

WSR 10-15-009
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket UT-100148, General Order R-560—Filed July 8, 2010, 8:12 a.m.,
effective August 8, 2010]

In the matter of amending WAC 480-120-264, relating to prepaid calling services.

1 STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 10-10-080, filed with the code reviser on May 3, 2010. The commission initiated this proceeding pursuant to RCW 80.01.040 and 80.04.160.

2 STATEMENT OF COMPLIANCE: This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 DATE OF ADOPTION: The commission adopts this rule on the date this order is entered.

4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: RCW 34.05.325(6) requires the commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the commission's reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the commission's responses to the comments reflecting the commission's consideration of them.

5 To avoid unnecessary duplication in the record of this docket, the commission designates the discussion in this order, including Appendix A (*i.e.*, the rule adopted by this order), as its concise explanatory statement. Together, these documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

6 REFERENCE TO AFFECTED RULES: This order amends WAC 480-120-264 entitled, "Prepaid calling services."

7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER: The commission filed a preproposal statement of inquiry (CR-101) on February 17, 2010, at WSR 10-05-107. The statement advised interested persons that the commission was considering initiating a rule making to implement additional consumer protection disclosures regarding prepaid calling services. The commission concluded that such additions may be necessary to ensure that both the advertising for prepaid calling services as well as the disclosure of components of the service, such as the value of the service, are presented to potential consumers in the same language. The commission further concluded that additional consumer disclosure requirements may be needed to better enable consumers to make choices between competitively offered telecommunications services.

8 On February 19, 2010, the commission issued a notice of opportunity to file written comments informing persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all regulated telecommunications companies and the commission's list of telecommunications attor-

neys. The commission posted the relevant rule-making information on its internet web site at <http://www.utc.wa.gov/100148>.

9 The commission invited interested persons to file comments by March 22, 2010. Pursuant to the notice, the commission received three written comments which helped to guide the process. The written comments received pursuant to the CR-101 were filed by MCI Communications Services Inc., d/b/a Verizon Business Services (Verizon-MCI), Paracom, Inc. (Paracom), and AT&T Communications of the Pacific Northwest, Inc. (AT&T).

10 NOTICE OF PROPOSED RULE MAKING: The commission filed a notice of proposed rule making (CR-102) on May 3, 2010, at WSR 10-10-080. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 10-10-080 at 1:30 p.m., Monday, June 28, 2010, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice also provided interested persons the opportunity to submit written comments to the commission, by June 7, 2010.

11 WRITTEN COMMENTS: The commission received written comments in response to the CR-102 from Verizon-MCI and AT&T. The parties identified two issues:

(a) The effective disclosure of international prepaid calling rates and minutes.

(b) The need for clarification regarding whether the rule applies only to a prepaid calling "card," or, to regulated telecommunications prepaid "services" in general.

Commission staff conferred with Verizon-MCI and AT&T regarding their written comments and developed consensus language that addressed their concerns regarding international prepaid calling rates and minutes.

12 The consensus language regarding international prepaid calling rates and minutes is contained in Appendix A.

13 RULE-MAKING HEARING: The commission considered the proposed rules for adoption at a rule-making hearing on Monday, June 28, 2010, before Chairman Jeffrey D. Goltz, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones. The commission heard oral comments from Mr. Tim Zawislak representing commission staff. No other interested person made oral comments.

14 SUGGESTIONS FOR CHANGE THAT ARE ACCEPTED: Verizon-MCI and AT&T submitted written comments suggesting changes to the proposed rule. Verizon-MCI and AT&T both raise concerns about the new requirement that all applicable rates for international calls, must be disclosed on the card or its packaging as proposed in WAC 480-120-264 (5)(a)(iii). The concerns are that: (1) There is not enough space on the card or its packaging to disclose the rates for each of over two hundred countries and all applicable international call combinations (United States to a foreign country [country], foreign country to the United States [States] and calls to or from a cell phone) and; (2) international rates change frequently so publishing country-specific rates is impractical because the applicable rate may have changed in the time between when the card was purchased and when the call is actually placed.

15 Both Verizon-MCI and AT&T offer similar solutions regarding the disclosure of international rates. However,

they differ regarding which subsection of the rule should be modified. Verizon-MCI recommends that WAC 480-120-264 (5)(a)(iii) be revised to allow disclosure for international rates via a toll-free customer service number instead of printing the rates on the card or its packaging. AT&T recommends that WAC 480-120-264 (5)(d) be revised to allow for disclosure of international rates via a toll-free number and via a web site where the provider has a web site.

16 The commission accepts, in principle, the intent of the changes described above. However, the commission chooses to rely on its own wording that incorporates solutions offered by Verizon-MCI and AT&T. The commission opts for including language in WAC 480-120-264 (5)(d) as is shown in bold below:

*(d) If the PPCS provider issues a card, all information contained in this subsection **with the exception of international rates** must be disclosed on the card or its packaging. **International rates must be disclosed on the card, on its packaging, or via a without-charge telephone number.** Disclosures required in (a)(i) and (vi), (b)(i) and (ii) of this subsection must be on the card.*

17 The commission finds that the wording described above and contained in Appendix A, which modifies the text in the CR-102 proposed rule text, is appropriate, and adopts the language in this rule-making process.

18 **SUGGESTIONS FOR CHANGE THAT ARE REJECTED:** AT&T submitted written comments suggesting a requirement for disclosure of international rates via a web site where the company has a web site. This revision is rejected because many potential customers will not have readily available access to the internet at the time of purchase. Although the use of a web site is not prohibited, the toll-free number is the only other option acceptable for the disclosure of international rates other than disclosing this information on the card or its packaging.

19 AT&T also submitted written comments suggesting that the proposed revisions to WAC 480-120-264 (5)(a)(vi) that change the term "card" to the term "service" are unnecessary. The commission also rejects this suggestion because the rule does not exclusively address prepaid calling cards; it encompasses other prepaid calling services. The proposed use of the word "service" enables more comprehensive consumer protection, aligns the subsection with the remainder of the rule, and essentially corrects a typographical error in the current rule. Additionally, some services provided via a card can also be recharged without the issuance of a brand new card upon expiration of the term of service. Furthermore, the use of the word "service" is consistent with WAC 480-120-264 (5)(a)(vii) and is congruent with the rule as a whole.

20 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission finds and concludes that it should adopt the rule as proposed in the CR-102 at WSR 10-10-080 and as modified by the clarification described in paragraph 15 of this order.

21 **CHANGES FROM PROPOSAL:** The commission addressed the written comments submitted by Verizon-MCI and AT&T earlier in this order. The suggested changes and the commission's reason for accepting or rejecting the suggested changes are discussed in paragraphs 15 through 18 of this order.

22 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the commission determines that WAC 480-120-264 should be amended to read as set forth in Appendix A, as a rule of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

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

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

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

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

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

ORDER

THE COMMISSION ORDERS:

23 The commission amends WAC 480-120-264 to read as set forth in Appendix A, as a rule of the Washington utilities and transportation commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

24 This order and the rule set out below, after being recorded in the register of the Washington utilities and transportation commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and 1-21 WAC.

DATED at Olympia, Washington, July 8, 2010.

Washington State Utilities and Transportation Commission
Jeffrey D. Goltz, Chairman
Patrick J. Oshie, Commissioner
Philip B. Jones, Commissioner

Appendix A

AMENDATORY SECTION (Amending Docket UT-060676, General Order R-540, filed 3/27/07, effective 4/27/07)

WAC 480-120-264 Prepaid calling services. (1) For the purposes of this section, prepaid calling services (PPCS) means any transaction in which a customer pays for service prior to use and applies only to those services where the number of available minutes decreases as the customer uses the service. Prepaid calling services do not include flat-rated basic local service that is billed in advance of use.

(a) PPCS may require the use of an access number or authorization code.

(b) This section excludes credit cards and cash equivalent cards. Services provided at pay telephones using these

cards are regulated under the provisions of WAC 480-120-263 (Pay phone service providers (PSPs)).

(2) PPCS providers must provide customers a without-charge telephone number staffed by personnel capable of:

(a) Responding to technical problems or questions related to their service twenty-four hours a day, seven days a week;

(b) Responding to general account-related questions during regular business hours; and

(c) Providing the commission's toll-free number and address to dissatisfied customers as required by WAC 480-120-165 (Customer complaints).

(3) Billing requirements for PPCS.

(a) A PPCS provider may charge only for the actual time a circuit is open for conversation. The tariff and presale document must define billing increments. The provider must not round up the length of conversation time for less than a full billing increment beyond that full increment.

(i) If a PPCS provider uses an increment based on a time measurement, the increment must not exceed one minute.

(ii) If a PPCS provider bills usage in "unit" measurements, it must clearly define units using both equivalent dollar amounts and time measurement. Unit billing increments cannot exceed the equivalent one minute rate.

(b) At the customer's request, a PPCS provider may add additional time to an existing account in exchange for an additional payment at a rate not to exceed those on file on tariff with the commission or at rates, terms and conditions pursuant to competitive classification. The PPCS provider must inform the customer of the new rates at the time of the recharge request.

(4) PPCS providers must maintain the following call-data for a minimum of twenty-four months:

(a) Dialing and signaling information that identifies the inbound access number called or the access identifier;

(b) The number of the originating phone when the information is passed to the PPCS provider;

(c) The date and time the call was originated;

(d) The duration or termination time of the call;

(e) The called number; and

(f) The personal identification number (PIN), or account number.

(5) Disclosure requirements - Prepaid calling services.

(a) A PPCS provider must disclose, prior to the sale, the following information:

(i) The PPCS provider's name as registered with the commission;

(ii) The "doing business as" name as registered with the commission, if applicable;

(iii) The maximum charge per billing increment. A PPCS provider charging varying rates for intrastate ~~((and))~~, interstate, and international calls must disclose all applicable rates;

(iv) The number of minutes or the value of the service and the rates from which the minutes may be determined;

(v) Charges for all services, including any applicable surcharges, fees, or taxes, and the method of application;

~~((+))~~ (vi) Expiration date, if applicable. If a ~~((card))~~ service expires after a set period of time from activation, the PPCS provider must specify the expiration date ~~((on))~~ of the

~~((card))~~ service. If an expiration date is not disclosed ~~((on))~~, the ~~((card-it))~~ service will be considered unexpired indefinitely; and

~~((+))~~ (vii) Recharge policy, if applicable. If a PPCS provider does not disclose the expiration date at the time service is recharged, the service will be considered unexpired indefinitely.

(b) A PPCS provider must disclose, at the time of purchase, the following information:

(i) The without-charge telephone number(s) a customer may use to resolve technical problems, service-related questions, and general account-related questions; and

(ii) Authorization code, if required, to access the service or, if applicable, the without-charge telephone number used to establish access capability.

(c) The information required to be disclosed in this subsection must be in the language in which the service is advertised.

(d) If the PPCS provider issues a card, all information contained in this subsection, with the exception of international rates, must be disclosed on the card or its packaging. International rates must be disclosed on the card, on its packaging, or via a without-charge telephone number. Disclosures required in (a)(i) and (vi), (b)(i) and (ii) of this subsection must be on the card.

(e) If the PPCS provider is not the entity that packages the services for sale to the public, it must require the company that does so, through a written agreement, to comply with the disclosure requirements of this section.

(6) Time of use disclosure requirements. The PPCS provider must:

(a) Announce at the beginning of each call the time remaining on the prepaid account or prepaid calling card; and

(b) Announce the time remaining at least one minute before the prepaid account balance is depleted.

(7) When a PPCS provider has failed to provide service at rates disclosed prior to the sale or quoted at the time an account is recharged, or the PPCS provider has failed to meet performance standards, it must provide refunds for any unused service or provide equivalent service credit when requested by a customer. Refunds or credits must equal the value remaining on the prepaid calling account. The customer may choose either the refund or equivalent service credit option.

(8) Performance standards for prepaid calling services. Each PPCS provider must ensure that:

(a) Customers can complete a minimum of ninety-eight percent of all call attempts to the called party's number. The PPCS provider will consider any busy signals or unanswered calls as completed calls.

(b) Customers can complete a minimum of ninety-eight percent of all call attempts to the PPCS provider. The PPCS provider will not consider any busy signals or unanswered calls as completed calls.

WSR 10-15-014
PERMANENT RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2010-02—Filed July 8, 2010, 12:15 p.m., effective August 8, 2010]

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

Purpose: This rule amends the exiting [existing] rule to: Allow other entities to act as the administrator for the joint underwriting association (JUA), allow the JUA board the discretion to indemnify the servicing company for acting on its behalf, change the composition of the board of the directors, change the reporting requirements of the JUA, change the circumstances under which the board may refuse or cancel coverage for a licensee, update citations and terms which have changed as result of statutory amendments, set forth the order of distribution of the assets of the JUA upon dissolution, and allow the JUA to distribute excess reserves.

Citation of Existing Rules Affected by this Order: Amending WAC 284-87-020, 284-87-050, 284-87-060, 284-87-080, 284-87-090, 284-87-100, 284-87-110, 284-87-130, 284-87-140, and 284-87-150.

Statutory Authority for Adoption: RCW 48.02.060 and 48.87.100.

Adopted under notice filed as WSR 10-12-101 on June 2, 1010 [2010].

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 10, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 10, Repealed 0.

Date Adopted: July 8, 2010.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Order R 93-18, filed 12/30/93, effective 1/30/94)

WAC 284-87-020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

"Association" means the joint underwriting association established pursuant to the provisions of chapter 48.87 RCW.

"Board" means the governing board of the association.

"Licensee" means any person or birth center facility licensed to provide midwifery services pursuant to chapters 18.46, 18.50, and ~~((18.88))~~ 18.79 RCW.

"Market assistance plan" or "MAP" means the voluntary consumer assistance plan established pursuant to the provisions of RCW 48.22.050.

"Member insurer" means any insurer that on or after July 25, 1993, possesses a certificate of authority to write medical malpractice, general casualty insurance, or both, within this state.

"Midwifery and birth center insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as a result of negligence or malpractice in rendering professional service by any licensee.

"Service ~~((insurer))~~ company" means any insurance company or person designated by the association ~~((and approved by the commissioner))~~ to ((issue policies pursuant to this)) act on behalf of the association under chapters 48.87 RCW and 284-87 WAC.

AMENDATORY SECTION (Amending Order R 93-18, filed 12/30/93, effective 1/30/94)

WAC 284-87-050 Administration. (1) The association ~~((shall))~~ must be administered by a governing board, subject to the supervision of the commissioner, and operated by a ~~((manager))~~ service company or companies appointed by the board.

(2) The board ~~((shall))~~ must consist of seven members. ~~((Four))~~ Five board members ~~((shall))~~ must be member insurers appointed by the commissioner. ~~((A fifth board member shall be the insurer designated as the service insurer for the association (or, if there is more than one service insurer, the fifth board member shall be such service insurer as the commissioner designates as the board member).))~~ The other two board members ~~((shall))~~ must be licensees who are appointed by the commissioner to so serve, neither of whom shall ~~((be interested))~~ have an interest, directly or indirectly, in any insurer except as a policyholder. Three of the original board members ~~((shall))~~ must be appointed to serve an initial term of three years, two ~~((shall))~~ must be appointed to serve an initial term of two years, and the remaining ~~((shall))~~ must be appointed to serve a one-year initial term. All other terms ~~((shall))~~ must be for three years or until a successor has been appointed. Not more than one member insurer in a group under the same management or ownership shall serve on the board at the same time. At least one of the ~~((four))~~ five insurers on the board ~~((shall))~~ must be a domestic insurer. Members of the board may be removed by the commissioner for cause.

(3) The association must indemnify each person serving on the board or any subcommittee thereof, each member insurer of the association, and each officer and employee of the association ~~((shall be indemnified by the association against))~~ all costs and expenses actually and necessarily incurred by him, her, or it in connection with the defense of any action, suit, or proceeding in which he, she, or it is made a party by reason of his, her, or its being or having been a member of the board, or a member or officer or employee of the association, except in relation to matters as to which he, she, or it has been judged in such action, suit, or proceeding to be liable by reason of ~~((willful))~~ willful misconduct in the

performance of his, her, or its duties as a member of such board, or member, officer, or employee of the association. This indemnification shall not be exclusive of other rights as to which such member, or officer, or employee may be entitled as a matter of law.

(4) The association at the discretion of the board may agree to indemnify its appointed service company or companies and its staff from all costs and expenses actually and necessarily incurred by them in defense of any action, suit, or proceeding in which they are made a party by reason of their being or having been a service company of the association, except in relation to matters as to which they have been judged by a court of competent jurisdiction, to have engaged in willful misconduct in the performance of their duties as a service company on its behalf by staff.

AMENDATORY SECTION (Amending Order R 93-18, filed 12/30/93, effective 1/30/94)

WAC 284-87-060 General powers and duties of the board. (1) Within thirty days after the appointment of its members by the commissioner, the board ~~((shall))~~ must prepare and adopt a plan of operation and bylaws consistent with this chapter, subject to approval by the commissioner. In a timely manner thereafter, the board ~~((shall))~~ must take all actions necessary to prepare the association to receive applications and issue policies, when and if the commissioner activates the association as provided in WAC 284-87-040. These actions ~~((shall))~~ must include the preparation of all necessary policy forms and rating information to be filed with the commissioner for approval and all necessary operating manuals and procedures to be followed.

(2) The board shall meet as often as may be required to perform the general duties of the administration of the association or on the call of the commissioner. Four members of the board shall constitute a quorum as long as at least one of ~~((whom shall be))~~ those present is a licensee board member.

(3) The board may appoint a ~~((manager))~~ service company or companies, who shall serve at the pleasure of the board, to perform any duties necessary or incidental to the proper administration of the association, including the hiring of necessary staff.

(4) The board shall annually furnish to ~~((all member insurers of the association and to))~~ the commissioner a written report of operations. All insurer members of the association may receive a copy of the report from the association upon request.

AMENDATORY SECTION (Amending Order R 93-18, filed 12/30/93, effective 1/30/94)

WAC 284-87-080 Statistics, records, and reports. (1) The association ~~((shall))~~ must maintain statistics on business written and shall make the following quarterly report to the commissioner:

- (a) Number of applications received by the association;
- (b) Number of applications accepted by the association and the total and average premiums charged, including the high and low premiums;
- (c) ~~((Number of risks declined;~~

~~((d) Number of risks conditionally declined and the number ultimately accepted after having been conditionally declined; and~~

~~((e))~~ Number of ((risks cancelled)) policies canceled; and

(d) Claims activity.

(2) In addition to statistics, the association ~~((shall))~~ must maintain complete and separate records of all business transactions, including copies of all policies and endorsements issued by the association, and records of reasons provided for each declination of coverage or cancellation of coverage, including the results of any on-site inspections, or investigations of applicants or insureds or their employees. Information concerning individual licensees ~~((shall))~~ must be kept confidential to the extent permitted by law.

(3) Regular reports of the association's operations ~~((shall))~~ must be submitted to all members of the board and to the commissioner, ~~((such))~~ the reports ~~((to))~~ must include, but not necessarily to be limited to, premiums written and earned, losses, including loss adjustment expense, paid and incurred, all other expenses incurred, outstanding liabilities, and, at least once a year, the proposed annual budget of the association for the next fiscal year.

