and credits accepted from other programs.

(c) Documentation of two hundred hours of supervised clinical experience that meet the requirements of subsection (3) of this section.

(d) Additional documentation as requested by the commission if the commission cannot verify the applicant's successful completion of a board or commission approved practical nurse program which included multiple clinical experiences supervised by nursing faculty.

#### NEW SECTION

**WAC 246-840-045 Initial licensure for registered nurses and practical nurses who graduate from an international school of nursing.** Registered nursing and practical nursing applicants educated in a jurisdiction which is not a member of the National Council of State Boards of Nursing and applying for initial licensure must:

(1) Successfully complete a basic nursing education program approved in that country.

(a) The nursing education program must be equivalent to the minimum standards prevailing for nursing education programs approved by the commission.

(b) Any deficiencies in the nursing program (theory and clinical practice in medical, psychiatric, obstetric, surgical and pediatric nursing) must be satisfactorily completed in a commission approved nursing program.

(2) Demonstrate English language proficiency by passing a commission approved English proficiency examination at a commission designated standard. Individuals from countries where English is the primary language and where nursing education (theory and clinical) is conducted in English will have this requirement waived.

(3) Complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(4) Successfully pass the commission approved licensure examination as provided in WAC 246-840-050.

(5) Submit the following documents:

(a) A completed licensure application with the required fee as defined in WAC 246-840-990.

(b) LPNs must submit an:

(i) Official transcript directly from the nursing education program or licensure agency in country where the applicant was educated or previously licensed.

Transcript must be in English or accompanied by an official English translation. If the applicant's original documents (education and licensing) are on file in another state or with an approved credential evaluating agency, the applicant may request that the state board or approved credential evaluating agency send copies directly to the commission in lieu of the originals.

The transcript must:

(A) Include the applicant's date of graduation and credential conferred.

(B) Describe the course names and credit hours completed.

(C) Document equivalency to the minimum standards in Washington state.

(ii) Documentation from a commission approved nursing program showing that any deficiency in theory and clinical practice in medical, psychiatric, obstetric, surgical and pediatric nursing has been satisfactorily completed.

(iii) Documents must show the applicant has passed a commission approved English proficiency examination at a commission designated standard. This documentation will not be required from individuals from countries where English is the primary language and where nursing education (theory and clinical) is conducted in English.

(c) RNs must submit:

(i) A certificate or credential from a commission approved credential evaluating service verifying that the educational program completed by the applicant is equivalent to registered nursing education in Washington state. This documentation will not be required for individuals who have passed the national licensing examination and are licensed as a registered nurse by another United States nursing board.

(ii) Documents showing the applicant has passed a commission approved English proficiency examination at a commission designated standard. This documentation will not be required for individuals from countries where English is the primary language or where nursing education, theory and clinical, is conducted in English.

AMENDATORY SECTION (Amending WSR 99-13-086, filed 6/14/99, effective 7/15/99)

**WAC 246-840-050 Licensure examination.** (1) The current series of the National Council of the State Boards of Nursing Registered Nurse (NCSBN) Registered Nurse or Practical Nurse Licensure Examination (NCLEX-RN® or NCLEX-PN®) (~~Computerized Adaptive Test (NCLEX-CAT))~~) shall be the official examinations for nurse licensure.

(2) In order to be licensed in this state, all nurse applicants shall take and pass the National Council Licensure Examination (NCLEX-RN® or NCLEX-PN®) (~~within four attempts and within two years of completion of the nursing program~~).

~~((2) The NCLEX will consist of a Computerized Adaptive Test that will be individualized with the score for the examination reported as either pass or fail. Specific parameters of the exam will be as prescribed by contract with National Council of State Boards of Nursing, Inc. (NCSBN).))~~

(3) ~~((Examinations shall be conducted throughout the year.))~~ Only applicants who complete the education, experience, and application requirements of WAC 246-840-025, 246-840-030, 246-840-035 or 246-840-045 will be eligible for the examination.

(4) The commission will notify applicants who have filed the required application documents and met all qualifications of their eligibility to take the examination.

(5) Applicants must file an examination application directly to the testing service, along with the testing service's required fee.