(4) The books of account, records, reports, and other documents of the associations ~~((shall))~~ must be open to the commissioner for examination at all reasonable times.

(5) The books of account, records, reports, and other documents of the association shall be open to inspection by members only at ~~((such))~~ times and under ~~((such))~~ conditions as the board shall determine.

(6) The books of account of any and all servicing ~~((insurers))~~ companies may be audited by a firm of independent auditors designated by the board.

AMENDATORY SECTION (Amending Order R 94-11, filed 6/2/94, effective 7/3/94)

WAC 284-87-090 Eligibility of licensees for coverage. Any licensee that is unable to obtain midwifery or birthing center insurance with liability limits of at least one million dollars per claim and three million dollars per annual aggregate, or ~~((such))~~ other minimum level of mandated coverage as determined by the department of health, from the voluntary insurance market or from any market assistance plan organized pursuant to RCW 48.22.050, is eligible to apply for coverage through the association. The association's service ~~((insurer))~~ company or companies shall promptly process such application and, if the licensee is judged to be an acceptable insurable risk, offer coverage to the licensee. In view of the purpose of chapter 48.87 RCW, every licensee will be presumed to be an acceptable insurable risk for the association. To refuse or cancel coverage to any licensee meeting the other eligibility requirements of this section, the association must have the prior written approval of the commissioner. The commissioner will grant such approval only if the association demonstrates that ~~((extraordinary))~~ circumstances justify refusing or canceled coverage to ~~((such individual))~~ the licensee.

AMENDATORY SECTION (Amending Order R 94-11, filed 6/2/94, effective 7/3/94)

WAC 284-87-100 Standard policy coverage—Premiums. (1) All policies issued by the association (~~((shall))~~ must have liability limits of at least one million dollars per claim and three million dollars per annual aggregate, or (~~((such))~~) other minimum level of mandated coverage as determined by the department of health, and shall be issued for a term of one year.

(2) Premiums (~~((shall))~~ must be based on the association's rate filings approved by the commissioner in accordance with chapter 48.19 RCW. (~~((Such))~~ The rate filings shall provide for modification of rates for licensees according to the type, size, and past loss experience of each licensee, and any other differences among licensees that can be demonstrated to have a probable effect upon losses.

(3) Consistent with the nonprofit character of the association, rates for policies issued by the association (~~((shall))~~ must be set so that the expected profit (that is, premiums plus investment income minus the sum of expenses and losses) is zero.

(4) The association is exempt from the requirements of WAC 284-24-065.

AMENDATORY SECTION (Amending Order R 93-18, filed 12/30/93, effective 1/30/94)

WAC 284-87-110 Renewal of policies. (1) Policies written by the association will not automatically renew. To obtain continuing coverage by the association, a licensee must again satisfy initial eligibility requirements under WAC 284-87-090 at the end of the expiring policy term.

(2) The association shall notify covered licensees in writing at least (~~((forty-five))~~ ninety days prior to the expiration of a policy term of the need to submit a new application for coverage to the association to continue coverage.

(3) If the association fails to provide the required written notice, the existing policy shall continue in force until the association has provided the required notice. In such case, premium shall be charged the licensee on a pro rata basis for coverage during the extended coverage period.

AMENDATORY SECTION (Amending Order R 93-18, filed 12/30/93, effective 1/30/94)

WAC 284-87-130 Right of appeal. (1) Any applicant or insured, licensed pursuant to chapter 18.46, 18.50, or 18.88 RCW, shall have a right of appeal to the commissioner, including the right to appear (~~((personally))~~) before the commissioner or his or her designee, if requested by the person seeking appeal, from any decision by the board.

(2) Appeals to the commissioner under this provision shall be handled in accordance with chapters 48.04 and 34.05 RCW.

AMENDATORY SECTION (Amending Order R 93-18, filed 12/30/93, effective 1/30/94)

WAC 284-87-140 Cooperation of (~~((agents and brokers))~~ producers. All licensed (~~((insurance agents and bro-~~

~~kers shall))~~ producers must provide full cooperation in carrying out the aims and the operation of the association.

AMENDATORY SECTION (Amending Order R 93-18, filed 12/30/93, effective 1/30/94)

WAC 284-87-150 Commissions. The association shall pay commissions as established by the board on policies issued (~~((pursuant to))~~ under this chapter to the licensed (~~((agent or broker))~~ producer designated by the applicant.

NEW SECTION

WAC 284-87-155 Reserves and surplus. (1) The board shall determine and establish a minimum loss reserve account to offset infrequent severe losses.

(2) If the board, in its sole discretion, determines that the reserve account is in excess of an amount necessary to pay potential infrequent severe losses, the association may, but is not obligated to:

(a) Refund to the member insurers all or any portion of any assessment that was received from the member insurers in the same pro rata amount the member insurer was assessed and paid. No return to a member insurer may exceed the aggregate amount paid to the association by the member insurer.

(b) After all assessments received by the association from member insurers are refunded to the member insurers, the association may make a one-time premium adjustment to the insured licensees.

NEW SECTION

WAC 284-87-165 Distribution of assets upon dissolution of the association. If the association is deactivated or dissolved and has a positive asset balance, the excess funds will be distributed in the following order:

(1) For the purchase of prior acts coverage from the successor insurer for all active licensees insured by the association.

(2) For the return of one hundred percent of unearned premium to all active licensees insured by the association.

(3) For the return of remaining funds to the member insurers on a pro rata formula, based upon the total of all assessments paid in throughout the lifetime of the association's operation. Returns to a member insurer must not exceed the aggregate amount paid to the association by the member insurer.

(4) For the distribution of any remaining balance to active licensees insured by the association at the time of deactivation or dissolution, according to a pro rata formula based upon the total of all premiums paid to the association. Distribution amounts paid to a licensee must not exceed the aggregate amount paid to the association by the licensee. Pro rata amounts of less than twenty-five dollars will not be returned.

(5) Any remaining balance will be utilized at the discretion of the commissioner.

WSR 10-15-015
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed July 8, 2010, 2:01 p.m., effective August 8, 2010]

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

Purpose: New definitions were added to WAC 16-228-1010 to clarify the meaning of "properly secured," "loose bait," and "above ground," all in relation to specific rodent control rules. These definitions were necessary to better define how to safely and legally use rodenticides. Industry requested a revision to clarify current practices of indoor above floor treatments with rodenticides. The language was revised to match the Environmental Protection Agency (EPA) bait box requirements for outdoor above ground treatment and directed towards commercial use only. Homeowner use is covered by EPA. A new permit requirement was added for rodenticide tracking powder use.

The definition of a commercial vineyard was amended to include properties that both grow their own grapes and then use these grapes for their own winery.

Citation of Existing Rules Affected by this Order: Amending WAC 16-228-1010, 16-228-1380, 16-230-665, 16-231-335, 16-231-835, and 16-232-030.

Statutory Authority for Adoption: Chapters 15.58 and 17.21 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 10-08-113 on April 7, 2010.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 2, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, Repealed 0.

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

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

Date Adopted: July 8, 2010.

Dan Newhouse
Director

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-228-1010 What are the definitions that apply to this chapter? The definitions in this section apply throughout this chapter, unless the context requires otherwise:

(1) "Above ground" means situated on the surface of the ground, not to include treatment of below ground tunnels, burrows and/or nests.

(2) "Agricultural commodity" means any plant, or part of a plant, or animal, or animal product, produced by a person

(including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by people or animals.

~~((2))~~ (3) "Authorized agent" is any individual who is authorized to act on behalf of a certified applicator for the purpose of purchasing pesticides.

~~((3))~~ (4) "Bait box" for rodenticides is a box constructed of durable metal, wood, plastic, or other treated material. It shall be designed to hold rodent bait securely, allow rodents to enter and leave, and prevent unauthorized individuals and nonpest domestic animals from gaining access to the bait. Baits placed in industrial, commercial or other areas that are accessible to the public shall be contained in tamper resistant bait boxes. Fragile materials are unacceptable.

~~((4))~~ (5) "Bait station" may be any location where baits are placed to allow target pests to gain access to the bait.

~~((5))~~ (6) "Blossoming plants" means:

(a) When there are five or more open blooms per square yard on average in a given field; or

(b) When there are one or more open blooms per tree or vine in an orchard or vineyard; or

(c) When there are five or more open weed blooms per square yard on average for the area being measured for groundcover in orchards or vineyards, fence lines, ditch banks, or field, vineyard or orchard edges. This definition shall not apply to plants that are not attractive to bees (e.g., lentils, hops, peas (*Pisum sp.*), pears (second bloom) and potatoes). For the purposes of this definition, "bloom" means a flower head, raceme or spike with one or more open flowers.

~~((6))~~ (7) "Bulk fertilizer" is a commercial fertilizer, agricultural mineral, or lime, distributed in nonpackaged form.

~~((7))~~ (8) "Certified applicator" means any individual who is licensed as a commercial pesticide applicator, commercial pesticide operator, public operator, private-commercial applicator, demonstration and research applicator, or certified private applicator, or any other individual who is certified by the director to use or supervise the use of any pesticide which is classified by the EPA as a restricted use pesticide or by the state as restricted to use by certified applicators only.

~~((8))~~ (9) "Chemigation" means the application of any substance or combination of substances intended as a pesticide, plant or crop protectant or a system maintenance compound applied with irrigation water.

~~((9))~~ (10) "Commercial vineyard" means a parcel of land from which the grape crop is intended to be sold to a processor, or intended to be used for commercial wine making or intended for the commercial fresh market.

~~((10))~~ (11) A "complainant" is defined as a person who has requested an inspection of an area in which a pesticide violation is believed to have occurred.

~~((11))~~ (12) "Complete wood destroying organism inspection" means inspection for the purpose of determining evidence of infestation, damage, or conducive conditions as part of the transfer, exchange, or refinancing of any structure

in Washington state. Complete wood destroying organism inspections must also include any wood destroying organism inspection that is conducted as the result of telephone solicitation by an inspector, pest control, or other business, even if the inspection would fall within the definition of a specific wood destroying organism inspection.

~~((12))~~ (13) "Controlled disposal site" means any place where solid or liquid waste is disposed of: Provided that the area has been designated as a disposal site for waste materials by the appropriate jurisdictional agency. The site must be fenced, barricaded or otherwise enclosed or attended by some person in charge to control the access of domestic animals, pets, and unauthorized persons.

~~((13))~~ (14) "Department" means the Washington state department of agriculture.

~~((14))~~ (15) "Diluent" means a material, liquid or solid, serving to dilute the pesticide product to the application rate for adequate coverage (such as water).

~~((15))~~ (16) "Director" means the director of the department or a duly authorized representative.

~~((16))~~ (17) "Dry pesticide" is any granular, pelleted, dust or wettable powder pesticide.

~~((17))~~ (18) "EPA" means the United States Environmental Protection Agency.

~~((18))~~ (19) "EPA restricted use pesticide" means any pesticide classified for restricted use by the administrator, EPA.

~~((19))~~ (20) "Fertilizer" as included in this chapter means any liquid or dry mixed fertilizer, fertilizer material, specialty fertilizer, agricultural mineral, or lime.

~~((20))~~ (21) "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act as amended (61 stat. 163, 7 U.S.C. Sec. 136 net seq.).

~~((21))~~ (22) "Floor level" means the floor upon which people normally walk—not shelves, ledges, overhead beams, tops of stacked materials, surfaces of equipment, or similar places.

~~((22))~~ (23) "Food service establishment" means any fixed or mobile restaurant; coffee shop; cafeteria; short order cafe; luncheonette; grill; tearoom; sandwich shop; soda fountain; tavern; bar; cocktail lounge; nightclub; roadside stand; industrial-feeding establishment; retail grocery; retail food market; retail meat market; retail bakery; private, public, or nonprofit organization routinely serving food; catering kitchen; commissary or similar place in which food or drink is prepared for sale or for service on the premises or elsewhere; and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

~~((23))~~ (24) "Fumigant" means any substance or combination of substances that produce gas, fumes, vapors, or smoke, and is used to kill pests in some kind of enclosure.

~~((24))~~ (25) "High volatile esters" are phenoxy hormone-type herbicides with five or less carbon atoms in the ester group, such as, but not limited to, methyl, ethyl, isopropyl, n-butyl, isobutyl and n-pentyl.

~~((25))~~ (26) "Highly toxic pesticide" for the purpose of this chapter, means any pesticide that conforms to the criteria in 40 C.F.R. Sec. 156.10 for toxicity Category I due to oral, inhalation or dermal toxicity.

~~((26))~~ (27) "Landscape application" means an application by a certified applicator of any EPA registered pesticide to any exterior landscape plants found around residential property, commercial properties such as apartments or shopping centers, parks, golf courses, schools including nursery schools and licensed day cares, or cemeteries or similar areas. This definition shall not apply to: (a) Applications made by certified private applicators; (b) mosquito abatement, gypsy moth eradication, or similar wide-area pest control programs sponsored by governmental entities; and (c) commercial pesticide applicators making structural applications.

~~((27))~~ (28) "Loose bait" means pellet, grain, seed meal, liquid or any other form of bait that can be spilled or scattered, including bait packaged in a place pack. Loose bait does not include single-block, paste or other single-piece types of bait.

(29) "Low volatile esters" are phenoxy hormone-type herbicides with more than five carbon atoms in the ester group.

~~((28))~~ (30) "Person" is defined as any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

~~((29))~~ (31) A "person aggrieved" by a violation is defined as a person who has reasonable grounds to believe that he or she has been subjected to harm or an unreasonable risk by such a violation.

~~((30))~~ (32) "Pollen shedding corn" means that stage of growth when ten percent or more of the corn plants in any one quarter portion of the field are showing spike anthers.

~~((31))~~ (33) "Positive identification" means a photo identification document issued by a U.S. government agency or affiliated jurisdiction (states, tribes, territories). Acceptable photo identification documents are: A driver's license, a passport, a military ID card or an immigration green card. Exception: Nonphoto identification documents may be allowed for religious groups that prohibit members from having their picture taken. In this case, two forms of identification are required, one of which must be a government issued document with a signature (e.g., Social Security card). Other nonphoto identification must identify the holder by name and address (e.g., utility bill).

~~((32))~~ (34) "Private applicator" means a certified applicator who uses or is in direct supervision of the use of any pesticide classified by the EPA or the director as a restricted use pesticide for the purposes of producing any agricultural commodity and for any associated noncrop application on land owned or rented by the private applicator or the applicator's employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on the land of another person.

~~((33))~~ (35) "Private-commercial applicator" means a certified applicator who uses or supervises the use of any pesticide classified by the EPA or the director as a restricted use pesticide for purposes other than the production of any agricultural commodity on lands owned or rented by the applicator or the applicator's employer.

~~((34))~~ (36) "Properly secured" means firmly attached and fixed to a floor or other surface so that animals and children cannot overturn the bait box or displace the bait. In the

case of liquid baits, the bait container must be firmly attached and fixed to a floor surface only.

~~((37))~~ (37) "Specific wood destroying organism inspection" means an inspection of a structure for purposes of identifying or verifying evidence of an infestation of wood destroying organisms prior to pest management activities.

~~((35))~~ (38) "State restricted use pesticide" means any pesticide determined to be a restricted use pesticide by the director under the authority of chapters 17.21 and 15.58 RCW.

~~((36))~~ (39) "Structural pest inspector" means any individual who performs the service of conducting a complete wood destroying organism inspection or a specific wood destroying organism inspection.

~~((37))~~ (40) "Unreasonable adverse effects on the environment" means any unreasonable risk to people or the environment taking into account the economic, social and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

~~((38))~~ (41) "Use restricted pesticide" means any pesticide determined by the director to need further state restrictions on use under the authority of chapters 17.21 and 15.58 RCW. This designation does not change federal or state restricted use classifications.

~~((39))~~ (42) "Waste pesticide" is any pesticide formulation which cannot be used according to label directions in Washington state because of cancellation or suspension of its federal or state registration, or deterioration of the product or its label, and any pesticide formulation whose active ingredients are not clearly identifiable because of label deterioration or because the pesticide is not stored in its original container.

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1380 What are the ~~((regulations))~~ requirements for application of ~~((vertebrate))~~ rodent control pesticides? ~~((Vertebrate))~~ Rodent control pesticides shall be used in and around structures only under the following conditions, provided that the use of rodent control baits registered for home and garden use only, is exempt from this section:

(1) ~~((Vertebrate control pesticides))~~ Bait shall only be placed ~~((only))~~ in locations ~~((that are))~~ not readily accessible to ~~((nonpest animals,))~~ children, ~~((and unauthorized persons, and in a manner that shall preclude contamination of food, feed, drugs, and other consumer commodities. Exposure of rodenticides baits within buildings shall not be above floor levels))~~ pets and nontarget wildlife, provided that when properly secured, a locked and/or sealed tamper-resistant bait box may be used in accessible locations.

(2) ~~((Baits shall be colored or otherwise formulated so that they will be identifiable from foods common to the establishment in which the bait is placed.))~~ Locked bait boxes are required for all outdoor, aboveground bait placement.

(3) ~~((When the use of bait boxes is necessary to ensure that baits are not readily accessible to nonpest animals, children, and unauthorized persons, the bait boxes shall be of sturdy construction and tamper resistant. Baits placed in industrial, commercial or other areas that are accessible to the~~

public shall be contained in tamper resistant bait boxes and such bait boxes shall be secured in such a way that nonpest animals, children and unauthorized persons cannot displace or remove the baits out of such bait boxes. Bait boxes shall be labeled clearly with letters on contrasting background showing the following information:

~~(a) Any information required by the EPA or Washington state registered label for the bait or the concentrate from which it was formulated.~~

~~(b) The name of the active ingredient(s).~~

~~(c) The name of the firm and/or certified applicator, address, and the telephone number.)~~ Bait shall not be placed in a manner that can contaminate, or be easily translocated to food, feed, drugs, or other consumer commodities. Spilled bait must be cleaned up immediately.

~~(4) ((Containers used for exposing vertebrate control baits to pests shall be composed of tough, nonabsorbent, corrosion resistant materials and designed so they cannot be readily overturned or carried off by pest animals. Those containers that are used for exposing vertebrate control pesticides outside of bait boxes shall bear a legible warning label with wording not less restrictive than requirements on bait boxes being used as per WAC 16-228-1380(3), (except for the size of lettering). Food containers, such as "meat boats" and "souffle cups" are unacceptable. Containers used for liquid bait exposure shall be water and/or liquid impervious.))~~ Loose bait, whether contained in a bait box or not, shall not be placed above floor levels, including but not limited to suspended ceilings, shelves, ledges, cupboards and counters. Except that, loose bait may be placed on the floor of an attic, including unfinished walking surfaces, or bottom surfaces in conformance with all other requirements of this section.