(6) The executive director of the commission shall negotiate with NCSBN for the use of the NCLEX® (~~CAT~~).

~~((5))~~ (7) The examination shall be administered in accord with the NCSBN security measures and contract. All appeals of examination procedures and results shall be managed in accord with policies in the NCSBN contract.

AMENDATORY SECTION (Amending WSR 97-13-100, filed 6/18/97, effective 7/19/97)

**WAC 246-840-060 (~~Release of~~) Results and retaking of examination.** (1) ~~((Candidates shall be notified regarding))~~ The commission will notify applicants of the examination results by mail (~~only~~).

(2) ~~((Candidates who pass shall))~~ Applicants who pass receive a license to practice as a (~~licensed~~) practical nurse or registered nurse from the commission provided all other requirements are met.

(3) ~~((Candidates who fail shall))~~ Applicants who fail the examination will receive a letter of notification (~~regarding their eligibility to rewrite~~) from the commission, including information on retaking the examination. The applicant may retake the examination no sooner than forty-five days following the date of the last exam taken.

(4) The ~~((candidate's))~~ applicant's examination results will be maintained in his/her application file ~~((in the health professions quality assurance division.))~~ with the department of health.

AMENDATORY SECTION (Amending WSR 99-13-086, filed 6/14/99, effective 7/15/99)

**WAC 246-840-090 Licensure for nurses by interstate endorsement.** ~~((A license to practice as a nurse in Washington may be issued without examination provided the applicant meets all of the following requirements:~~

**FOR PRACTICAL NURSE PROGRAMS:**

(1) The applicant has graduated and holds a credential from:

(a) A commission or state board approved program preparing candidates for licensure as a practical nurse; or

(b) Its equivalent as determined by the commission, which program must fulfill the minimum requirement for commission or state board approved practical nursing programs in Washington at the time of graduation.

(2) Applicants shall have passed a state board constructed test, the SBTPE (state board test pool examination), or NCLEX in their original state of licensure within four attempts and within two years of completion of the nursing program.

(3) The applicant held or currently holds a license to practice as a practical nurse in another state or territory. If the license is lapsed or inactive for three years or more, the applicant must successfully complete a commission approved refresher course before an active Washington license is issued.

(4) That grounds do not exist for denial under chapter 18.130 RCW.

(5) The applicant shall:

(a) Submit a completed application with the required fee.

(b) Applicants must complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

**FOR REGISTERED NURSE PROGRAMS:**

(6) The applicant has graduated and holds a degree/diploma from a commission or state board approved school of nursing preparing candidates for licensure as a registered nurse provided such nursing program is equivalent to the minimum nursing educational standards prevailing for commission or state board approved schools of nursing in Washington at the time of the applicant's graduation.

(a) Applicants who were licensed prior to January 1, 1953, must have scored at least seventy-five percent on the commission or state board examination in the state of original licensure.

(i) Applicants licensed after January 1, 1953, but before June 1, 1982, must have passed the state board test pool examination for registered nurse licensure with a minimum standard score of 350 in each test.

(ii) Applicants licensed after July 1, 1982, must have passed with a minimum standard score as established by contract with the National Council of State Boards of Nursing.

(b) The applicant holds a valid current license to practice as a registered nurse in another state or territory.

(c) Applicants must complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(d) The application must be completed and notarized, the fee must be filed with the application. A notarized copy of a valid current license shall be filed with the application.

(e) Verification of licensure by examination must be obtained from the state or territory of original licensure. Any fee for verification required by the state or territory of original license must be paid by the applicant.

(7) Applicants from countries outside the United States who were granted a license in another United States jurisdiction or territory prior to December 31, 1971, and who were

not required to pass the state board test pool examination must meet the following requirements:

(a) The nursing education program must meet the minimum approved standards prevailing for schools of nursing in Washington at the time of the applicant's graduation.

(b) The applicant holds a valid current license to practice as a registered nurse in another United States jurisdiction or territory.

(c) The applicant must submit to the commission:

(i) A complete notarized application. The fee must be filed with the application.

(ii) Verification of original licensure obtained in the United States jurisdiction or territory.

(iii) Notarized copies of educational preparation and licensure by examination submitted directly from the country of original licensure or from the state commission or territory of original United States licensure.

(iv) Verification of current nursing practice for three years prior to application for Washington licensure.

(v) Applicants must complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(d) The applicant shall meet all requirements of chapter 18.79 RCW and regulations of the commission.) Registered nursing and practical nursing applicants for interstate endorsement as a nurse may be issued a license without examination provided the applicant meets the following requirements:

(1) The applicant has graduated and holds a credential from:

(a) A commission or state board approved program preparing candidates for licensure as a nurse; or

(b) Its equivalent as determined by the commission, which program must fulfill the minimum requirements for commission or state board approved registered nursing programs in Washington at the time of graduation.

(2) The applicant was originally licensed to practice as a nurse in another state or territory after passing a state approved examination.

(3) The applicant possesses a current active nursing license without discipline in another state or territory, or, possess an inactive or expired license in another state or territory and successfully complete a commission approved refresher course.

(a) An applicant whose license was inactive or expired must be issued a limited education authorization by the commission to enroll in the clinical portion of the refresher course.

(b) The limited education authorization is valid only while working under the direct supervision of a preceptor and is not valid for employment as a registered nurse.

(4) For RNs: If the applicant is a graduate of a nontraditional program in nursing and:

(a) Was licensed as a practical/vocational nurse prior to licensure as a registered nurse, the applicant must document two hundred hours of preceptorship in the role of a registered nurse as defined in WAC 246-840-035 or at least one thousand hours of practice as a registered nurse without discipline of the registered nurse license by any other state or territory.

(b) Was not licensed as a practical/vocational nurse prior to licensure as a registered nurse, the applicant must docu-

ment at least one thousand hours of practice as a registered nurse without discipline of the registered nurse license by any other state or territory.

(5) Complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(6) Applicants must submit the following documents:

(a) A completed licensure application with the required fee as defined in WAC 246-840-990.

(b) An official transcript sent directly from the applicant's nursing education program to the commission.

(i) The transcript must contain adequate documentation to demonstrate that the applicant has graduated from an approved nursing program or has successfully completed the prelicensure portion of an approved graduate-entry registered nursing program.

(ii) The transcripts shall include course names and credits accepted from other programs.

(c) Verification of an original registered nurse license sent directly to the commission from the state or territory of original licensure. This document must include verification that the original licensure included passing a state examination or computerized verification from NurSYS®.

(d) Verification of a current active or expired nurse license in another state or territory sent directly to the commission from that state's or territory's licensure agency. Verification that the applicant has successfully completed a commission approved refresher course may be accepted if the applicant's out-of-state licensure is on inactive or expired status.

(e) For RNs: If the applicant is a graduate of a nontraditional program in nursing and:

(i) Was licensed as a practical/vocational nurse prior to licensure as a registered nurse, the applicant must submit documentation of two hundred hours of preceptorship in the role of a registered nurse as defined in WAC 246-840-035 or at least one thousand hours of practice as a registered nurse without discipline of the registered nurse license by any other state or territory.

(ii) Was not licensed as a practical/vocational nurse prior to licensure as a registered nurse, the applicant must submit documentation of at least one thousand hours of practice as a registered nurse without discipline of the registered nurse license by any other state or territory.

AMENDATORY SECTION (Amending WSR 97-13-100, filed 6/18/97, effective 7/19/97)

**WAC 246-840-760 Definitions of terms used in WAC 246-840-750 through 246-840-780.** (1) "Approved substance abuse monitoring program" or "approved monitoring program" is a program the commission has determined meets the requirements of the law and the criteria established by the commission in WAC 246-840-770 (~~which~~). The program enters into a contract with nurses who have substance abuse problems regarding the required components of the nurse's recovery activity and oversees the nurse's compliance with these requirements. Substance abuse monitoring programs do not provide evaluation or treatment to participating nurses.

(2) "Contract" is a comprehensive, structured agreement between the recovering nurse and the approved monitoring

program wherein the nurse consents to comply with the monitoring program and its required components of the nurse's recovery activity.