~~(5) All ~~((vertebrate control pesticide stocks, when not in use or when unattended, shall be kept in locked storage or locked service vehicles))~~ bait boxes and containers used for bait placement shall be of sturdy construction, composed of durable, nonabsorbent, corrosion resistant material and designed to prevent overturning. All bait containers holding liquid bait shall be liquid impervious and shall be properly secured.~~

~~(6) All bait boxes and containers used for ~~((storing or transporting vertebrate control pesticides shall bear an EPA or department registered label))~~ bait placement shall be labeled with letters on contrasting background and maintained with the following information clearly legible on the outside of the bait box or container:~~

~~(a) The name, physical address, and telephone number of the company and/or certified applicator.~~

~~(b) The name, Environmental Protection Agency (EPA) registration number, and active ingredient(s) of the rodent control pesticide product.~~

~~(7) When detection baits without pesticides are placed in bait containers, the container must clearly identify that the contents are not a pesticide.~~

~~((7) Applicator's kits which contain vertebrate control pesticides))~~ (8) Rodenticide bait, when in use to fill bait containers shall be handled with ~~((extra))~~ caution ~~((and))~~ according to the label, shall not be left unattended where children ~~((or other unauthorized persons))~~ or nontarget animals might

~~((remove))~~ be exposed to the contents and be in a container that bears an EPA registered label.

~~((8))~~ (9) Upon completion of a baiting operation, all bait ((boxes, containers, and/or throw bags)), if ((they)) it may become readily accessible to the public, shall be recovered ((for disposal in an approved manner)) and disposed of according to the product label.

~~((9) Wherever poisoned carcasses jeopardize public sanitation, or create a health hazard to wildlife, domestic animals, or the public, they shall be recovered and disposed of by burning, burying not less than three feet below the soil surface, or placed in proper waste containers and delivered to an approved disposal site.)~~ (10) Rodenticide tracking powders shall not be used in any manner that will expose people, non-target animals, food, feed, drugs, or other consumer commodities to the powder. The use of rodenticide tracking powders is prohibited in or on residential structures, except by written permission of the Washington state department of agriculture. Applicators who wish to use a rodenticide tracking powder in or on a residential structure must submit a request in writing to be received by the department at least seven days prior to the intended application date. The written request must include:

(a) The name, address, and telephone number of the occupants of the structure.

(b) The date and time of the intended application.

(c) The specific locations in or on a structure and the means by which the rodenticide tracking powder will be applied.

(d) A justification for the need to use the rodenticide tracking powder.

(e) What steps will be taken to ensure the rodenticide tracking powder does not contaminate any living area or otherwise result in an exposure to people or nontarget animals.

(11) Rodenticide tracking powder that contaminates an unintended location must be immediately and thoroughly cleaned up according to label instructions, or in the absence of label instructions, according to instructions obtained from the manufacturer.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-230-665 What are the restrictions on aerial applications near vineyards? (1) Aerial application of use restricted herbicides is prohibited within one mile of any commercial vineyard: Provided, That the Washington state department of agriculture may approve written requests and issue permit for aerial application of use restricted herbicides that may be applied to lands located one-half to one mile from commercial vineyards: Provided further, That no distance restrictions shall apply to aerial applications of use restricted herbicides near vineyards during the grape dormant season if written permission of the vineyard owner/manager is obtained. EXCEPTIONS are found in Franklin and Grant County restrictions.

(2) Commercial vineyard means a parcel of land from which the grape crop is intended to be sold to a processor, or intended to be used for commercial wine making, or intended for the commercial fresh market.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-335 What are the restrictions on applications near vineyards? (1) Aerial applications of use restricted herbicides are prohibited within one mile of any commercial vineyard in the area under order: Provided, That aerial application of use restricted herbicides to lands located within one-half mile to one mile from commercial vineyards shall be considered through written request to the Washington state department of agriculture.

(2) Commercial vineyard means a parcel of land from which the grape crop is intended to be sold to a processor, or intended to be used for commercial wine making, or intended for the commercial fresh market.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-231-835 What are restrictions for aerial applications near vineyards? (1) Aerial application of use restricted herbicides is prohibited within one mile of any commercial vineyard in the area under order: Provided, That aerial application of use restricted herbicides to lands located within one-half mile to one mile from commercial vineyards will be considered through written request to the Washington state department of agriculture.

(2) Commercial vineyard means a parcel of land from which the grape crop is intended to be sold to a processor, or intended to be used for commercial wine making, or intended for the commercial fresh market.

AMENDATORY SECTION (Amending WSR 07-11-041A, filed 5/9/07, effective 6/9/07)

WAC 16-232-030 What are the restrictions on aerial applications near vineyards? (1) Aerial applications of use restricted herbicides are prohibited within one mile of any commercial vineyard: Provided, That aerial application of use restricted herbicides to lands located within one-half to one mile from commercial vineyards will be considered through written request of the Washington state department of agriculture.

(2) Commercial vineyard means a parcel of land from which the grape crop is intended to be sold to a processor, or intended to be used for commercial wine making, or intended for the commercial fresh market.

WSR 10-15-019

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed July 9, 2010, 7:29 a.m., effective August 9, 2010]

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

Purpose: Renewal of driver's license or identicard by electronic commerce—Eligibility. Remove the requirement for notice of eligibility for renewal of driver's license or identicard by electronic commerce and to change eligibility requirements for applicants to renew driver's licenses by elec-

tronic commerce. Eligibility for renewal of driver's license by electronic commerce is amended to raise the maximum age for renewal by electronic commerce from age sixty-five to age seventy.

Citation of Existing Rules Affected by this Order: Amending WAC 308-104-019.

Statutory Authority for Adoption: RCW 46.01.110, 46.20.117, and 46.20.120.

Adopted under notice filed as WSR 10-11-124 on May 19, 2010.

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

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

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

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

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

Date Adopted: July 9, 2010.

Walt Fahrer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-16-012, filed 7/23/09)

WAC 308-104-019 Renewal of driver's license or identicard by electronic commerce—Eligibility. An applicant for a driver's license renewal or identicard renewal may apply by electronic commerce if ~~((he or she has received an authorization notice from the department))~~ permitted under this section.

(1) ~~((The department may send an authorization notice to))~~ A person whose valid driver's license is about to expire may be allowed to renew by electronic commerce if the person:

(a) Is eligible to renew his or her driver's license by electronic commerce under the provisions of RCW 46.20.120 (3)(b) or (4)(b);

(b) Has previously been issued a digital driver's license;

(c) Is at least twenty-four and not more than ~~((sixty-five))~~ seventy years of age;

(d) Has a valid Social Security number on file with the department;

(e) Has a valid mailing address on his or her driving record as maintained by the department;

(f) Does not have a commercial driver's license, enhanced driver's license or identicard, instruction permit, or agricultural permit;

(g) Has not paid a fee owed to the department with a check that has been dishonored;

(h) Has not failed to appear, respond, or comply with the terms of or in response to a traffic citation or notice of traffic infraction; and

(i) Does not have any actions pending against his or her driver's license or driving privileges.

(2) A person applying for driver's license renewal by electronic commerce must:

(a) Certify that he or she has had no mental or physical condition or is not taking any medication which could impair his or her ability to operate a motor vehicle safely;

(b) Make the necessary certification under WAC 308-104-010(2); and

(c) Complete the required application and pay all applicable fees.

(3) ~~((The department may send an authorization notice to))~~ A person whose valid identicard is about to expire may renew by electronic commerce if the person:

(a) Is eligible to renew his or her identicard by electronic commerce under the provisions of RCW 46.20.117 (3)(b);

(b) Is at least twenty-four years of age; and

(c) Has previously been issued a digital identicard.

(4) A person applying for identicard renewal by electronic commerce must complete the required application and pay all applicable fees.

(5) The department may specify the means and establish procedures by which a person may make an application under this section.

WSR 10-15-020

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed July 9, 2010, 7:30 a.m., effective August 9, 2010]

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

Purpose: Commercial driver's license—Out-of-service order violations. Adopts minimum periods of disqualification for persons violating out-of-service orders while operating commercial motor vehicles. Adds a new section to chapter 308-100 WAC.

Statutory Authority for Adoption: RCW 46.01.110, 46.25.140.

Adopted under notice filed as WSR 10-11-125 on May 19, 2010.

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

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

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

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

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

Date Adopted: July 9, 2010.

Walt Fahrer
Rules Coordinator

NEW SECTION

WAC 308-100-135 Out-of-service order violations.

As required for compliance with federal regulation 49 CFR 383.51(e), the Department may not impose a minimum period of disqualification of less than:

(1) One hundred eighty days when disqualifying a person from operating a commercial motor vehicle under RCW 46.25.090 (6)(a); or

(2) Two years when disqualifying a person from operating a commercial motor vehicle under RCW 46.25.090 (6)(b).

WSR 10-15-021

PERMANENT RULES

WESTERN WASHINGTON UNIVERSITY

[Filed July 9, 2010, 1:44 p.m., effective August 9, 2010]

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

Purpose: The purpose of the amended rule is to provide updated and clear guidance on parking and traffic rules and regulations for students, faculty, staff, and guests of Western Washington University. Highlights of the amendments include: Updates to definitions; a new section on administrative responsibility; and broadens the purpose and application section to encourage sustainable transportation. Also filed is a repeal to chapter 516-14 WAC, Appeals from parking violations. The chapter on appeals from parking violations has been incorporated into the parking chapter for improved cohesiveness and reduces the number of members on the parking appeals review board to better expedite the appeal process.

Citation of Existing Rules Affected by this Order: Repealing chapter 516-14 WAC, Appeals from parking violations; and amending WAC 516-12-400, 516-12-410, 516-12-420, 516-12-430, 516-12-440, 516-12-450, 516-12-460, 516-12-470, and 516-12-480.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Other Authority: RCW 28B.10.560.

Adopted under notice filed as WSR 10-09-076 on April 19, 2010.

Changes Other than Editing from Proposed to Adopted Version: WAC 516-12-430, amend the maximum time allowed for parking government-owned vehicles from two hours to four hours.

WAC 516-12-480(7), add the language "as a form of appeals bond" to explain the reason for payment of a citation prior to the appeals board review.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 9, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 9, Repealed 1.

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

Date Adopted: July 8, 2010.

Suzanne M. Baker
Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-07-045, filed 3/14/02, effective 4/14/02)

WAC 516-12-400 Definitions. As used in this chapter, (~~and chapters 516-13 and 516-14 WAC,~~) the following words and phrases mean:

(1) "All lot permit assignment." A parking lot assignment that allows the driver access to campus from a majority of all university parking lots with exceptions. Exceptions are identified on the guidelines issued and are subject to change annually, unless impact to the lot or the campus warrants an earlier change.

(2) "Appeals board." The board that hears citation and notice of infraction appeals for parking, impoundment, bicycle, and skateboard violations.

(3) "Area designator."((:)) A tag affixed to a permit indicating a parking lot assignment for a vehicle.

~~((2))~~ (4) "Automobile."((:)) Any motorized vehicle having four or more wheels.

~~((3))~~ (5) "Board."((:)) The board of trustees of Western Washington University.

~~((4))~~ (6) "Campus."((:)) All state lands devoted to the educational or research activities of the university.

~~((5))~~ (7) "((Disabled)) Disability space."((:)) A parking space identified with a sign bearing the international ~~((disabled))~~ disability symbol that is restricted at all hours to use by vehicles displaying both a valid WWU ~~((disabled))~~ parking permit and WWU disability parking permit.

~~((6))~~ "Dismount zone": Any area designated by signs or symbols as a place where bicycles shall not be ridden but may be walked.

~~((7))~~ (8) "Electric personal assistive mobility device (EPAMD)." A self-balancing device with two wheels not in tandem, designed to transport only one person by an electric propulsion system with an average power of seven hundred fifty watts (one horsepower) having a maximum speed on a paved level surface, when powered solely by such a propulsion system while ridden by an operator weighing one hundred seventy pounds, of less than twenty miles per hour. This term is intended to include other similar devices as defined in RCW 46.04.304 as now or hereafter amended.

(9) "Employee."((:)) Any individual appointed to the faculty, staff, or administration of the university.

~~((8))~~ (10) "Habitual offender."((:)) The driver of a vehicle license number or permit number accruing ~~((ten))~~

eight or more paid or unpaid parking citations within a twelve-month period.

~~((9)) (11) "Holiday" or "university holiday."((:)) A day ((when all university offices and/or facilities are closed (e.g., Thanksgiving Day, Christmas Day, New Year's Day))) designated by the university as a holiday or university holiday. ((Intercession)) Intercession or quarter breaks are not considered holidays. See definition of ((intercession)) intercession.~~

~~((10)) (12) "Impoundment." The status of a vehicle that has been seized and kept in legal custody by either being immobilized with a wheel lock device or towed from campus.~~

~~(13) "((Intercession)) Intercession."((:)) A period of time in which classes or final exams are not in session. ((Except for holidays that may fall within this time period, the)) University business offices ((of the university)) are open during this time, except during holidays.~~

~~((11) "Impoundment": A state in which a vehicle has been seized and kept in legal custody by either being immobilized with a wheel lock device or towed from campus.~~

~~((12)) (14) "Loading zone." A space in which parking is allowed for a specific time period and which is identified by signage as a loading zone.~~

~~(15) "Meter feeding."((:)) Purchase of additional time beyond the time limit posted on the parking meters. This practice is prohibited since use of meters is intended to serve short-term parking needs.~~

~~((13)) (16) "Metered parking." A parking space where drivers pay to park for a specified time period. Drivers pay to park in the space for a length of time by purchasing time at a meter or pay box.~~

~~(17) "Motor vehicle" or "vehicle." Every vehicle that is self-propelled; for example cars, trucks, and motorcycles. Motor vehicle includes a neighborhood electric vehicle as defined in RCW 46.04.357. Motor vehicle also includes a medium-speed electric vehicle as defined in RCW 46.04.295. Electric personal assistive mobility devices and power wheelchairs are not considered motor vehicles.~~

~~(18) "Motorcycle."((:—Any two or)) A motor vehicle designed to travel on not more than three ((wheeled motorized vehicle.~~

~~(14) "Motor vehicle" or "vehicle": Any automobile or motorcycle.~~

~~(15) "Parking appeals board": The board which hears parking citation appeals.~~

~~(16) "Public safety director": The person appointed public safety director of the university by the president or designee.~~

~~(17) "Parking space": A parking area designated by a sign, wheelstop, white painted lines, and/or white traffic buttons)) wheels in contact with the ground on which the driver rides astride the motor unit or power train and is designed to be steered with a handle bar, but excluding a farm tractor, a power wheelchair, an electric personal assistive mobility device, and a moped. Refer to chapter 516-13 WAC for further information.~~

~~(19) "Parking services." A unit of the public safety department responsible for the parking on campus property.~~

~~(20) "Pass." An event parking pass issued by the university, a university bus pass issued by Whatcom transportation~~

authority and distributed by the university, or other valid parking pass issued by parking services.

~~(21) "Pay station." An automatic kiosk that issues parking permits from a free-standing, unattended machine.~~

~~(22) "Pedestrian." Any person who is afoot or who is using a wheelchair, a powered wheelchair, or a powered scooter for persons with disabilities.~~

~~((18)) (23) "Permit."((:—Any special or temporary)) An unexpired parking permit ((authorized)) issued by ((the public safety director)) parking services and properly displayed on a vehicle.~~

~~((19)) (24) "President."((:)) The president of Western Washington University.~~

~~((20)) (25) "Prohibited areas."((:—An area in which vehicular traffic and/or parking is prohibited according to the times posted.)) Areas other than those designated for parking or a roadway.~~

~~((21)) (26) "Public safety department."((:)) The ((university public safety department)) office consisting of parking services, university police, lockshop, and sustainable transportation.~~

~~((22)) (27) "Public safety director." The person appointed public safety director of the university by the president or designee.~~

~~(28) "Registered volunteer." An individual who is registered with the university's human resources department to perform assigned or authorized volunteer duties as determined by a department of the university.~~

~~(29) "Student."((:)) Any person enrolled in the university as a student.~~

~~((23) "Parking and transportation services": The parking and transportation services of the university.~~

~~(24) "Time-limited parking space": A space in which parking is allowed for a specific time period.~~

~~((25)) (30) "University."((:)) Western Washington University.~~

~~((26) "Valid permit": An unexpired parking permit authorized by the public safety director, properly registered and displayed on the vehicle.~~

~~((27)) (31) "University business assignment." A parking assignment that allows the driver access to specific lots on campus. The specific lots are identified on the guidelines issued and are subject to change annually, unless impact to the lot warrants a change.~~

~~(32) "Visitors."((:—Persons)) People physically present on campus who are ((neither)) not employees, registered volunteers, or students ((and who visit the campus only on occasional basis)).~~

~~((28)) (33) "Walk zone." Any area designated by signs or symbols as a place where bicycles, skateboards, and other regulated devices cannot be ridden during specified periods.~~

~~(34) "Wheelstop."((:)) A cement or metal barrier ((approximately eight inches high and six feet long)) used to define a parking space.~~

AMENDATORY SECTION (Amending Resolution No. 85-05, filed 7/2/85)

WAC 516-12-410 Purpose and application. The purpose of these regulations is to facilitate safety and access to

and around campus by users. These regulations apply to anyone seeking motor vehicle access to campus. Specifically these regulations are intended:

(1) To ((facilitate the work of the university-)) regulate parking by assigning limited parking space and hours of operation for the most efficient use;

(2) To ((assign the limited available space for the most effective use-)) regulate motor vehicles and minimize traffic disturbances on campus;

(3) To protect ((and control)) pedestrians ((and vehicular traffic-));

(4) To assure access at all times for emergency traffic(-);

(5) ((To regulate parking and minimize traffic disturbance during class hours-

)) To facilitate the work of the university by allowing access for its vehicles given limited parking resources;

(6) To encourage sustainable transportation, including travel to the university by means other than single occupancy vehicles (SOV) due to the limited ability to park on campus; and

(7) To generate resources to establish and manage suitable, self-sustaining parking space and facilities through a principled and fairly administered process.

AMENDATORY SECTION (Amending WSR 02-07-045, filed 3/14/02, effective 4/14/02)

WAC 516-12-420 Authority. The board of trustees of Western Washington University is granted statutory authority under ~~((Title 28B of the Revised Code of Washington))~~ RCW 28B.10.560 to establish regulations to govern pedestrian and vehicular traffic and parking on the campus of the university. ~~((The administration of the parking regulations and moving violations is the responsibility of the public safety director.~~

(1) All regulations in this chapter and all motor vehicle and other traffic laws of the state of Washington will apply on the campus-

(2) The traffic code of the city of Bellingham will apply on city streets which cross the campus-

(3) The public safety director is authorized to:

(a) Issue and/or sell parking permits to employees, students, guests, visitors, and others when necessary, and to provide special parking for the physically disabled-

(b) Impose and/or suspend traffic and parking regulations and restrictions when appropriate to the mission of the university-

(c) Erect signs, barricades, and other structures to designate and mark the various parking or no parking areas on campus; and to paint marks and other directions on the streets and roadways for the regulation of traffic and parking-

(d) Establish procedures, including time schedules and deadlines, to govern the purchase of annual, academic year, and quarterly permits, and to assign the limited parking spaces-

(4) The authority conferred upon the public safety director under this chapter may be delegated by the public safety director to other personnel within parking and transportation

services under guidelines established by business and financial affairs-

(5) The university reserves the right to change or close, either temporarily or permanently, any campus parking area. Notice of change will be provided whenever practical-))

NEW SECTION

WAC 516-12-425 Administrative responsibility. The administration of parking regulations and moving violations is the responsibility of the public safety director.

(1) The public safety director is authorized to:

(a) Issue and sell parking permits to employees, students, guests, visitors, and others when necessary, and to provide special parking for individuals with disabilities.

(b) Impose or suspend traffic and parking regulations and restrictions when appropriate to the mission of the university, such as commencement.

(c) Erect signs, barricades, and other structures to designate the various parking or no parking areas on campus; and to paint markers and other directions for the regulation of traffic and parking.

(d) Establish procedures to govern the purchase and distribution of annual, academic year, quarterly permits and other permits, and to assign parking spaces.

(e) Change or close, either temporarily or permanently, any campus parking area. Notice of change will be provided whenever practical.

(2) The authority of the public safety director under this chapter may be delegated to other personnel within the public safety department.

AMENDATORY SECTION (Amending WSR 02-07-045, filed 3/14/02, effective 4/14/02)

WAC 516-12-430 General regulations. (1) ~~((The registered owner(s) and operator of a vehicle or the person to whom a permit is issued involved in a violation of these regulations will be jointly and severally responsible for the violation-~~

(2) All vehicles, attended or unattended, must display a valid Western Washington University parking permit when parked on the campus unless parked in a metered parking space (with meter payment) or a time-limited space-

(3) Policy on assignments to parking lots will be established by the public safety director-

(4)) All regulations in this chapter and all motor vehicle and other traffic laws of the state of Washington apply on the campus-

(2) The traffic code of the city of Bellingham applies on city streets which cross the campus-

(3) All vehicles, attended or unattended, must display a valid Western Washington University parking permit or pass when parked on the campus, unless the vehicle is:

(a) Parked in a metered parking space with meter payment;

(b) Parked in a loading zone in compliance with posted limits; or

(c) Parked in a lot that does not require a permit during specified times as posted-

(4) The person who obtains a permit and the registered owner of the vehicle are responsible for assuring that the vehicle, regardless of who drives it, is parked in conformance with these regulations.

(5) If a parking permit holder cannot locate a parking space in the assigned lot, ~~(he/she)~~ the holder may park in the next nearest parking lot and then must call ~~(the)~~ parking ~~(and transportation)~~ services ~~(office)~~.

(6) Motorcycle permit holders ~~(will go to the next nearest)~~ must park in areas designated for motorcycles ~~(lot)~~.

~~((5))~~ (7) The university reserves the right to refuse parking privileges to anyone who has:

- (a) Had a permit revoked.
- (b) Falsified a parking application or registration.
- (c) Counterfeited or altered an area designator or permit.
- (d) Failed to pay outstanding citations.
- (e) Been identified as a habitual offender.
- (f) Been found to be in possession of or using a lost or stolen permit.

(g) Removed a wheel lock without authorization of parking ~~(and transportation)~~ services.

~~((6))~~ (h) Been trespassed from campus.

(i) Failed to comply with parking services directions.

(j) Damaged university property while driving or parking on campus.

(k) Verbally abused or assaulted staff.

(8) The speed limit on campus is ~~((40 mph))~~ ten miles per hour or as posted. ~~(Vehicles)~~ Drivers must ~~(be operated)~~ operate vehicles in a careful and prudent manner at all times and must ~~(be operated in compliance)~~ comply with established speed limits.

(9) Drivers of vehicles must obey all regulatory signs and comply with directions given by ~~(members of)~~ parking ~~(and transportation)~~ services and ~~(officers of the)~~ public safety ~~(department in the control and regulation of parking and traffic)~~ staff and their designees.

~~((7) The operator)~~ (10) Drivers of ~~((a))~~ vehicles must yield the right of way to pedestrians ~~(crossing streets and roadways)~~ within the campus~~(, and)~~. This includes, but is not limited to, pedestrians crossing streets, roadways, and parking areas within the campus. Operators must also yield to pedestrians at intersections ~~((or))~~, clearly marked crosswalks, or city streets which cross the campus~~(. Pedestrians must not cross any street or roadway except at an intersection or clearly marked crosswalk. Pedestrians must utilize sidewalks where provided on streets and roadways. If no sidewalk is provided, pedestrians will utilize the extreme left-hand side and move to their left and clear of the roadway or street upon meeting an oncoming vehicle)~~.

~~((8))~~ (11) Government-owned vehicles ~~(owned by or assigned on a permanent basis to administrative units on campus and)~~ bearing ~~((“E,” “B” or “M”))~~ government license plates ~~((or a university insignia))~~ may be parked in ~~((“G” or “C” lots))~~ nonreserved spaces for ~~((brief periods))~~ a maximum of four hours while the driver is on university business. Long-term parking is not permitted, nor is any parking allowed in reserved spaces except when a space is designated for that specific vehicle. ~~((University))~~ Such vehicles may be parked in metered spaces provided that meter regulations are observed. Violations incurred will be the responsibility of the

driver. All operators of these or other ~~((state))~~ government-owned vehicles will abide by all traffic and parking regulations.

~~((9))~~ (12) No person may utilize any vehicle parked on campus as a living unit without specific approval from the public safety director. Violators will be cited ~~((and/))~~ or towed.

~~((10))~~ (13) Vehicles are to be maintained in operating condition at all times on university property, except those in a garage, research facility, or automotive shop designated for parking such vehicles by the public safety director. Vehicle repairs or maintenance will not be made on campus unless authorization has been received in advance from the public safety director or designee.

(14) A vehicle which appears to be abandoned, with or without a current ~~((Western Washington University registration))~~ parking permit, pass, or license plates, may be impounded after an attempt is made to locate and notify the owner of the impending action.

~~((11))~~ (15) The university rents space to individuals who wish to park on campus and who are issued a parking permit or pass. The university assumes no responsibility or liability under any circumstances for vehicles or bicycles parked on campus nor does it assume any personal liability in connection with its parking program. No bailment of any sort is created by the issuance of a permit or pass.

~~((12) The person who obtains a permit is responsible for assuring that the vehicle, regardless of who drives it, is parked in conformance with these regulations.)~~

AMENDATORY SECTION (Amending WSR 02-07-045, filed 3/14/02, effective 4/14/02)

WAC 516-12-440 Parking areas. (1) Parking is prohibited in any area not specifically marked as a parking space, designated by a sign, wheelstop, white~~((/))~~ painted lines, and/or white traffic buttons.

(2) Vehicles ~~((will))~~ may not be parked in any parking area without a parking permit or pass for that area except as provided in WAC 516-12-430~~((2))~~ (3) or (11). Each parking area is posted to indicate the type of permit required and the times they are required.

(3) Parking in ~~((a time limited space))~~ loading zones is limited to the time posted ~~((or assigned))~~.

(4) Visitors ~~((will))~~ may park only where assigned by permit, pass, or in metered ~~((visitor))~~ areas with meter payment.

(5) Vehicles displaying valid permits ~~((for other parking areas on campus))~~ or passes may ~~((not))~~ park in metered ~~((visitor lots except as provided in WAC 516-12-430(4))~~ spaces with meter payment.

(6) Meters are available to serve short-term parking needs. ~~((They are in effect at the times posted at the location. During these times the meter must be paid the correct amount posted.))~~ "Feeding" meters is prohibited. That is, additional time cannot be purchased beyond the time limit posted on the meter ~~((e.g., a two-hour meter will allow a maximum of two hours of purchased time, and the driver may not pay the meter again to park longer than the maximum time provided))~~.

(7) Motorcycles ~~((and moped-type vehicles will))~~ must only be parked in designated "M" ~~((motorcycle))~~ lots ~~((only and will))~~ or at metered spaces with payment. Motorcycles may not use space assigned to automobiles or bicycles, unless parked at a meter with payment.

(8) Automobiles ~~((will))~~ must not be parked in areas assigned to motorcycles.

(9) Bicycles must only be parked as provided in ~~((bicycle racks where provided.))~~ chapter 516-13 WAC, Bicycles, mopeds, and other powered devices. ~~((?))~~

(10) Personal notes or business cards left on vehicles describing reasons for parking without a ~~((proper and))~~ valid permit or for parking in an unauthorized manner will not be accepted.

(11) Spaces designated for specific use are restricted for that designated purpose or to assigned vehicles ~~((all hours))~~.

(12) Resident student "R" lots are restricted to permit holders as assigned 24 hours per day.

(13) ~~((All parking spaces are defined by signs, painted surface lines, traffic "buttons," and/or wheelstops. All other areas are no parking zones. Using))~~ Vehicles must not use more than one space when parking ~~((is prohibited))~~.

(14) The ~~((fact that))~~ violation of any parking regulation by other vehicles ~~((are parked improperly))~~ does not constitute a valid excuse for violating these regulations. ~~((Should an individual parked in violation of any regulation not receive a citation, it does not indicate that such parking is authorized, that the regulation is no longer in effect, or that a future ticket is invalid.~~

~~((15) The fact that one vehicle is parked in such a manner as to occupy more than one parking space is not an acceptable excuse for another operator to do the same.))~~

AMENDATORY SECTION (Amending WSR 02-07-045, filed 3/14/02, effective 4/14/02)

WAC 516-12-450 Permits. (1) Except as otherwise provided in this chapter, permits may be issued only to students, employees, and other members of the university community. Persons wishing to obtain parking permits are required to complete a registration form provided by parking ~~((and transportation))~~ services and pay the fee. Ownership of the parking permit remains with the university. Individuals are not allowed to transfer ownership.

(2) The loss or theft of a parking permit should be reported to parking services immediately. Upon recovery, all permits reported lost or stolen should be returned immediately to ((the)) parking ((and transportation)) services ((office immediately upon recovery)). Possession or use of a lost ~~((or))~~ stolen ~~((permit))~~, or ~~((a))~~ forged permit will result in a fine, the vehicle being ~~((wheel-locked))~~ wheel locked or towed, and loss of parking privileges. ~~((Report the loss or theft of a parking permit to the parking and transportation services office immediately.~~

~~((2))~~ (3) A stolen permit will be replaced the first time at no cost, provided a theft report has been filed with parking services. A fee will be charged for the replacement of subsequent stolen or lost permits.

(4) A valid permit means an unexpired parking permit ~~((authorized))~~ issued by ((the public safety director, properly

registered)) parking services and properly displayed on ((the)) a vehicle. ((3) Hanging)) Parking permits are to be displayed ~~((from the rear-view mirror))~~ according to instructions ~~((on the permit))~~ provided by parking services. ~~((Other types of permits are to be displayed according to instructions provided by parking and transportation services personnel. A parking permit is not considered valid unless it is correctly displayed on the vehicle.~~

~~((4))~~ (5) Motorcycle permits ~~((will))~~ must be ~~((permanently attached to the top of the taillight. If taillight does not conform to current federal law, permits must be attached so as to be easily seen from the rear of the vehicle.~~

~~((5) The theft or loss of a parking permit should be reported immediately upon discovery.~~

~~((A stolen permit will be replaced the first time at no cost providing a theft report has been filed with the public safety department. The second time the replacement fee will be \$10.00; the third time \$20.00; and thereafter at the original cost of the highest priced permit plus \$5.00.~~

~~((A lost permit will be replaced the first time for \$5.00; the second time \$10.00; the third time \$20.00; and thereafter at the original cost of the highest priced permit plus \$5.00.~~

~~((Recovered lost or stolen permits should be returned to the parking services office immediately))~~ affixed and easily visible from the rear fender.

(6) To enhance the business and operation of the university, ~~((all))~~ all lots ~~((deals))~~ or university business permits may be issued and renewed by the public safety director. Initial requests for all lots ((deals)) and university business permits require ((an annual)) a completed ((supplemental)) application and the signature of the dean, director, or chairperson of the department with ((which)) whom the person is associated. The approved arrangement may be renewed until the employee's job position or duties change. Issuance requires purchase of a ~~((G))~~ WWU parking permit ((and permits will be in effect the same period of time)). ~~((These))~~ All lots and university business permits are valid for brief periods of time only when on university business and are not valid in metered lots, ((specifically)) reserved spaces, or small capacity lots.

(7) Persons with a temporary or permanent physical disability who require special parking consideration must obtain a state ~~((disabled))~~ disability parking permit as well as a valid WWU ~~((disabled))~~ disability parking permit.

(8) All permits are the property of the university and may be recalled by the public safety director under the following circumstances:

(a) When the purpose for which they were issued changes or ceases to exist.

(b) Falsification of an application or registration for parking.

(c) Violations of the regulations in this chapter.

(d) Counterfeiting or altering a permit.

(e) Failure to comply with a judgment of the ~~((parking))~~ appeals board.

(f) Failure to pay outstanding citations.

(g) Removed a wheel lock without authorization of parking ~~((and transportation))~~ services.

(h) For an unauthorized permit transfer.

~~(9) ((Annual, academic, and quarterly parking space))~~
The public safety director determines parking lot and space assignments ((will be available according to a schedule determined and publicized by the public safety director)).

(a) Annual permits are valid for twelve months.

(b) Academic permits are valid for nine months.

(c) Quarterly permits are valid from the first day of the quarter for which issued ~~((until))~~. Permits must be renewed on or before the first day of the ((succeeding)) quarter.

(d) Those persons ~~((desiring))~~ seeking to consecutively renew a quarterly permit for winter, spring, and summer quarters to the same parking lot as assigned for fall quarter may do so during the two weeks prior to finals week ~~((each quarter through the first two weeks of the next quarter))~~. Permits may not be renewed for fall quarter.

(10) Special permits may include, but are not limited to ~~((=))~~, guests, service~~((=))~~, vendors, temporary assignments, visitors, and loading permits authorized by the public safety director.

(11) University departments that sponsor functions such as athletic events, conferences, seminars, and dinners may arrange parking for their guests on a space available basis. Departments have the option of paying for guest parking; otherwise, their guests will be responsible for the parking fee. Departments may also collect parking fees to facilitate pre-paid parking with the prior approval of parking services.

(12) Faculty, staff, or students who have purchased a ~~((hanging))~~ parking permit but forget to place it on the vehicle they are driving to campus must obtain a temporary permit from ~~((the))~~ parking ~~((office or visitor information center))~~ services. Those who have not purchased a permit must obtain a temporary permit from ~~((the))~~ parking ~~((and transportation services office or the visitor information center at the cost of a daily visitor permit))~~ services. Temporary permits are issued for the lot assigned or, if no permit has been purchased, for available spaces.

~~((12))~~ (13) Emergency temporary permits may be issued for staff to park temporarily in locations where emergency call out requires attendance. Parking services may suspend enforcement during emergencies as declared by the president, vice-president of business and financial affairs, or designee.

(14) Faculty, staff, or students who purchase an annual, academic, or quarterly parking permit may use the permit on any vehicle they drive but may not transfer ownership of the permit. The individual to whom a permit is issued is jointly responsible with the registered owner for parking violations by any vehicle bearing the permit.

AMENDATORY SECTION (Amending WSR 02-07-045, filed 3/14/02, effective 4/14/02)

WAC 516-12-460 Fees. (1) Fee and citation schedules will be ~~((submitted))~~ approved by the president or his/her designee ~~((to the board of trustees for approval by motion))~~ and will ~~((thereafter))~~ be posted in ~~((the))~~ a public area of ~~((the))~~ parking ~~((and transportation))~~ services ~~((office))~~ and available on its web site.

(2) Cost of permits will be prorated throughout the year according to type and date purchased ~~((and will be posted in the parking and transportation services office)).~~

(3) Refunds ~~((may))~~ will be made based on the valid time remaining ~~((upon application by the permit holder or upon revocation of the permit by the public safety director. Unpaid citation fines will be deducted from any refund.))~~ according to the parking services refund schedule. Refunds may be made if unpaid fines and fees have been paid.

(a) The permit holder must return the permit to ~~((the))~~ parking ~~((and transportation))~~ services ~~((office))~~ before a refund will be authorized or a payroll deduction be terminated.

~~((A service charge will be assessed for any permit returned during the first ten days of fall quarter.~~

~~((A service charge will be assessed for quarterly permits returned during the first ten days of the quarter for which valid.~~

~~((=))~~ No refund will be made for a ~~((quarterly))~~ permit ~~((during the last two weeks of the quarter))~~ after the first thirty calendar days of any quarter. Unused quarters may be refunded in whole at respective rates.

~~((No refund will be made for an academic permit during the last two weeks of spring quarter.~~

~~((No refund will be made for a summer permit or an annual permit after the six-week summer session.))~~ (c) Refunds will not be made upon permit revocation by the public safety director.

(4) A service charge will be assessed for:

(a) Change of permit when a lot transfer is requested by the permit holder and approved by the public safety director.

(b) ~~((Replacement of permits unless the old permit is returned in identifiable condition.))~~ Any permit returned for a refund.

(c) Change in hours issued on a part-time permit.

(5) Salaried employees have the option of paying for parking through payroll deduction.

~~((Prorated fees will be charged for part-time permits.~~

~~((=))~~ The proper fee must be paid for all vehicles parked in metered lots unless otherwise authorized.

~~((=))~~ (7) For fees regarding lost or stolen permits, see WAC 516-12-450~~((=))~~ (3).

AMENDATORY SECTION (Amending WSR 02-07-045, filed 3/14/02, effective 4/14/02)

WAC 516-12-470 Enforcement. (1) General.

(a) A vehicle which is parked in a manner which endangers or potentially endangers members of the university community or their property, state property, and ~~((=))~~ prevents a person having a valid permit from parking in their designated parking area, will be impounded on the first violation.

(b) Upon receiving two unpaid parking citations outstanding for more than seventy-two hours, a vehicle is subject to impound.

(c) A student with unpaid parking citations may not receive ~~((their))~~ his or her class registration and/or transcript until citations are paid.

(d) Parking permits will not be issued until all outstanding citations and fees are paid.

(e) After identifying the registered owner of any vehicle without a parking permit or a permit number which has one or more unpaid citations, ~~((the))~~ parking ~~((and transportation))~~ services ~~((office))~~ will contact the owner in writing that payment is required. If payment for outstanding citations is not made by the date required, the matter will be referred to the appropriate collection agent and/or civil court for resolution.

(f) The ~~((operator))~~ permit holder and registered owner(s) of a vehicle which is involved in a violation of the university's parking regulations are jointly and severally responsible for the violation. ~~((The person to whom a permit is issued is responsible for all citations issued to that permit number.))~~

(g) ~~((These))~~ Enforcement measures are cumulative; using one or more enforcement measures will not prohibit the use of additional measures.

(2) When regulations are in effect.

(a) Except as stated in (b) and (c) of this subsection, parking regulations are subject to enforcement throughout the calendar year but will not be enforced on official university holidays unless otherwise posted. For purposes of this section, ~~((intercession))~~ intercession is not considered a university holiday.

(b) A vehicle which is parked in a manner which endangers or potentially endangers members of the university or their property or state property will be impounded on the first violation regardless of when the violation occurs.

(c) ~~((Intercession))~~ Intercession regulations will be determined and published by the public safety director as required.

(d) All lots have restrictions ~~((Refer to))~~, which are posted on regulatory signs at lot entrances.

(e) Should there be a conflict between these regulations, parking maps, and on-site posted signs regarding parking information and instructions, the on-site sign takes precedence.

(3) Citations. A vehicle which is in violation of the university's parking regulations will be issued a citation.