(3) "Approved treatment facility" is a facility approved by the ~~((bureau))~~ division of alcohol and substance abuse, department of social and health services according to chapter 70.96A RCW or RCW 69.54.030 to provide concentrated alcoholism or drug treatment if located within Washington state. Drug and alcohol treatment programs located out-of-state must be equivalent to the standards required for approval under chapter 70.96A RCW or RCW 69.54.030.

(4) "Substance abuse" means the impairment ~~((as determined by the commission,))~~ of a nurse's professional services by an addiction to, a dependency on, or the use of alcohol, legend drugs, or controlled substances.

(5) "Aftercare" is that period of time after intensive substance abuse treatment that provides the nurse and the nurse's family with group or individual counseling sessions, discussions with other families, ongoing contact and participation in self-help groups and ongoing continued support of treatment program staff.

(6) "Nurse support group" is a group of nurses meeting regularly to support the recovery of its members from substance abuse issues. The group provides a confidential setting with a trained and experienced nurse facilitator in which nurses may safely discuss drug diversion, licensure issues, return to work and other professional issues related to recovery.

(7) "Twelve-step groups" are groups such as alcoholics anonymous, narcotics anonymous, and related organizations based on a philosophy of anonymity, belief in a power outside of oneself, peer group association, and self-help.

(8) "Random drug screens" are laboratory tests to detect the presence of drugs of abuse in body fluids which are performed at irregular intervals not known in advance by the person to be tested.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 246-840-040 Filing of application for licensing examination.
- WAC 246-840-070 Failures—Repeat examination.
- WAC 246-840-080 Licensure of graduates of foreign schools of nursing.
- WAC 246-840-299 Definitions.

**WSR 08-02-089**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
(Veterinary Board of Governors)  
[Filed January 2, 2008, 10:46 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Chapter 246-935 WAC, Veterinary technician.

Hearing Location(s): Department of Health, 20435 72nd Avenue South, Second Floor, Conference Room One, Kent, WA 98032, on March 3, 2008, at 10:00 a.m.

Date of Intended Adoption: March 3, 2008.

Submit Written Comments to: Judy Haenke, Program Manager, P.O. Box 47868, Olympia, WA 98504-7868, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4947, by February 25, 2008.

Assistance for Persons with Disabilities: Contact Judy Haenke by February 25, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HB 1331 changed the credential level of veterinary technicians from registration to licensure in law. Amendments to chapter 246-935 WAC as proposed will change all references to "registered" or "registration" to "licensed" or "licensure" in order to comply with the legislation. The proposed amendments will not change the credentialing requirements for veterinary technicians but will allow veterinary technicians to refer to themselves as licensed.

Reasons Supporting Proposal: HB 1331 (chapter 235, Laws of 2007) provides in part for licensure rather than registration of veterinary technicians. These proposed rules change the reference from "registered" to "licensed" and will allow veterinary technicians to use the title "licensed" when referring to themselves. The veterinary board of governors is developing rules to implement other provisions of HB 1331 under additional rule filings.

Statutory Authority for Adoption: RCW 18.92.030 and HB 1331 (chapter 235, Laws of 2007).

Statute Being Implemented: RCW 18.92.030 and HB 1331 (chapter 235, Laws of 2007).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, veterinary board of governors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Judy Haenke, Program Manager, P.O. Box 47868, Olympia, WA 98504-7868, (360) 236-4947.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule is exempt from a small business economic impact statement under RCW 19.85.025, which does not apply to rules adopted under RCW 34.05.310(4).

A cost-benefit analysis is not required under RCW 34.05.328. The rule is exempt from the cost-benefit analysis requirements under RCW 34.05.328 (5)(b)(iii).

January 2, 2008

Judy Haenke

Acting Executive Director

AMENDATORY SECTION (Amending WSR 02-10-135, filed 5/1/02, effective 6/1/02)

**WAC 246-935-010 Definitions.** (1) "Veterinary technician" means any person who has met the requirements of RCW 18.92.015 and who is (~~(registered)~~) licensed as required by chapter 18.92 RCW.

(2) "Direct supervision" means the supervisor is on the premises, is quickly and easily available and the animal has been examined by a veterinarian at such times as acceptable veterinary medical practice requires, consistent with the particular delegated animal health care task.

(3) "Emergency" means that the animal has been placed in a life-threatening condition where immediate treatment is necessary to sustain life.