(4) Continued violations. A vehicle which remains in violation of any regulation ~~((s))~~ may receive additional citations for every four hours of the violation.

(5) Impoundment by towing or wheel lock:

(a) All violators are subject to having their vehicles impounded through the use of towing or the wheel lock device at their own risk and expense.

(b) Any vehicle may be towed away if the vehicle:

(i) Has been immobilized by wheel lock for more than twenty-four hours; or

(ii) Is parked in such a manner as to endanger the university community; or

(iii) Is parked in a fire lane blocking traffic or other posted tow-away zone; or

(iv) Is parked so as to deprive a permit holder of space in his/her assigned lot, ~~((personally))~~ reserved space, or ~~((disabled))~~ disability space without a proper permit; or

(v) Is left under circumstances which indicate it has been abandoned; or

(vi) Is found displaying a forged ~~((or))~~, reported lost or stolen permit; or

(vii) Cannot be impounded with the wheel lock device; or

(viii) When a university police officer has probable cause to believe the vehicle is stolen; or

(ix) When a university police officer has probable cause to believe that the vehicle contains or constitutes evidence of a crime, and in the police officer's judgment impoundment is necessary to obtain or preserve such evidence; or

(x) When a driver is arrested and/or deprived of the right to leave with the driver's vehicle, and the university police are responsible for the "safekeeping" of the vehicle; or

(xi) Is parked at any time on campus when parking privileges have been revoked.

(c) Any vehicle may be immobilized by use of a wheel lock device if the vehicle:

(i) Has an accumulation of two or more unpaid parking tickets (the second of which has been outstanding for more than seventy-two hours); or

(ii) Is parked at any time on campus when parking privileges have been revoked.

(d) The operator/owner of the impounded vehicle must pay all outstanding citations at ~~((the))~~ parking ~~((and transportation))~~ services ~~((office))~~ (or university public safety department when ~~((the))~~ parking ~~((and transportation))~~ services ~~((office))~~ is closed) and complete the required paperwork before a vehicle release is authorized.

(e) A fee will be assessed on vehicles immobilized by the wheel lock device.

(f) Any vehicle which remains immobilized by wheel lock for more than twenty-four hours in an area where towing is not practical or possible will be assessed a fee for each day or portion thereof over the twenty-four hours.

(g) An impound fee is charged if the driver of the tow truck or the wheel lock operator has performed any labor prior to the vehicle operator/owner returning to the vehicle before the impoundment is completed.

(h) An impounded vehicle shall be released to the operator/owner of the vehicle when:

(i) Positive identification and proof of ownership of the vehicle is provided;

(ii) All unpaid fines against the impounded vehicle or any other vehicle registered to the violator are paid at parking ~~((and transportation))~~ services (or university public safety department when parking ~~((and transportation))~~ services is closed);

(iii) A wheel lock fee is paid; and/or

(iv) All towing and storage fees are paid.

(i) The operator/owner of the towed vehicle must present an authorized release form to the towing company and pay all towing charges including any storage fees incurred.

(j) The university assumes no responsibility for damages which may result from use of the wheel lock device, towing, storage, or attempts to move a vehicle with a wheel lock device installed.

(k) A person wishing to challenge the validity of the impound or any fines or fees imposed under ~~((the impound policy))~~ these rules may appeal through the process provided in ~~((the))~~ this chapter ~~((governing appeals (chapter 516-14 WAC)))~~. However, in order to secure release of the vehicle, the driver or owner must pay the amount of fines and/or fees

as a bond which will be refunded to the extent the appeal is approved.

(6) It is prohibited to park and citations may be issued to vehicles:

- (a) Without a valid permit;
 - (b) Double parked;
 - (c) In reserved spaces without a proper permit;
 - (d) In no parking areas;
 - (e) In a ~~((disabled))~~ disability space without a proper permit;
 - (f) In fire lanes, service roads, fire exits or within ~~((15))~~ fifteen feet of a fire hydrant;
 - (g) In loading zones exceeding the time limit;
 - (h) In service entrances, construction sites, spaces reserved for maintenance vehicles, ~~((handicapped))~~ disability access areas, dumpster access;
 - (i) On lawns, sidewalks, walk zones, crosswalks, parking lot driveways, straddling painted lines or buttons, or angle parking where prohibited;
 - (j) Exceeding time in ~~((time-limited))~~ loading zones or metered spaces;
 - (k) In areas where a permit is not valid;
 - (l) Over or adjacent to yellow lines or curbs;
 - (m) Against the flow of traffic;
 - (n) In areas or spaces closed by barricades or other control devices.
- (7) Payment of ~~((citations))~~ fine is due upon receipt of citation.

AMENDATORY SECTION (Amending WSR 02-07-045, filed 3/14/02, effective 4/14/02)

WAC 516-12-480 Appeals and appeals board. Any person who ~~((alleges being unjustly ticketed and who))~~ wishes to appeal a citation ~~((shall report to the parking and transportation services office))~~ must, within seven days from the date of the citation ~~((and))~~, complete an appeal form at the parking services office or appeal on-line at ~~((www.park-wwu.edu))~~ www.ps.wwu.edu. The person who appeals will be referred to as the appellant.

- (1) The right to a hearing is forfeited seven days from the date of the citation.
- (2) ~~((Any person dissatisfied with the decision of the public safety director or designee on appeal of a citation may request a hearing before the parking appeals board. (Chapter 516-14 WAC-)))~~ The appeal form must include a full explanation of the basis for the appeal. The only proper basis for an appeal is a contention that the cited regulations were not violated.
- (3) ~~((Requests for a parking appeals board review must be made in writing within fourteen days of the decision made by))~~ The public safety director or designee ~~((and after the appealed citation has been paid in full))~~ will review the appeal and issue a decision to the appellant within fourteen days of review. The public safety director may deny the appeal or grant the appeal in whole or in part by dismissing or reducing the citation.
- (4) If dismissal or reduction is not granted, appellant may request the appeal be sent to the appeals board for review upon payment of the fine and the completion of an appeals

board review request form. The public safety director has the authority to waive completion of the appeals board review request form and authorize delay of payment of the fine, pending review.

(5) Requests for an appeals board review must be made in writing within fourteen calendar days of the decision made by the public safety director or designee.

(6) The citation(s) must be paid in full before an appeals board review request form may be filled out as a form of appeals bond and can only be delayed by written authority of the public safety director.

(7) Payment of a parking fine will not constitute a waiver of the right to a hearing with regard to the underlying violation.

(8) An appeals board has been established composed of one administrator; one faculty member; one staff member; and four students. Representation must be by the administrators, faculty union, staff unions, and associated students. Each member may be reappointed for a term. The appeals board will choose its own chairperson from its members.

(9) The appeals board will meet throughout the academic year dependent upon the volume of appeals. If an appeals board member has been notified of a meeting at least three days in advance and does not appear to participate, the other appeals board members may proceed with their duties in reviewing appeals. At least three appeals board members are required to conduct a review.

(10) The appeals board has jurisdiction to hear and decide only those cases involving alleged violations of Western Washington University's regulations, chapters 516-12, 516-13, 516-15 WAC.

(11) Moving violations, violations of the motor vehicle and other traffic laws of the state of Washington, and traffic code of the city of Bellingham are referred to the appropriate court.

(12) The appeals board will consider appeals as follows:

(a) Should a personal appearance before the appeals board be desired it should be indicated on the appeals board review request form, otherwise the citation will be adjudicated on the basis of the written submission only.

(b) If a personal appearance is requested, and the appellant cannot appear on the date scheduled, the appellant must notify parking services in writing at least twenty-four hours before the scheduled time and request a new date. Only one such rescheduling is permitted. If the appellant does not appear at a scheduled hearing without notification, the appeal will be reviewed on the basis of the written appeal only.

(c) The appeals board operates according to the rights of due process of law. If desired, the appellant has the right to be represented by another person, the right to cross-examine witnesses, and the right to an open and impartial hearing.

(d) Parking services has the right to be represented at hearings and to cross-examine witnesses.

(e) The appeals board may examine witnesses for either side.

(f) At the conclusion of a hearing, and in an open session, the appeals board will specify the charge(s) against the appellant, declare judgment for each charge, and include a reason for each judgment. The appeals board has the authority to

deny the appeal, waive, void or refund charge(s) in part or in full, according to the judgment.

(g) The decision of the appeals board will be in writing, sent immediately to the appellant and parking services, and will be final.

(h) Failure to comply with a decision of the appeals board constitutes a ground for revocation of campus parking privileges. Any unpaid fine will be deducted from any refund due as a result of revocation of parking privileges or a judgment of the appeals board.

(i) A written record of the judgment, reason, and fine imposed, if any, shall be furnished to parking services by the appeals board chairperson. These records will then be maintained by parking services.

(j) The appellant may appeal the appeals board decision to parking services within ten days after the final decision has been issued. Parking services shall immediately forward documents to the district court which has jurisdiction to hear the appeal de novo. No appeal may be taken unless the citation has been contested as provided in these rules.

(13) The appeals board chairperson may submit written recommendations about the parking system to the vice-president for business and financial affairs by May 31st of each year.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 516-14-200 Policy and procedure.

WSR 10-15-024
PERMANENT RULES
PARKS AND RECREATION
COMMISSION

[Filed July 12, 2010, 3:12 p.m., effective August 12, 2010]

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

Purpose: The Washington state parks and recreation commission has determined the need to amend chapter 352-28 WAC following an agency study on issues related to the sale, leasing or management of its lands and natural resources materials. The commission intends to remove specific procedural language relating to natural resources sales from the WAC, and to replace them with procedures adopted through specific commission action items. These procedures will then be added to the agency's Lands Manual, which currently contains sales-related language based on previous commission procedural actions. This will ensure that all natural resources-related sale guidelines reside in a single agency document.

Citation of Existing Rules Affected by this Order: Amending WAC 352-28-005, 352-28-010, and 352-28-020.

Statutory Authority for Adoption: RCW 79A.05.035, 79A.05.070, 79A.05.075, and 79A.05.165.

Adopted under notice filed as WSR 10-11-016 on May 7, 2010.

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

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

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

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

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

Date Adopted: June 24, 2010.

J. M. French
Chief of Policy Research
and Program Development

AMENDATORY SECTION (Amending WSR 08-05-009, filed 2/7/08, effective 3/9/08)

WAC 352-28-005 Definitions. When used in this chapter the following words and phrases shall have the meanings designated in this section unless a different meaning is expressly provided or unless the context clearly indicates otherwise.

(1) "Catastrophic forest event" means a natural or accidental devastation of major proportions that results in drastic alteration of the natural environment by, but not limited to, wind, fire, insect infestation, forest disease, flooding, or landslide.

(2) "Commission" means the Washington state parks and recreation commission.

(3) "Conservation" means the professional management of the agency's natural resources to ensure their long-term presence, function and enjoyment by the public.

(4) "Director" means the director of the Washington state parks and recreation commission.

(5) "Endangered species" means each plant, fungus and lichen species identified as endangered on the list of such species prepared by the department of natural resources Washington natural heritage program and each wildlife species identified as endangered by the Washington department of fish and wildlife in WAC 232-12-014.

(6) "Natural resource(s)" includes biological organisms, their processes, dead or organic matter, soils, and geologic materials.

(7) "Resource conservation plan" means a plan that advances the stewardship of that resource. The plan may address, although not be limited to, resource conservation, protection, restoration or mitigation.

(8) "Sensitive species" means each plant, fungus and lichen species identified as sensitive on the list of such species prepared by the department of natural resources Washington natural heritage program and each wildlife species identified as sensitive on the list of such species prepared by the Washington department of fish and wildlife.

~~((7))~~ (9) "Threatened species" means each plant, fungus and lichen species identified as threatened on the list of such species prepared by the department of natural resources Washington natural heritage program and each wildlife species identified as threatened on the list of such species prepared by the Washington department of fish and wildlife.

AMENDATORY SECTION (Amending WSR 08-05-009, filed 2/7/08, effective 3/9/08)

WAC 352-28-010 Cutting, collection and removal of natural resources. (1) Trees may be cut and removed subject to the following limitations:

(a) **Significant trees:** Significant trees means living and dead standing trees > 10 inches in diameter at breast height (4.5 feet above the ground). Except in emergencies and when feasible, significant trees in any area under the jurisdiction and/or management of the commission shall be removed only after they have been evaluated, rated, appraised and marked by a professional forester, certified arborist, or staff member trained in agency-approved tree risk rating and abatement techniques. In addition, except where deemed an emergency tree, or in the event of wildfire, weather, or other natural emergencies, significant trees can be cut or removed only after compliance with (d) of this subsection and subsection (4) of this section, agency review through the tree activity worksheet process and upon the written approval of the director or the designee of the director.

(b) **Emergency trees:** Emergency trees means any tree that has already failed (cracked, tipped, diseased, ~~((failed))~~) or standing dead) or ~~((#))~~ that poses an imminent threat, based on the judgment of a professional forester, certified arborist, or staff member trained in tree risk rating and abatement techniques approved by the agency, and which due to its location, poses an imminent threat to a target. Imminent means likely to occur at any moment, and target means a structure, facility, or person that has the potential to be hit or impacted by a falling tree or tree part. The park manager or designee trained in tree risk rating and abatement techniques as prescribed by the agency forester or arboriculture manager is authorized to immediately close the target area, and where the target cannot be relocated, cut or remove the emergency tree.

(c) **Worksheet:** The cutting or removal of any significant trees in landscapes classified recreation, heritage, or resource recreation by the commission shall, except in the case of emergency trees ~~((as defined in (b) of this subsection))~~, occur only after agency review through the tree activity worksheet process and the written approval of the director or ~~((the))~~ designee ~~((of the director))~~.

(d) **Consultation:** The cutting or removal of any significant trees in a natural area, natural forest area or natural area preserve shall, except ~~((in emergencies as defined in (b) of this subsection))~~ in the case of emergency trees, be approved only by the director or designee and only after consultation with the Washington department of fish and wildlife and the department of natural resources Washington natural heritage program, the preparation of a ~~((mitigation))~~ resource conservation plan for affected natural resources, and a public hearing on each such proposed cutting or removal conducted in the county/counties in which the cutting or removal is to take

place as determined by the director. Prior notice of a hearing shall be published in a newspaper of general circulation in such county or by an alternative method prescribed by the commission deemed to yield equal or better public notice. Any person who requests notification of such proposed cutting or removal shall be sent prior notice of a hearing. A summary of the testimony presented at a hearing or received in writing shall be presented to the director.

~~((e))~~ The cutting and/or removal of significant and emergency trees shall be done by park personnel, unless the personnel lack necessary expertise or resources. Trees identified as emergencies will be scheduled for immediate treatment. All emergency and significant trees requiring treatment, when feasible and justifiable, should be considered for pruning, crown reduction, target relocation, or similar practices in an effort to avoid tree cutting or removal. If trees are cut or removed by a contractor, park personnel shall provide on-site supervision to ensure that work and safety standards are met to prevent harm or damage to persons, trees, nontree vegetation, soils, organic matter and other park resources. When feasible, equipment shall be kept on existing roads and parking areas. Areas damaged during cutting or removal shall be restored.)

(2) ~~((Nontimber))~~ **Native plants, fungi, and dead organic matter:** The cutting or removal of ~~((any native plant, fungi, or dead organic matter))~~ natural resources, other than trees or those specified in WAC 352-32-350, 352-28-030 and 352-28-040, will only occur as a part of a resource conservation plan approved by the director or ~~((the))~~ designee ~~((of the director))~~.

(3) **Protected species:** Natural resources may be cut and/or removed from areas supporting protected species, or for the purposes of enhancing habitat for protected species, under the following conditions:

(a) The cutting or removal of ~~((trees, other plants, fungi, or dead organic matter))~~ natural resources in any area known to be inhabited by endangered, threatened, or sensitive species shall, except in emergencies as defined in subsection (1)(b) of this section, follow requirements of the department of fish and wildlife and of the department of natural resources Washington natural heritage program and be approved only by the director or designee after consultation with those agencies, and the preparation of a mitigation plan for affected species.

(b) The cutting or removal of ~~((trees, other plants, fungi, or dead organic matter))~~ natural resources to enhance the habitat of a sensitive, threatened, or endangered species as defined in WAC 352-28-005 ~~((5) through (7))~~, on lands managed by the commission or on other state lands, will only occur as a part of an interagency agreement or resource conservation plan that involves consultation with the Washington department of fish and wildlife, department of natural resources Washington natural heritage program, and as appropriate, other agencies and groups with expertise with these species, and is approved by the director or ~~((the))~~ designee ~~((of the director))~~.

(4) **Land classification (chapter 352-16 WAC) criteria:** Natural resources may be cut and/or removed from the areas listed below for the following reasons only:

(a) Natural area preserves:

(i) Maintenance or construction of service roads, boundary fences, or trails, or modification of conditions only as may be required, and only where ~~((absolutely))~~ necessary, to meet park management goals and mitigated in a resource conservation plan that involves consultation with the department of natural resources Washington natural heritage program, and as appropriate other agencies and is approved by the director or the designee of the director.

(ii) Maintain or restore a native plant community, species population, or ecological process as specified in a natural area preserve management plan prepared in consultation with the department of natural resources Washington natural heritage program.

(iii) Correction of conditions hazardous to persons, properties, and/or facilities on or adjacent to park land.

(iv) Control of diseases and insect infestations where adjacent lands are severely jeopardized or where a drastic alteration of the natural environment is expected to occur, after consultation with the department of natural resources Washington natural heritage program and other agencies and groups with expertise in ecosystem health as deemed appropriate by the director.

(v) Prevent the deterioration or loss of or facilitate the restoration of historical/cultural resources.

(vi) Maintenance or construction of fire lanes for abatement of fires.

(vii) Collection of specimens as specified in WAC 352-28-040, including consultation with the department of natural resources Washington natural heritage program.

(b) Natural areas and natural forest areas:

(i) Maintenance or construction of boundary fences, trails, trail structures, trail head facilities, interpretive sites, utility easements, or service roads only as may be required, and only where absolutely necessary to meet park management goals and mitigated in a resource conservation plan that involves consultation with the department of natural resources Washington natural heritage program, and as appropriate other agencies and is approved by the director or the designee of the director.

(ii) Maintain or restore a native plant community, species population, or ecological process as specified in a natural resource conservation plan prepared in consultation with the department of natural resources Washington natural heritage program, and as appropriate other agencies.

(iii) Correction of conditions hazardous to persons, properties, and/or facilities on or adjacent to park land.

(iv) Control of diseases and insect infestations where adjacent lands are severely jeopardized or where a drastic alteration of the natural environment is expected to occur, after consultation with the department of natural resources Washington natural heritage program and other agencies and groups with expertise in ecosystem health as deemed appropriate by the director or the designee of the director.

(v) Prevent the deterioration or loss of or facilitate the restoration of historical/cultural resources.

(vi) Maintenance or construction of ~~((service roads))~~ fire lanes for abatement of fires.

(vii) Collection of edibles as specified in WAC 352-28-030 or specimens as specified in WAC 352-28-040.

(c) Recreation areas, resource recreation areas, and heritage areas:

(i) Area clearing necessary for park maintenance, and/or park development projects for day use and overnight recreation facilities, road and utility easements, and administrative facilities.

(ii) Correction of conditions hazardous to persons, properties, and/or facilities on or adjacent to park land.

(iii) Cleanup of trees fallen, tipped, or damaged by the weather, fire, or other natural causes where they directly interfere with park management activities.

(iv) Creation of diverse native trees and other plants, coarse woody debris, and fungi sizes, ages, and species to achieve visual aspects that resemble a formal landscape, natural or historical setting, or to improve wildlife habitat.

(v) Maintenance or creation of a regenerating natural environment that will sustain low ground cover, shrubs, and understory and overstory trees to provide screening, wind, and sun protection.

(vi) Control of diseases and insect infestations where adjacent lands are severely jeopardized or where a drastic alteration of the natural environment is expected to occur.

(vii) Prevent the deterioration or loss of historical/cultural resources.

(viii) Maintenance or construction of ~~((service roads))~~ fire lanes for abatement of fires.

(ix) Modification of conditions to maintain or restore a desired plant community, species population, or ecological process.

(x) ~~((Grazing, hay removal, or other similar activities when performed under authority of a permit from the commission or director.~~

~~((xi)))~~ Collection of edibles as specified in WAC 352-28-030 or specimens as specified in WAC 352-28-040.

(5) **Use of fallen trees:** ~~((Except where they may create safety hazards and/or interfere with the normal operation of a park))~~ When feasible, fallen trees shall be left on the ground when deemed environmentally beneficial or used for park purposes such as, but not limited to, approved building projects, trail mulching, and firewood~~((In natural area preserves, natural forest areas, natural areas, and resource recreation areas first consideration shall be given to leaving trees on the ground for natural purposes))~~, or where the tree has no economic values contributed to a state managed resource conservation effort. In natural area preserves, natural forest areas, natural areas, and resource recreation areas first consideration shall be given to leaving trees on the ground for natural purposes.

(6) Parks use: Subject to the guidelines of this section, the commission may authorize the use of natural resources within recreation areas, resource recreation areas, and heritage areas for park purposes.

AMENDATORY SECTION (Amending WSR 08-05-009, filed 2/7/08, effective 3/9/08)

WAC 352-28-020 Resource sales and leases. The following qualifications, procedures, and general provisions pertain to the sale of~~((or leasing of lands containing, tree,~~

~~plant or fungi))~~ natural resources from commission owned or managed lands:

(1) ~~Subject to the limitations set forth under WAC 352-28-010(4),~~ the sale of natural resources ~~((associated with commission owned or managed lands, or the lease of lands containing natural resources to be sold,))~~ will be undertaken only where they advance a commission approved ~~((capital))~~ development, are part of a resource conservation plan or interagency agreement approved by the director or ~~((the))~~ designee ~~((of the director)),~~ or are deemed by the director or ~~((the))~~ designee ~~((of the director))~~ to advance agency stewardship goals and are surplus to the parks needs. ~~((Sales of natural resources from lands owned, leased or managed by the commission, are limited to lands classified as resource recreation, recreation, or heritage as defined in chapter 352-16 WAC, and must be consistent with criteria specified in WAC 352-28-010. Resources from other land classes must meet the criteria specified in WAC 352-28-010 prior to their consideration for sale.))~~

(2) Prior to a sale of natural resources ~~((sales from lands owned, leased or managed by the commission)),~~ qualified park personnel or their designated agent shall conduct an inventory or cruise of the materials, appraise the value of such materials, and establish a minimum acceptable bid, unless such natural resources are for use by the park or qualify for direct sale under subsection (4) of this section.

~~((a))~~ Where trees are to be sold, ~~((the following qualifications must be met:~~

(i) ~~Only timber which qualifies for cutting and removal under RCW 79A.05.035(2), WAC 352-28-010, and which is surplus to the needs of the park may be sold.~~

(ii) ~~The timber significantly hinders the public use or operation of a park and is of such a quantity that park personnel cannot dispose of it in a timely manner.~~

(iii) ~~The timber is cut or removed as part of a commission approved park maintenance or development project, or road or utility easement; a plan to address blown-down, burned, or damaged trees resulting from a catastrophic forest event; part of a resource conservation plan to maintain or restore a native plant community, species population, or ecological processes; or an agency approved maintenance or development project that contains a resource conservation plan.~~

~~(iv) Timber))~~ such trees shall be appraised using methods consistent with those applied by the Washington department of natural resources. Complete records of the methods and assumptions used to make the timber appraisal and estimated minimum acceptable bids shall be maintained.

~~((b) Where nontimber resources are to be sold from lands owned, leased or managed by the commission, the following qualifications must be met:~~

(i) ~~The removal of natural resources from commission owned or managed lands will only occur where the sale is part of a resource conservation plan to maintain or restore a native plant community, species population, or ecological processes.~~

(ii) ~~The commission cannot achieve its stewardship goals without selling the resources or leasing the lands designated in the conservation plan noted in WAC 352-28-020(2).~~

(3) ~~A public meeting on each proposed sale or lease shall be conducted in the county in which the sale or lease is to take place. Prior notice of a hearing shall be published in a newspaper of general circulation in such county. Any person who requests notification of proposed sale or lease shall be sent prior notice of a meeting by mail. A summary of the testimony presented at a meeting or received in writing shall be presented to the director.~~

~~(4))~~ (3) ~~Sales~~ ~~((or leases))~~ where the appraised value of the materials is in excess of twenty-five thousand dollars ~~((in appraised value or the value specified for direct sales in RCW 79.15.050, whichever is larger,))~~ shall require approval by a majority of the commission. ~~((Public testimony related to the sale or lease will be presented to the commission. Sales or leases where the appraised value of the materials is less than or equal to twenty five thousand dollars, or the direct sale value specified in RCW 79.15.050, shall require approval by the director. Public testimony related to the sale or lease will be presented to the director.~~

~~(5))~~ (4) Sales where the appraised value of the materials is less than or equal to twenty-five thousand dollars shall require approval by the director or designee. All sales ~~((or leases))~~ shall be conducted ~~((through an agreement with the department of natural resources pursuant to RCW 43.30.530 or by the director or the designee of the director in accordance with subsections (6) through (11) of this section. Director approved sales may use a direct sales approach as specified in RCW 79.15.050.~~

(6) ~~Sales or leases shall be granted on the basis of competitive, sealed bids or public auction made by responsible qualified bidders. At least three qualified bidders shall be invited to bid and an advertisement for bids shall be published in a newspaper of general circulation in the county in which the sale or lease is to take place. Reasonable efforts shall be made to invite bids from prospective contractors operating or living in or near the general location of the sale.~~

(7) ~~All sales or leases shall be granted on the basis of the highest bid from a responsible qualified bidder. No materials shall be sold for less than the minimum acceptable bid established by park personnel. Any bid shall be rejected if the prospective contractor is deemed unqualified. To qualify for bidding, a contractor must be of good character and reputation with demonstrated abilities and capacities sufficient to perform the contract and must not have failed to perform satisfactorily on any current or previous products sale contract with the state.~~

(8) ~~All timber sold shall be measured, graded, and counted by a sealing bureau. When a sealing bureau is not located in the vicinity of a log buyer, such measuring, grading, and counting shall be performed according to standard log grading practices by a log buyer agreed to by a contractor and the director or the designee of the director.~~

(9) ~~All sales or leases shall require sufficient liability and property damage insurance and also sufficient security bonding by the contractors to ensure protection of the state and satisfactory contract compliance and completion.~~

(10) ~~All sales or leases shall require contract validation by the director or the designee of the director. The quantity of material which may be added to an approved sale or lease shall be no more than four percent of the total material~~

included in an approved sale or lease. The addition of materials to an approved sale or lease may occur only upon the approval of the director or the designee of the director.

~~(11) All sales shall require authorization by the state of Washington, department of general administration, division of purchasing as provided in RCW 43.19.1919; also, all sales or leases shall be granted, subject to approval of any governing agency as may be required by legal condition of land title and/or timber ownership and/or by state or federal statute.~~

~~(12) All contracts shall be of a form approved by the attorney general with special provisions to tailor a contract to the particular needs of a park site)) pursuant to procedures approved by the commission.~~

WSR 10-15-035

PERMANENT RULES

SECRETARY OF STATE

[Filed July 13, 2010, 11:29 a.m., effective August 13, 2010]

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

Purpose: To implement 2010 state law changes.

Citation of Existing Rules Affected by this Order:
Repealing WAC 434-130-040 and 434-130-050; and amending WAC 434-130-060, 434-130-070, 434-130-080, 434-130-090, and 434-130-100.

Statutory Authority for Adoption: RCW 25.15.007, 25.15.805, 25.15.810.

Other Authority: RCW 43.07.120.

Adopted under notice filed as WSR 10-11-017 on May 7, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 5, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 5, Repealed 2; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 13, 2010.

Steve Excell

Assistant Secretary of State

NEW SECTION

WAC 434-130-055 On-line services. Customers may access limited liability company information, forms, or on-line submissions by visiting the corporations division's web site. When completing and submitting an on-line filing for a limited liability company, the filing requirements are found under WAC 434-112-065 through 434-112-075.

AMENDATORY SECTION (Amending WSR 94-19-005, filed 9/8/94, effective 10/1/94)

WAC 434-130-060 Registered office address—Requirements. A post office box address may be used in conjunction with a registered geographic office address ~~((when:~~

~~(1) The United States Postal Service cannot or will not deliver to the street address; and~~

~~(2) The post office box address is in the same Washington city or town as the registered office address; and))~~

~~((3)) The agent ((notifies)) must notify the office of the secretary of state and the corporation of any changes in either the street address or the post office box address.~~

AMENDATORY SECTION (Amending WSR 94-19-005, filed 9/8/94, effective 10/1/94)

WAC 434-130-070 Annual reports—Due date. Each limited liability company ~~((shall))~~ must file an annual report by the last day of the month of its original registration as a limited liability company. The corporations division ~~((shall notify))~~ or a subagent notifies all limited liability companies of its annual renewal date forty-five days in advance by ~~((a mailing))~~ regular mail or electronic mail that may include~~((s))~~ the annual report form. Failure to receive an annual report notice is insufficient reason for failure to file the statutorily required annual report.

AMENDATORY SECTION (Amending WSR 94-19-005, filed 9/8/94, effective 10/1/94)

WAC 434-130-080 In-person or expedited counter service—Special fees. (1) The corporations division counter is open to in-person requests from 8:00 a.m. to ~~((4:30))~~ 5:00 p.m. each business day. Staff provides expedited~~((same-day processing of))~~ services for corporate documents or requests received ~~((prior to 4:30 p.m. on that day))~~ in-person, by fax, mail, or on-line with the appropriate expedite fee. ~~((These))~~ Expedite services are available for the following transactions:

(a) ~~((Charter))~~ Document review and filing;

(b) ~~((Name reservation review and filing;~~

~~(c) Document certification;~~

~~(d))~~ Document copying, certification, and status certificates((;

~~(e) Status change filings)).~~

(2) The fee for ~~((same-day))~~ expedited service is ~~((twenty))~~ fifty dollars for single or multiple paper transactions within each new or existing limited liability company file. On-line transactions are expedited for twenty dollars, but may be charged fifty dollars for in-person completion at front counter. In addition, a regulatory fee for each transaction may apply.

(3) There is no expedited fee for the following transactions:

(a) Initial reports;

(b) License renewal and required annual report;

(c) Amended annual reports;

(d) ~~((Reinstatements;~~

(~~e~~)) In-person inspection or review of limited liability company files or other public documents located in the corporations division office;

((~~f~~)) (~~e~~) Documents left at the counter for processing with mail-in documents received the same day(~~or~~

(~~g~~) ~~A search for nonactive limited company files less than twenty years old).~~

(4)(a) If staff cannot complete (~~the~~) an expedited service request before the end of the same day, the transaction will be completed (~~(first on the following)~~) within the next two business days.

(b) Emergency services needed outside regular business hours requiring employee overtime are one hundred fifty dollars per hour plus regulatory or statutory fees due for the specific form (~~(of the filing)~~). When the division receives an emergency request, staff notifies the customer of the service fee and any other reasonable conditions set by the director. The customer must agree to pay the fees before emergency services are provided.

(5) Over-the-counter service hours may be shortened under extraordinary circumstances. Separate service requests by one person may be limited to those relating to three corporations per (~~(day)~~) transaction. (~~(Documents submitted by courier services or document handling companies may receive twenty-four hour service. A customer may make alternate arrangements with the director prior to bringing or sending in documents, if a sudden, unexpected situation occurs during the business day.)~~)

Under special circumstances, the filing party may petition the secretary in writing to request a waiver of emergency or penalty fees.

AMENDATORY SECTION (Amending WSR 99-12-007, filed 5/20/99, effective 6/20/99)

WAC 434-130-090 Fees. For Washington registered domestic and foreign limited liability companies fees are as follows:

(1) Certificate of formation or application for registration, one hundred (~~(seventy-five dollars)~~) eighty;

(2) Annual report license renewal, (~~(fifty)~~) sixty dollars plus the department of licensing's handling fee of nine dollars;

(3) Certificate of amendment, restated certificate, or amended and restated certificate, thirty dollars;

(4) Delinquent annual report license renewal (~~(with required annual report filed after due date and before administrative dissolution)~~), penalty fee of twenty-five dollars, plus the renewal fee of (~~(fifty)~~) sixty dollars plus the department of licensing's handling fee of nine dollars;

(5) Reinstatement, one hundred dollars plus all delinquent license or annual fees and a twenty-five percent penalty computed on the total amount;

(6) Articles of merger, twenty dollars for each listed company;

(7) (~~(Certificate)~~) Statement of change of registered agent, registered office address, or designation of new registered agent, (~~(ten dollars per entity name)~~) no fee;

(8) Resignation of registered agent, twenty dollars per entity name;

(9) An initial report or amended annual report, ten dollars;

(10) Registration, reservation, or transfer of name, thirty dollars;

(11) Certificate of dissolution, certificate of cancellation, (~~(administrative dissolution)~~) or dissolution by judicial decree, (~~(or revocation of certificate of authority)~~) no fee;

(12) (~~(Agent's consent to act as agent)~~) Revocation of certificate of dissolution, thirty dollars plus any possible missed license fees;

(13) Agent's resignation if appointed without consent(~~or annual report when filed concurrently with annual license fee~~), no fee; and

(~~(13)~~) (14) Other statement or report filed, ten dollars.

Under special circumstances, the filing party may petition the secretary in writing to request a waiver of emergency or penalty fees.

AMENDATORY SECTION (Amending WSR 94-19-005, filed 9/8/94, effective 10/1/94)

WAC 434-130-100 Miscellaneous fees. (1) For photocopies, fees are as follows:

(a) Each annual report, five dollars;

(b) Certificate of formation or any single document, ten dollars;

(c) (~~(Amendments to articles and mergers)~~) A copy of all documents relating to one entity, twenty dollars;

(d) (~~(All charter documents, thirty dollars;~~

(~~e~~)) Surcharge for files exceeding one hundred pages of copy, thirteen dollars for each fifty page increment (~~((number of pages determined by weight of copies))~~).

(2) For certificates of existence fees are as follows:

(a) With complete or specific historical data, under embossed seal, thirty dollars;

(b) (~~(Computer generated)~~) Under embossed seal, without historical data, twenty dollars;

(c) Duplicate certificate, under gold or embossed seal, twenty dollars.

(3) For each certified copy of any document the fee is ten dollars plus the copy fee.

(4) For any service of process the fee is fifty dollars.

(5) Dishonored checks. If a person, corporation or other submitting entity has attempted to pay any fee due to the secretary of state by means of a check, and the check is dishonored by the financial institution when presented, the secretary of state will impose a twenty-five dollar penalty, payable to the secretary of state.

In the event a valid replacement check and dishonor charge is not received in the office of the secretary of state within the time prescribed by its accounting division, the transaction covered by the dishonored check will be (~~(cancelled)~~) canceled and all other late filing fees and penalties will be instituted.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-130-040

Telephone services.

WAC 434-130-050

Original signature required.

WSR 10-15-036
PERMANENT RULES
SECRETARY OF STATE

[Filed July 13, 2010, 11:46 a.m., effective August 13, 2010]

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

Purpose: To implement 2010 changes to state law.

Citation of Existing Rules Affected by this Order:

Amending WAC 434-120-145, 434-120-160, 434-120-250, 434-120-330, 434-120-345, and 434-120-355.

Statutory Authority for Adoption: RCW 43.07.125 and new section of chapter 19.09 RCW.

Adopted under notice filed as WSR 10-11-014 on May 7, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 6, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: June 25, 2010.

Steve Excell

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)**WAC 434-120-145 Fees.** (1) Original registration: Entities registering as charitable organizations ~~((shall))~~ must pay a fee of ~~((twenty))~~ sixty dollars for the first year of registration.(2) Annual renewal: Organizations ~~((shall))~~ must pay a renewal fee of ~~((ten))~~ forty dollars.(3) Information changes: Organizations filing changes of information described in WAC 434-120-105 ~~((shall pay a fee of ten dollars for each submittal of change(s)))~~ will file at no charge.

(4) Photocopy fees: For copy of a charitable organization registration form or letter, including the finance and solicitation reports, the fee is five dollars.

(5) ~~((Expedited service fees: For in-person service at the counter, or on-line filings, the fee is twenty dollars for one or more transactions in each charitable organization file requested.))~~ The fee for expedited service is twenty dollars for single on-line transactions within each new or existing charity's program file. The fee for expedited service of paper documents (in-person, mail or fax) is fifty dollars for singleor multiple transactions within each new or existing charity's program file. In addition, the filing fee for each transaction will apply.

(6) For service of process on a registered charity, commercial fund-raiser, or charitable trust, the fee is fifty dollars.

AMENDATORY SECTION (Amending WSR 09-22-056, filed 10/30/09, effective 11/30/09)**WAC 434-120-160 Fees for late registration.** (1) A charitable organization that fails to renew its registration by its renewal date ~~((shall))~~ must pay a late fee of fifty dollars. The charitable organization ~~((shall))~~ must pay an additional fifty dollar late fee for each year, including the current year, that it was not registered under this act, but was required to do so. If the registration has lapsed for a period of more than two years, the entity ~~((shall))~~ must provide solicitation information for the previous two years, and ~~((shall))~~ must reregister as a new charitable organization.(2) The fees for late registration ~~((shall be))~~ are in addition to the filing fees under WAC 434-120-145, and any other remedies that may be imposed by law, including penalties for soliciting without being registered.

(3) The charitable organization may ask the secretary to waive fees for late registration. The request must include a description of the circumstances that justify a waiver of the late fees. Under special circumstances the secretary may waive fees for late registration that are imposed by these regulations.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)**WAC 434-120-250 Fees.** All commercial fund-raisers ~~((shall))~~ must pay an original registration fee at the time of filing and an annual renewal fee.(1) The fee for original registration in this state is ~~((two hundred fifty))~~ three hundred dollars.(2) The annual renewal fee is ~~((one hundred seventy-five))~~ two hundred twenty-five dollars.(3) ~~((The))~~ There is no fee for filing changes in any information previously filed under RCW 19.09.079, and WAC 434-120-215 ~~((or for filing a contract is ten dollars)).~~(4) The fee for filing a contract under RCW 19.09.079 and WAC 434-120-240 is twenty dollars.(5) The late fee is fifty dollars for failing to renew registration by the due date. The commercial fund-raiser ~~((shall))~~ must pay an additional late fee of one hundred dollars for each year that it was required to register under this act and failed to do so, including the current year. If the registration has lapsed for more than two years, the entity ~~((shall))~~ must provide solicitation information for the previous two years and ~~((shall))~~ must register as a new commercial fund-raiser under RCW 19.09.079, in addition to paying any late fees due under this section.