(4) "Immediate supervision" means the supervisor is in audible and visual range of the animal patient and the person treating the patient.

(5) "Indirect supervision" means the supervisor is not on the premises, but has given either written or oral instructions for treatment of the animal patient and the animal has been examined by a veterinarian at such times as acceptable veterinary medical practice requires, consistent with the particular delegated animal health care task and the animal is not anesthetized.

(6) "Supervisor" means a veterinarian or, if a task so provides, a veterinary technician.

(7) "Unregistered assistant" means any individual who is not a veterinary technician or veterinarian.

(8) "Veterinarian" means a person authorized by chapter 18.92 RCW to practice veterinary medicine in the state of Washington.

(9) "Veterinary medical facility" is as defined by WAC 246-933-310.

AMENDATORY SECTION (Amending WSR 02-10-135, filed 5/1/02, effective 6/1/02)

**WAC 246-935-020 Applications—Veterinary technicians.** Applications for (~~(registration)~~) licensure as a veterinary technician shall be made on forms prepared by the secretary of the department of health and submitted to the department of health. Applications must be received at least sixty days prior to the scheduled examination. The application, in addition to the required fee, must be accompanied by satisfactory evidence of experience and/or official transcripts or other evidence of completion of educational courses approved by the board. The application shall be signed by the applicant. When the application and the accompanying evidence are found satisfactory, the secretary shall notify the applicant of eligibility to be scheduled for the veterinary technician examination.

AMENDATORY SECTION (Amending WSR 02-10-135, filed 5/1/02, effective 6/1/02)

**WAC 246-935-030 Grounds for denial, suspension or revocation of (~~(registration)~~) licensure.** The board may suspend, revoke or deny the issuance or renewal of (~~(registration)~~) license of any veterinary technician and file its decision in the secretary's office if the veterinary technician:

(1) Has employed fraud or misrepresentation in applying for or obtaining the (~~(registration)~~) license;

(2) Has within ten years prior to the date of application been found guilty of a criminal offense relating to the practice of veterinary medicine, surgery and dentistry, including, but not limited to:

(a) Any violation of the Uniform Controlled Substances Act or the Legend Drug Act;

(b) Chronic inebriety;

(c) Cruelty to animals;

(3) Has violated or attempted to violate any provision of chapter 18.92 RCW or any rule or regulation adopted pursuant to that chapter;

(4) Has assisted, abetted or conspired with another person to violate chapter 18.92 RCW, or any rule or regulation adopted under that chapter;

(5) Has performed any animal health care service not authorized by WAC 246-935-040 or 246-935-050.

AMENDATORY SECTION (Amending WSR 07-17-169, filed 8/22/07, effective 9/22/07)

**WAC 246-935-050 Animal health care tasks. (1) Veterinary technicians.**

No individual, other than a (~~(registered)~~) licensed veterinary technician, may advertise or offer her/his services in a manner calculated to lead others to believe that she/he is a trained or (~~(registered)~~) licensed veterinary technician.

Veterinary technicians are prohibited from performing the following activities: Surgery except as outlined below; diagnosis and prognosis; prescribing drugs, medication or appliances; initiation of treatment without prior instruction by a veterinarian except as outlined under emergency animal care.

(a) Immediate supervision. A veterinary technician may perform the following tasks only under the immediate supervision of a veterinarian:

(i) Assist veterinarian in surgery by tissue handling;

(ii) Assist veterinarian in surgery by instrument handling;

(iii) Dental extractions.

(b) Direct supervision. A veterinary technician may perform the following tasks under the direct supervision of a veterinarian:

(i) Endotracheal intubation;

(ii) Blood administration;

(iii) Fluid aspiration, including cystocentesis;

(iv) Intraperitoneal injections;

(v) Monitoring of vital signs of anesthetized patient;

(vi) Application of splints;

(vii) Induce anesthesia by intravenous, intramuscular, or subcutaneous injection or by inhalation;

(viii) Administration of immunological agents including rabies vaccination;

(ix) Catheterization of the unobstructed bladder;

(x) Ophthalmological procedure including:

(A) Tear production testing

(B) Topical anesthetic application

(C) Fluorescein staining of the cornea

(D) Tonometry;

(xi) Teeth cleaning, provided an oral examination of the anesthetized patient has been conducted by the veterinarian;

(xii) Microchip implantation;

(xiii) Floating teeth;

(xiv) Removal of partially exposed foxtails and porcupine quills;

(xv) Provide massage;

(xvi) Suturing. The use of a needle, cutting or tapered, and suture material, staples, wound clips or tissue glue to close a skin or gingival incision or prepared wound as directed by the attending licensed veterinarian under direct supervision. Suturing may include the use of needle holders, thumb forceps, tissue forceps, retractors and comparable instruments for gentle handling of the tissues to be repaired/closed by such suturing. Suturing does not include the use of cutting instruments such as scalpels, scissors, electrosurgical equipment or other instruments to remove skin or other tissues from the animal patient.

(c) Indirect supervision. A veterinary technician may perform the following tasks under the indirect supervision of a veterinarian. If the animal is anesthetized, these tasks require the direct supervision of a veterinarian:

- (i) Enema;
- (ii) Electrocardiography;
- (iii) Application of bandages;
- (iv) Gavage;
- (v) Ear flush;
- (vi) Radiology;
- (A) Patient positioning;
- (B) Operation of radiograph machines;
- (C) Oral and rectal administration of radio-opaque materials;
- (vii) Placement and securing of an intravenous catheter;
- (viii) Injections of medications not otherwise prohibited:
  - (A) Intramuscular, excluding immunological agents
  - (B) Subcutaneous, excluding immunological agents
  - (C) Intravenous, including giving medication through an established intravenous catheter;
- (ix) Oral medications;
- (x) Topical medications;
- (xi) Laboratory (specimen collections):
  - (A) Collection of tissue during or after a veterinarian has performed a necropsy
  - (B) Urine, except cystocentesis
  - (C) Blood
  - (D) Parasitology
  - (E) Exfoliative cytology
  - (F) Microbiology
  - (G) Fecal material
- (xii) Laboratory (specimen testing):
  - (A) Urinalysis
  - (B) Hematology
  - (C) Serology
  - (D) Chemistries
  - (E) Endocrinology
  - (F) Parasitology
  - (G) Exfoliative cytology
  - (H) Microbiology
  - (I) Fecal analysis;
- (xiii) Administration of preanesthetic drugs;

- (xiv) Oxygen therapy;
- (xv) Euthanasia in all circumstances as otherwise allowed by law;
- (xvi) Removal of sutures;
- (xvii) Indirect blood pressure measurement;
- (xviii) Obtaining a general history from a client of a patient and the client's concerns regarding that patient;
- (xix) Preliminary physical examination including temperature, pulse and respiration;
- (xx) Behavioral consultation with clients;
- (xxi) Dietary consultation with clients.

**(2) Unregistered assistants.**

Induction of anesthesia by any method is prohibited.

(a) Immediate supervision by veterinarian. An unregistered assistant may perform the following tasks only under the immediate supervision of a veterinarian:

- (i) Assist veterinarian in surgery by tissue handling;
- (ii) Assist veterinarian in surgery by instrument handling.

(b) Immediate supervision by veterinarian or veterinary technician. An unregistered assistant may perform the following tasks only under the immediate supervision of either a veterinarian or veterinary technician:

- (i) Blood administration;
- (ii) Laboratory (specimen collections):
  - (A) Hematology
  - (B) Exfoliative cytology, including skin scraping
  - (C) Microbiology
  - (D) Serology;
- (iii) Placement and securing of an intravenous catheter.

(c) Direct supervision by veterinarian. An unregistered assistant may perform the following tasks only under the direct supervision of a veterinarian:

- (i) Monitor vital signs of anesthetized patient;
- (ii) Euthanasia in all circumstances as otherwise allowed by law;
- (iii) Removal of sutures;
- (iv) Teeth cleaning, provided an oral examination of the anesthetized patient has been conducted by the veterinarian;
- (v) Provide massage;
- (vi) Administration of immunological agents including rabies vaccination;
- (vii) Microchip implantation;
- (viii) Enema;
- (ix) Removal of partially exposed foxtails and porcupine quills from skin and feet.

(d) Direct supervision by veterinarian or veterinary technician. An unregistered assistant may perform the following tasks under direct supervision of either a veterinarian or veterinary technician. If the animal is anesthetized, these tasks require immediate supervision of a veterinarian or a veterinary technician:

- (i) Application of bandages;
- (ii) Ear flush;
- (iii) Electrocardiography;
- (iv) Intramuscular or subcutaneous injections of medications not otherwise prohibited;
- (v) Laboratory (test preparation, not evaluation):
  - (A) Parasitology
  - (B) Serology

- (C) Urinalysis;
- (vi) Preliminary physical examination including temperature, pulse and respiration;
- (vii) Radiology:
  - (A) Patient positioning
  - (B) Operation of radiograph machines
  - (C) Rectal and oral administration of radio-opaque materials.

(e) Indirect supervision. An unregistered assistant may perform the following tasks under the indirect supervision of a veterinarian. If the animal is anesthetized, these tasks require the direct supervision of a veterinarian:

- (i) Oral medications;
- (ii) Topical medications;
- (iii) Laboratory (specimen collection):
  - Collecting of voided urine and fecal material;
- (iv) Oxygen therapy;
- (v) Obtaining a general history from a client of a patient and the client's concerns;
- (vi) Behavioral consultation with clients;
- (vii) Dietary consultation with clients.

**(3) Emergency animal care.**

(a) Under conditions of an emergency, a veterinary technician and unregistered assistant may render certain life saving aid to an animal. A veterinary technician may:

- (i) Apply tourniquets and/or pressure bandages to control hemorrhage;
- (ii) Administer pharmacologic agents to prevent or control shock. Placement of an intravenous catheter and administering parenteral fluids, must only be performed after direct communication with a veterinarian, and only if the veterinarian is either present or immediately en route to the location of the distressed animal;
- (iii) Administer resuscitative oxygen procedures;
- (iv) Establish open airways including the use of intubation appliances, but excluding surgery;
- (v) Administer external cardiac resuscitation;
- (vi) Apply temporary splints or bandages to prevent further injury to bones or soft tissues;
- (vii) Apply appropriate wound dressings and external supportive treatment in severe burn cases;
- (viii) Apply external supportive treatment to stabilize body temperature.

(b) An unregistered assistant may:

- (i) Apply tourniquets and/or pressure bandages to control hemorrhage;
- (ii) Administer resuscitative oxygen procedures;
- (iii) Establish open airways including intubation appliances, but excluding surgery;
- (iv) Apply external supportive treatment to stabilize body temperature.

AMENDATORY SECTION (Amending WSR 03-11-034, filed 5/15/03, effective 6/15/03)

**WAC 246-935-070 Examination for ((~~registration~~)) licensure as a veterinary technician.** (1) All applicants shall be required to successfully complete the veterinary technician national examination as approved by the board, and the

Washington state examination that consists of questions pertaining to the laws and rules regulating technicians.

(2) The passing criteria or score is:

- (a) Criteria-referenced passing score on the national examination.
- (b) Ninety percent on the Washington state examination.

AMENDATORY SECTION (Amending WSR 02-10-135, filed 5/1/02, effective 6/1/02)

**WAC 246-935-090 Examination review procedures.**

(1) Each individual who takes the examination for ((~~registration~~)) licensure as a veterinary technician and does not pass the examination may request review by the board of his or her examination results. This request must be in writing and shall be received by the board within thirty days of notification of the examination results. The request shall state the reason or reasons the applicant feels the results of the examination should be changed. The board shall not consider any challenges to examination scores unless the total revised score could result in the issuance of a ((~~registration~~)) license. The board shall consider the following to be adequate reasons for consideration for review and possible modification of examination results:

- (a) A showing of a significant procedural error in the examination process;
- (b) Evidence of bias, prejudice or discrimination in the examination process;
- (c) Other significant errors which result in substantial disadvantage to the applicant.

(2) Any applicant who is not satisfied with the result of the examination review may appeal the board's decision and may request a formal hearing before the board under the Administrative Procedure Act. The hearing shall be requested within twenty days of receipt of the result of the board's review of the examination results.