Any commercial fund-raiser failing to renew registration and conducting business may be subject to other penalties and remedies that may be imposed by law, including penalties for soliciting without being registered. These penalties are cumulative.

~~((5) The fee for expedited in-person service, and on-line filings, is twenty dollars for any and all transactions within one commercial fund-raiser file, in addition to regular fee for the transaction.)) (6) The fee for expedited service is twenty dollars for a single on-line transaction within one commercial fund-raiser file. The fee for expedited service of paper documents (in-person, mail, or fax) is fifty dollars for single or multiple transactions within one commercial fund-raiser file. In addition, the filing fee for each transaction will apply.~~

~~((6)) (7) The photocopy fee is ten dollars for copies of the annual registration form or letter.~~

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-120-330 Annual fees. (1) Charitable trusts filing initial or renewal registrations ~~((shall))~~ must pay a fee of twenty-five dollars.

~~((For all expedited in-person service, or on-line filing, the fee is twenty dollars for one or more transactions within one charitable trust file, in addition to the regular fee for the transaction.))~~ The fee for expedited service is twenty dollars for a single on-line transaction within one charitable trust file. The fee for expedited service of paper documents (in-person, mail, or fax) is fifty dollars for single or multiple transactions within one charitable trust file. In addition, the filing fee for each transaction will apply.

(3) For a photocopy of an Internal Revenue Service Form 990EZ the fee is five dollars and for a copy of Form 990 or 990-PF the fee is ten dollars with a surcharge for forms exceeding 100 pages of copy, which is thirteen dollars for each fifty page increment.

(4) For a photocopy of a charitable trust registration form, the fee is five dollars.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-120-345 Late registration fees. (1) A charitable trust that fails to renew its registration at the time its renewal is due, ~~((shall))~~ must pay a late fee of fifty dollars when the reregistration is made. The trust ~~((shall))~~ must pay an additional fifty-dollar late fee for each year, including the current year, it was not registered under this act. If the registration has lapsed for a period of more than two years, the entity ~~((shall))~~ must register as a new trust and pay any late fees, which ~~((shall be))~~ are cumulative.

(2) The fees for late registration ~~((shall be))~~ are in addition to any other filing fees or remedies that may be imposed by law, including penalties for not being registered.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-355 Change in status, notification. A charitable trust ~~((shall))~~ must notify the charities program in writing of a change in trust instrument, trustee, principal officer, tax status, fiscal year, or any other information filed under RCW 11.110.060 or WAC 434-120-310 within four months after the change at no charge. ~~((Organizations filing changes of information described in RCW 11.110.060 or~~

~~WAC 434-120-310 shall pay a fee of ten dollars for each submittal of change.))~~

WSR 10-15-041
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed July 13, 2010, 12:54 p.m., effective August 13, 2010]

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

Purpose: We proposed that the standard of residency to be a student's expectation to reside at a particular address for more than twenty days. This aligns with WAC 392-121-108(1), which instructs districts to not count students who are absent for more than twenty days.

Residency establishes a district's responsibility to serve a student. Current rules do not provide guidelines or standards for a timeline to be considered when evaluating a student's residency status. This rule establishes a twenty day window for a district's consideration of student residency.

Citation of Existing Rules Affected by this Order: Amending WAC 392-137-115.

Statutory Authority for Adoption: RCW 28A.150.290

(1).

Adopted under notice filed as WSR 10-11-040 on May 11, 2010.

Changes Other than Editing from Proposed to Adopted Version: A school district requested that we add the word "consecutive" in between the words "twenty days" which clarifies our intent better.

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

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

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

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

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

Date Adopted: June 22, 2010.

Randy Dorn
State Superintendent

AMENDATORY SECTION (Amending Order 26, filed 9/17/90, effective 10/18/90)

WAC 392-137-115 Student residence—Definition. As used in this chapter, the term "student residence" means the physical location of a student's principal abode—i.e., the home, house, apartment, facility, structure, or location, etc.—

where the student lives the majority of the time. The following shall be considered in applying this section:

(1) The mailing address of the student—e.g., parent's address or post office box—may be different than the student's principal abode.

(2) The student's principal abode may be different than the principal abode of the student's parent(s).

(3) The lack of a mailing address for a student does not preclude residency under this section.

(4) If students are expected to reside at address for twenty consecutive days or more.

WSR 10-15-043
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed July 13, 2010, 1:15 p.m., effective August 1, 2010]

Effective Date of Rule: August 1, 2010.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: These rules become permanent effective August 1, 2010, which is less than thirty-one days after filing. RCW 34.05.380 (3)(a) states that a rule may become effective on a subsequent earlier date if the action is required by state or federal constitution, a statute or court order. USDA Food and Nutrition Service final rules for the Farm Security and Rural Investment Act (FSRIA) of 2002 (farm bill) final rule announcement included new procedures for applying sponsored alien deeming exemptions, and deeming sponsor's income and resources, and required to have them in effect on August 1, 2010.

Purpose: The community services division is amending WAC 388-450-0156 and 388-450-0160 to comply with the FSRIA final rule announcement and to bring Washington's Basic Food program rules in line with new federal regulations and secure federal financial support for program benefits.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0156 and 388-450-0160.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Other Authority: 7 U.S.C. 2014(i); 7 C.F.R. § 273.4(c); USDA Food and Nutrition Service final rules for the FSRIA of 2002 (farm bill) final rule announcement.

Adopted under notice filed as WSR 10-11-036 on May 11, 2010.

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

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

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

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

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

Date Adopted: July 9, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-15-057, filed 7/13/04, effective 8/13/04)

WAC 388-450-0156 When am I exempt from deeming? (1) If you meet any of the following conditions, you are **permanently** exempt from deeming and we do not count your sponsor's income or resources against your benefits:

(a) The Immigration and Nationality Act (INA) does not require you to have a sponsor. Immigrants who are not required to have a sponsor include those with the following status with Immigration and Naturalization Service (INS):

- (i) Refugee;
- (ii) Parolee;
- (iii) Asylee;
- (iv) Cuban entrant; or
- (v) Haitian entrant.

(b) You were sponsored by an organization or group as opposed to an individual;

(c) You do not meet the alien status requirements to be eligible for benefits under chapter 388-424 WAC;

(d) You have worked or can get credit for forty qualifying quarters of work under Title II of the Social Security Act. We do not count a quarter of work toward this requirement if the person working received TANF, food stamps, Basic Food, SSI, CHIP, or nonemergency medicaid benefits. We count a quarter of work by the following people toward your forty qualifying quarters:

- (i) Yourself;
- (ii) Each of your parents for the time they worked before you turned eighteen years old (including the time they worked before you were born); and
- (iii) Your spouse if you are still married or your spouse is deceased.

(e) You become a United States (U.S.) Citizen;

(f) Your sponsor is dead; or

(g) If INS or a court decides that you, your child, or your parent was a victim of domestic violence from your sponsor and:

- (i) You no longer live with your sponsor; and
- (ii) Leaving your sponsor caused your need for benefits.

(2) You are exempt from the deeming process while you are in the same AU as your sponsor;

(3) For Basic Food, you are exempt from deeming while you are under age eighteen.

(4) For state family assistance, general assistance, state-funded Basic Food benefits, and state-funded medical assistance for legal immigrants you are exempt from the deeming process if:

(a) Your sponsor signed the affidavit of support more than five years ago;

(b) Your sponsor becomes permanently incapacitated; or

(c) You are a qualified alien according to WAC 388-424-0001 and you:

(i) Are on active duty with the U.S. armed forces or you are the spouse or unmarried dependent child of someone on active duty;

(ii) Are an honorably-discharged veteran of the U.S. armed forces or you are the spouse or unmarried dependent child of a honorably-discharged veteran;

(iii) Were employed by an agency of the U.S. government or served in the armed forces of an allied country during a military conflict between the U.S. and a military opponent; or

(iv) Are a victim of domestic violence and you have petitioned for legal status under the Violence Against Women Act.

(5) If you, your child, or your parent was a victim of domestic violence, you are exempt from the deeming process for twelve months if:

(a) You no longer live with the person who committed the violence; and

(b) Leaving this person caused your need for benefits.

(6) If your AU has income at or below one hundred thirty percent of the Federal Poverty Level (FPL), you are exempt from the deeming process for twelve months. This is called the "indigence exemption". You may choose to use this exemption or not to use this exemption in full knowledge of the possible risks involved. See risks in subsection (9) below. For this rule, we count the following as income to your AU:

(a) Earned and unearned income your AU receives from any source; and

(b) Any noncash items of value such as free rent, commodities, goods, or services you receive from an individual or organization.

(7) ~~If you ((are exempt from deeming because your AU does not have income over one hundred thirty percent of the FPL, we)) use the indigence exemption, and are eligible for a federal program, we are required by law to give the United States attorney general the following information:~~

(a) The names of the sponsored people in your AU;

(b) That you are exempt from deeming due to your income; ~~((and))~~

(c) Your sponsor's name; and

(d) The effective date that your twelve-month exemption began.

(8) If you use the indigence exemption, and are eligible for a state program, we do not report to the United States attorney general.

(9) If you choose not to use the indigence exemption:

(a) You could be found ineligible for benefits for not verifying your sponsor's income and resources; or

(b) You will be subject to regular deeming rules under WAC 388-450-0160.

AMENDATORY SECTION (Amending WSR 01-21-026, filed 10/9/01, effective 11/1/01)

WAC 388-450-0160 How does the department decide how much of my sponsor's income to count against my benefits? (1) We must count some of your sponsor's income as unearned income to your assistance unit (AU) if:

(a) Your sponsor signed the INS affidavit of support form I-864 or I-864A; and

(b) You are not exempt from the deeming process under WAC 388-450-0156.

(2) We take the following steps to decide the monthly amount of your sponsor's income we deem as your income and count against your benefits:

(a) We start with your sponsor's earned and unearned income that is not excluded under WAC 388-450-0015;

(b) If your sponsor's spouse signed the affidavit of support, we add all of the spouse's earned and unearned income that is not excluded under WAC 388-450-0015;

(c) We subtract twenty percent of the above amount that is earned income under WAC 388-450-0030;

(d) For cash and medical assistance, we subtract the need standard under WAC 388-478-0015. We count the following people who live in your sponsor's home as a part of your sponsor's AU to decide the need standard:

(i) Your sponsor;

(ii) Your sponsor's spouse; and

(iii) Everyone else in their home that they could claim as a dependent for federal income tax purposes.

(e) For food assistance, we subtract the maximum gross monthly income under WAC 388-478-0060. We count the following people that live in your sponsor's home as a part of your sponsor's AU to decide the maximum gross monthly income:

(i) Your sponsor;

(ii) Your sponsor's spouse; and

(iii) Everyone else in their home that they could claim as a dependent for federal income tax purposes.

(f) If you can show that your sponsor has sponsored other people as well, we divide the result by the total number of people who they sponsored including any member of your household that is exempt from deeming according to WAC 388-450-0156.

(3) After we have decided how much income to deem to you, we count the greater amount of the following against your benefits:

(a) The amount of income calculated from deeming; or

(b) The amount of money your sponsor actually gives you for your needs.

WSR 10-15-044

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed July 13, 2010, 1:20 p.m., effective August 1, 2010]

Effective Date of Rule: August 1, 2010.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: This rule becomes permanent effective August 1, 2010, which is less than thirty-one days after filing. RCW 34.05.380 (3)(a) states that a rule may become effective on a subsequent earlier date if the action is required by state or federal constitution, a statute [statute] or court order. USDA Food and Nutrition Service final rules for the Farm Security and Rural Investment Act (FSRIA) of 2002 (farm bill) final rule announcement included new procedures for not allowing the proration of mandatory standard utility allowances (SUA) for eligible assistance unit members when there are ineligible members that have income and pay part of the utility expenses, which are required to be in effect on August 1, 2010.

Purpose: The community services division is amending WAC 388-450-0140 to comply with the FSRIA final rule announcement and bring Washington's Basic Food program rules in line with new federal regulations and secure federal financial support for program benefits.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0140.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Other Authority: 7 U.S.C. 2014 (e)(7); 7 C.F.R. § 273.9 (d)(6).

Adopted under notice filed as WSR 10-11-037 on May 11, 2010.

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

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

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

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

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

Date Adopted: July 9, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-14-040, filed 6/29/04, effective 7/30/04)

WAC 388-450-0140 How does the income of an ineligible assistance unit member affect my eligibility and benefits for Basic Food? The department decides who must be in your assistance unit (AU) under WAC 388-408-0035. If an AU member is ineligible for Basic Food under WAC 388-408-0035, this affects your AU's eligibility and benefits as follows:

(1) We do not count the ineligible member(s) to determine your AU size for the gross monthly income limit, net

monthly income limit, or maximum allotment under WAC 388-478-0060.

(2) If an AU member is ineligible because they are disqualified for an intentional program violation (IPV), they failed to meet work requirements under chapter 388-444 WAC, or they are ineligible fleeing felons under WAC 388-442-0010:

(a) We count all of the ineligible member's gross income as a part of your AU's income; and

(b) We count all of the ineligible member's allowable expenses as part of your AU's expenses.

(3) If an AU member is an ineligible ABAWD under WAC 388-444-0030, is ineligible due to their alien status, failed to sign the application to state their citizenship or alien status, or refused to get or provide us a Social Security number:

(a) We allow the twenty percent earned income disregard for the ineligible member's earned income;

(b) We prorate the remaining income of the ineligible member among all the AU members by excluding the ineligible member's share and counting the remainder to the eligible members; and

(c) We divide the ineligible member's allowable expenses evenly among all members of the AU when the ineligible member has income except that we do not divide the standard utility allowance (SUA). We allow the full SUA based on the total number of members in your AU.

WSR 10-15-045

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed July 13, 2010, 1:24 p.m., effective July 27, 2010]

Effective Date of Rule: July 27, 2010.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: These rules become permanent effective July 27, 2010, which is less than thirty-one days after filing. RCW 34.05.380 (3)(a) states that a rule may become effective on a subsequent earlier date if the action is required by state or federal constitution, a statute or court order. Pub. L 111-118 (DOD appropriations law) Sec. 8120, USDA Food and Nutrition Service Guidance Letter from January 29, 2010, U.S. DHHS Administration for Children and Families, Office of Family Assistance Guidance Letter No. TANF-ACF-PI-2010-05 issued on June 16, 2010, state that special immigrants from Iraq and Afghanistan are eligible for sixty months of assistance, instead of eight months. When effective, this permanent filing will supersede emergency rules filed as WSR 10-08-020 and 10-09-111.

Purpose: The purpose of these amendments is to allow special immigrants from Iraq and Afghanistan to be eligible for federally funded benefits to the same extent and for the same period of time as refugees as allowed under the federal law.

Citation of Existing Rules Affected by this Order: Amending WAC 388-424-0001, 388-424-0006, and 388-424-0020.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.020.

Other Authority: Sec. 8120 of Pub. L 111-118 (DOD appropriations law); USDA Food and Nutrition Service federal guidance from January 29, 2010; U.S. DHHS Administration for Children and Families, Office of Family Assistance federal guidance letter No. TANF-ACF-PI-2010-05 issued on June 16, 2010.

Adopted under notice filed as WSR 10-11-038 on May 11, 2010.

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

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

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

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

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

Date Adopted: July 9, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-14-116, filed 6/30/08, effective 8/1/08)

WAC 388-424-0001 Citizenship and alien status—Definitions. "American Indians" born outside the United States. American Indians born outside the U.S. are eligible for benefits without regard to immigration status or date of entry if:

(1) They were born in Canada and are of fifty percent American Indian blood (but need not belong to a federally recognized tribe); or

(2) They are members of a federally recognized Indian tribe or Alaskan Native village or corporation.

"Hmong or Highland Lao." These are members of the Hmong or Highland Laotian tribe, which rendered military assistance to the U.S. during the Vietnam era (August 5, 1964 to May 7, 1975), and are "lawfully present" in the United States. This category also includes the spouse (including unremarried widow or widower) or unmarried dependent child of such tribe members.

"Nonimmigrants." These individuals are allowed to enter the U.S. for a specific purpose, usually for a limited time. Examples include:

- (1) Tourists,
- (2) Students,
- (3) Business visitors.

"PRUCOL" (Permanently residing under color of law) aliens. These are individuals who:

- (1) Are not "qualified aliens" as described below; and
- (2) Intend to reside indefinitely in the U.S.; and
- (3) United States Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service or INS) knows are residing in the U.S. and is not taking steps to enforce their departure.

~~("Special immigrants from Iraq and Afghanistan." According to federal law, special immigrants are Iraqi and Afghan aliens granted special immigrant status under section 101 (a)(27) of the Immigration and Nationality Act (INA).)~~

"Qualified aliens." Federal law defines the following groups as "qualified aliens." All those not listed below are considered "nonqualified":

(1) **Abused spouses or children**, parents of abused children, or children of abused spouses, who have either:

(a) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse or unmarried son or daughter of a Lawful Permanent Resident (LPR) - see definition of LPR below; or

(b) A notice of "prima facie" approval of a pending self-petition under the Violence Against Women Act (VAWA); or

(c) Proof of a pending application for suspension of deportation or cancellation of removal under VAWA; and

(d) The alien no longer resides with the person who committed the abuse.

(e) Children of an abused spouse do not need their own separate pending or approved petition but are included in their parent's petition if it was filed before they turned age twenty-one. Children of abused persons who meet the conditions above retain their "qualified alien" status even after they turn age twenty-one.

(f) An abused person who has initiated a self-petition under VAWA but has not received notice of prima facie approval is not a "qualified alien" but is considered PRUCOL. An abused person who continues to reside with the person who committed the domestic violence is also PRUCOL. For a definition of PRUCOL, see above.

(2) **Amerasians** who were born to U.S. citizen armed services members in Southeast Asia during the Vietnam war.

(3) Individuals who have been granted **asylum** under Section 208 of the Immigration and Nationality Act (INA).

(4) Individuals who were admitted to the U.S. as **conditional entrants** under Section 203 (a)(7) of the INA prior to April 1, 1980.

(5) **Cuban/Haitian entrants.** These are nationals of Cuba or Haiti who were paroled into the U.S. or given other special status.

(6) Individuals who are **lawful permanent residents** (LPRs) under the INA.

(7) Persons who have been granted **parole** into the U.S. for at least a period of one year (or indefinitely) under Section 212 (d)(5) of the INA, including "public interest" parolees.

(8) Individuals who are admitted to the U.S. as **refugees** under Section 207 of the INA.

(9) **Special immigrants from Iraq and Afghanistan** are individuals granted special immigrant status under section 101 (a)(27) of the Immigration and Nationality Act

(INA). Under federal law, special immigrants from Iraq and Afghanistan, their spouses and unmarried children under twenty-one are to be treated the same as refugees in their eligibility for public assistance.

(10) Persons granted **withholding of deportation or removal** under Sections 243(h) (dated 1995) or 241 (b)(3) (dated 2003) of the INA.

"Undocumented aliens." These are persons who either:

- (1) Entered the U.S. without inspection at the border, or
- (2) Were lawfully admitted but have lost their status.

"U.S. citizens."

(1) The following individuals are considered to be citizens of the U.S.:

(a) Persons born in the U.S. or its territories (Guam, Puerto Rico, and the U.S. Virgin Islands; also residents of the Northern Mariana Islands who elected to become U.S. citizens); or

(b) Legal immigrants who have naturalized after immigrating to the U.S.

(2) Persons born abroad to at least one U.S. citizen parent may be U.S. citizens under certain conditions.

(3) Individuals under the age of eighteen automatically become citizens when they meet the following three conditions on or after February 27, 2001:

(a) The child is a lawful permanent resident (LPR);

(b) At least one of the parents is a U.S. citizen by birth or naturalization; and

(c) The child resides in the U.S. in the legal and physical custody of the citizen parent.

(4) For those individuals who turned eighteen before February 27, 2001, the child would automatically be a citizen if still under eighteen when he or she began lawful permanent residence in the U.S. and both parents had naturalized. Such a child could have derived citizenship when only one parent had naturalized if the other parent were dead, a U.S. citizen by birth, or the parents were legally separated and the naturalizing parent had custody.

"U.S. nationals." A U.S. national is a person who owes permanent allegiance to the U.S. and may enter and work in the U.S. without restriction. The following are the only persons classified as U.S. nationals:

(1) Persons born in American Samoa or Swain's Island after December 24, 1952; and

(2) Residents of the Northern Mariana Islands who did not elect to become U.S. citizens.

"Victims of trafficking." According to federal law, victims of trafficking have been subject to one of the following:

(1) Sex trafficking, in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained eighteen years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(3) Under federal law, persons who have been certified or approved as victims of trafficking by the federal Office of Refugee Resettlement (ORR) are to be treated the same as refugees in their eligibility for public assistance.

(4) Immediate family members of victims are also eligible for public assistance benefits as refugees. Immediate family members are the spouse or child of a victim of any age and the parent or minor sibling if the victim is under twenty-one years old.

AMENDATORY SECTION (Amending WSR 09-15-082, filed 7/14/09, effective 8/14/09)

WAC 388-424-0006 Citizenship and alien status—Date of entry. (1) A person who physically entered the U.S. prior to August 22, 1996 and who continuously resided in the U.S. prior to becoming a "qualified alien" (as defined in WAC 388-424-0001) is not subject to the five-year bar on TANF, nonemergency medicaid, and SCHIP.

(2) A person who entered the U.S. prior to August 22, 1996 but became "qualified" on or after August 22, 1996, or who physically entered the U.S. on or after August 22, 1996 and who requires five years of residency to be eligible for federal Basic Food, can only count years of residence during which they were a "qualified alien."

(3) A person who physically entered the U.S. on or after August 22, 1996 is subject to the five-year bar on TANF, nonemergency medicaid, and SCHIP unless exempt. The five-year bar starts on the date that "qualified" status is obtained.

(4) The following "qualified aliens," as defined in WAC 388-424-0001, are exempt from the five-year bar:

- (a) Amerasian lawful permanent residents;
- (b) Asylees;
- (c) Cuban/Haitian entrants;
- (d) Persons granted withholding of deportation or removal;
- (e) Refugees;
- (f) Special immigrants from Iraq and Afghanistan;
- (g) Victims of trafficking who have been certified or had their eligibility approved by the office of refugee resettlement (ORR); and

((g)) (h) Lawful permanent residents, parolees, or battered aliens, as defined in WAC 388-424-0001, who are also an armed services member or veteran as described in WAC 388-424-0007.

(5) In addition to subsection (4) of this section, the following "qualified aliens" are also exempt from the five-year bar on nonemergency medicaid and SCHIP:

- (a) Pregnant women;
- (b) Children under nineteen years of age; and
- (c) Children under twenty-one years of age who are residing in a medical institution as described in WAC 388-505-0230.

AMENDATORY SECTION (Amending WSR 09-21-046, filed 10/14/09, effective 11/4/09)

WAC 388-424-0020 How does my alien status impact my eligibility for the federally funded Washington Basic Food program benefits? (1) If you are a U.S. citizen or U.S. national as defined in WAC 388-424-0001 and meet all other eligibility requirements, you may receive federal Basic Food benefits.

(2) If you are not a U.S. citizen or U.S. national, you must fall within (a)(~~(i)~~) or (b)(~~(i)-(e)~~) of this subsection, and meet all other eligibility requirements, in order to receive federal Basic Food benefits:

(a) You are a member of one of the following groups of "qualified aliens" or similarly defined lawful immigrants as defined in WAC 388-424-0001:

- (i) Amerasian;
- (ii) Asylee;
- (iii) Cuban or Haitian entrant;
- (iv) Deportation or removal withheld;
- (v) Refugee;
- (vi) Special immigrant from Iraq or Afghanistan;
- (vii) Victim of trafficking;
- (~~(viii)~~) (viii) Noncitizen American Indian; or
- (~~(viii)~~) (ix) Hmong or Highland Lao tribal member.

(b)(i) You are a member of one of the following groups of qualified aliens as defined in WAC 388-424-0001:

- (A) Conditional entrant;
- (B) Lawful permanent resident (LPR);
- (C) Paroled for one year or more; or
- (D) Victim of domestic violence or parent or child of a victim.

(ii) And, one of the following also applies to you:

(A) You have worked or can get credit for forty Social Security Administration (SSA) work quarters - as described in WAC 388-424-0008;

(B) You are an active duty personnel or honorably discharged veteran of the U.S. military or you are the spouse, unmarried surviving spouse, or unmarried dependent child of someone who meets this requirement, as described in WAC 388-424-0007(1);

(C) You receive cash or medical benefits based on Supplemental Security Income (SSI) criteria for blindness or disability;

(D) You have lived in the U.S. as a "qualified alien" as described in WAC 388-424-0001 for at least five years;

(E) You are under age eighteen; or

(F) You were lawfully residing in the U.S. on August 22, 1996 and were born on or before August 22, 1931.

~~((e) You are a special immigrant from Iraq or Afghanistan eligible for eight months of federally funded assistance from the date of your entry into the United States or from the date you received special immigrant status if this occurred after your U.S. entry.)~~

(3) If you are ineligible for federal Basic Food benefits due to your alien status, you may be eligible for state Basic Food benefits (see WAC 388-424-0025).

Citation of Existing Rules Affected by this Order:
Amending WAC 308-124A-775.

Statutory Authority for Adoption: RCW 18.85.061.

Other Authority: RCW 18.85.451.

Adopted under notice filed as WSR 10-12-094 on June 1, 2010.

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

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

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

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

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

Date Adopted: July 15, 2010.

Walt Fahrler
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124A-775 Real estate fees. These fees are applicable to all original licenses, examination services, and fee generating services issued or performed after July 1, 2010, and all renewals for existing licenses with expiration date after July 1, 2010. The fees for an original license and renewal include a ten dollar fee which is assessed for the real estate research center for the real estate broker and the real estate managing broker licenses. The following fees shall be charged by the department of licensing:

Title of Fee	Fee
Real estate broker:	
Application/examination	\$138.25
Reexamination	138.25
Original license	146.25
License renewal	146.25
Late renewal with penalty	172.75
Duplicate license	26.50
Certification	26.50
Name or address change, transfer or license activation	0.00
Real estate managing broker:	
Application/examination	\$138.25
Reexamination	138.25
Original license	210.00
License renewal	210.00
Late renewal with penalty	236.50

WSR 10-15-055

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed July 15, 2010, 7:39 a.m., effective August 15, 2010]

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

Purpose: To correct the error in the firm/assumed name fee from \$210.00 to \$200.00 and correct the subsequent fingerprint processing fee.

Title of Fee	Fee
Duplicate license	26.50
Certification	26.50
Name or address change, transfer or license activation	0.00
<u>Real estate firm and assumed name license:</u>	
Original license	\$(210.00) <u>200.00</u>
License renewal	((210.00)) <u>200.00</u>
Late renewal with penalty	((236.50)) <u>226.50</u>
Name or address change	0.00
Duplicate license	26.50
Certification	26.50
<u>Real estate branch:</u>	
Original license	\$189.50
License renewal	189.50
Late renewal with penalty	216.50
Certification	26.50
Duplicate license	26.50
Name or address change, transfer or license activation	0.00
Fingerprint processing	\$35.25
<u>Subsequent fingerprint processing</u>	<u>\$30.00</u>
<u>Fingerprints rejected by the department, Washington state patrol or FBI will necessitate subsequent fingerprint processing fees.</u>	
Fingerprinting fee does not include the cost of obtaining prints. Applicants will be responsible for obtaining their fingerprints for their cards.	

WSR 10-15-063
PERMANENT RULES
DEPARTMENT OF
EARLY LEARNING

[Filed July 15, 2010, 2:08 p.m., effective August 15, 2010]

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

Purpose: The department of early learning (DEL) is adopting amended WAC 170-290-0082 Eligibility period. The revised rule implements a new state law, E2SHB 3141 (chapter 273, Laws of 2010, regular session) that extends eligibility to twelve months for families in the working connections child care (WCCC) subsidy program who also have a child enrolled in head start (HS), early head start (EHS) or early childhood education and assistance program (ECEAP). Families in the WCCC program currently must reapply for subsidy benefits every six months - and more often in some cases. Extending eligibility to twelve months is expected to increase child care stability for families, reduce potential dis-

ruptions in the family's child care, and reduce the amount of paperwork families must complete to remain on the WCCC program.

DEL has also amended the rule to improve continuity of child care for WCCC families by:

- Allowing twelve-month eligibility for siblings of the child in HS, EHS or ECEAP who also receive WCCC subsidized care;
- Allowing families in the twelve-month eligibility group to receive WCCC-paid child care while the parent is attending parent education or family development classes offered by the HS, EHS or ECEAP; and
- Clarifying when other families in the WCCC program (who are not in the twelve-month eligibility group) may receive a full six-month eligibility period, and when a shorter period is appropriate.

DEL is considering other revisions to chapter 170-290 WAC to implement E2SHB 3141 and further improve continuity of care for families in the WCCC program. The department intends to file a supplemental or new rule proposal to adopt those revisions.

E2SHB 3141 directs DEL to, in part, "establish and implement policies in the working connections child care program to promote stability and quality of care for children from low income households ..." The bill establishes the twelve-month extended eligibility period for a limited group of families in the WCCC program while DEL and the department of social and health services (DSHS)* study the impact of extended eligibility on child care stability, and whether extended eligibility results in administrative costs or savings. DEL and DSHS must also make recommendations to the legislature about expanding twelve-month eligibility to other families receiving state-subsidized child care.

*WCCC is operated jointly by DEL and DSHS under section 501, chapter 265, Laws of 2006 (uncodified). DEL sets WCCC policy and adopts program rules. DSHS staff process applications for WCCC, determine family eligibility, and process payments to child care providers.

Citation of Existing Rules Affected by this Order: Amending WAC 170-290-0082.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070.

Other Authority: Chapter 273, Laws of 2010, regular session; chapter 43.215 RCW; chapter 265, Laws of 2006.

Adopted under notice filed as WSR 10-11-127 on May 19, 2010.

Changes Other than Editing from Proposed to Adopted Version: Content that is being deleted from the current WAC 170-290-0082 is not shown below for clarity.

1. As a result of comments received, DEL revised subsection (1) of proposed WAC 170-290-0082 to clarify when a family may receive six months of WCCC eligibility:

• **Proposed Rule:**

(1) Six-month eligibility. DSHS may approve a consumer for an eligibility period up to six months, except as provided in subsection (2) of this section. A consumer's eligibility may end before his or her end date as stated in WAC 170-290-0110.

• **Final Rule:**

(1) Six-month eligibility. A consumer who meets all of the requirements of part II of this chapter is eligible for six months, except as provided in subsection (2) of this section.

(a) A consumer's eligibility may be for less than six months if:

(i) Requested by the consumer; or

(ii) A TANF consumer's individual responsibility plan indicates child care is needed for less than six months.

(b) A consumer's eligibility may end sooner than six months if:

(i) The consumer no longer wishes to participate [participate] in WCCC; or

(ii) DSHS terminates the consumer's eligibility as stated in WAC 170-290-0110.

DEL [is] also adding new subsections (2)(a) and (b) with language comparable to subsection (1)(a) and (b) in the final to make requirements consistent for families with six-month eligibility and those with twelve-month eligibility.

2. As a result of comments received and to make the rule more consistent with other parts of chapter 170-290 WAC, DEL revised subsection (2)(c) of proposed WAC 170-290-0082 (now subsection (2)(e) and (f)) regarding when the twelve-month eligibility period begins:

• **Proposed Rule:**

(c) The twelve-month eligibility period for WCCC begins and ends as follows:

(i) Once DSHS verifies a child is receiving services, the twelve-month eligibility period begins on the date that the consumer's initial application or reapplication for WCCC is approved.

(ii) The twelve-month eligibility continues regardless of whether the child continues to receive services from HS, EHS, or ECEAP. Consumers must notify DSHS within ten days when the child is no longer receiving services from HS, EHS, or ECEAP.

(iii) Eligibility ends as stated in WAC 170-290-0110 or if the parent requests termination of WCCC.

• **Final Rule:**

(e) The twelve-month eligibility period begins:

(i)(A) When benefits begin under WAC 170-290-0095 for TANF consumers or WAC 170-290-0100 for consumers not receiving TANF; or

(B) Upon reapplication under WAC 170-290-0109(4) for TANF consumers or WAC 170-290-0109(5) for consumers not receiving TANF; and

(ii) When DSHS verifies that the child is receiving services from HS, EHS, or ECEAP.

(f) The twelve-month eligibility continues regardless of whether the child continues to receive services from HS, EHS, or ECEAP.

3. As a result of comments received, DEL revised subsection (2)(d) of proposed WAC 170-290-0082 (now subsection (2)(g)) regarding what types of parent education or family development classes are "approved activities" under WCCC:

• **Proposed Rule:**

(d) During a consumer's twelve-month eligibility period, culturally appropriate parent education and family development classes are approved activities.

• **Final Rule:**

(g) During a consumer's twelve-month eligibility period, parent education and family development classes offered by HS, EHS, or ECEAP are approved activities. As funds are available, other DEL-approved parent education and family development classes may be authorized.

4. As a result of comments received, DEL revised subsection (2)(e) of the proposed rule (now subsection (2)(h)) regarding student identification numbers used to track the preschool child's educational progress during the study of child care stability required under E2SHB 3141:

• **Proposed Rule:**

(e) If a child who is receiving services from HS, EHS, or ECEAP has a unique state student identifier (SSID) assigned by the office of superintendent of public instruction, and a twelve-month eligibility period for WCCC, the SSID is used to identify and measure the child's educational progress.

• **Final Rule:**

(h) Each child who is receiving services from HS, EHS, or ECEAP and is receiving WCCC subsidies will be assigned a unique early learning student identifier. Student information may be merged with information from the office of superintendent of public instruction, the education research data center, or both, to measure the child's educational progress from preschool through grade twelve.

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

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

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

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

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

Date Adopted: July 15, 2010.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0082 Eligibility period. ((~~DSHS may approve~~)) (1) Six-month eligibility.

(a) A consumer who meets all of the requirements of part II of this chapter is eligible for ((a period up to)) WCCC subsidies for six months, except as provided in subsection (2) of this section.

(b) A consumer's eligibility may be for less than six months if:

(i) Requested by the consumer; or

(ii) A TANF consumer's individual responsibility plan indicates child care is needed for less than six months.

(c) A consumer's eligibility may end ((before his or her end date as)) sooner than six months if:

(i) The consumer no longer wishes to participate in WCCC; or

(ii) DSHS terminates the consumer's eligibility as stated in WAC 170-290-0110.

(2) Twelve-month eligibility.

(a) A consumer who meets all of the requirements of part II of this chapter, and has a child receiving services from head start (HS), early head start (EHS), or an early childhood education and assistance program (ECEAP), is eligible for WCCC subsidies for twelve months.

(b) A consumer's eligibility may be for less than twelve months if:

(i) Requested by the consumer; or

(ii) A TANF consumer's individual responsibility plan indicates child care is needed for less than twelve months.

(c) The consumer's eligibility may end sooner than twelve months if:

(i) The consumer no longer wishes to participate in WCCC; or

(ii) DSHS terminates the consumer's eligibility as stated in WAC 170-290-0110.

(d) All children in the consumer's household under WAC 170-290-0015 are eligible for the twelve-month eligibility period.

(e) The twelve-month eligibility period begins:

(i)(A) When benefits begin under WAC 170-290-0095 for TANF consumers or WAC 170-290-0100 for consumers not receiving TANF; or

(B) Upon reapplication under WAC 170-290-0109(4) for TANF consumers or WAC 170-290-0109(5) for consumers not receiving TANF; and

(ii) When DSHS verifies that the child is receiving services from HS, EHS, or ECEAP.

(f) The twelve-month eligibility continues regardless of whether the child continues to receive services from HS, EHS, or ECEAP.

(g) During a consumer's twelve-month eligibility period, parent education and family development classes offered by HS, EHS, or ECEAP are approved activities. As funds are available, other DEL-approved parent education and family development classes may be authorized.

(h) Each child who is receiving services from HS, EHS, or ECEAP and is receiving WCCC subsidies will be assigned a unique early learning student identifier. Student information may be merged with information from the office of superintendent of public instruction, the education research and data center, or both, to measure the child's educational progress from preschool through grade twelve.

WSR 10-15-068

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Medicaid Purchasing Administration)

[Filed July 16, 2010, 3:10 p.m., effective August 16, 2010]

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

Purpose: To comply with recently passed federal legislation pertaining to the Children's Health Insurance Program Reauthorization Act (CHIPRA) and Section 8120, Title VIII, Division A of Department of Defense Appropriation Act of 2010 which was signed into law on December 19, 2009, and became Public Law 111-118. The amendments include adding certain PRUCOL (permanently residing under color of law) aliens in the group eligible for pregnancy medical and children's medical; and updating eligibility for assistance for special immigrants from Iraq and Afghanistan. Compliance with federal regulations is required to continue to receive federal funding. The rules also update and clarify current language.

Citation of Existing Rules Affected by this Order: Amending WAC 388-424-0009 and 388-424-0010.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, and 74.08.090.

Other Authority: CHIPRA of 2009, Public Law 111-3, Section 214; Section 8120, Title VIII, Division A of Department of Defense Appropriation Act of 2010, Public Law 111-118.

Adopted under notice filed as WSR 10-11-110 on May 18, 2010.

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

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

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

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

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

Date Adopted: July 15, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-15-004, filed 7/7/04, effective 8/7/04)

WAC 388-424-0009 Citizenship and alien status—Social Security number (SSN) requirements. (1) A "qualified alien," as defined in WAC 388-424-0001, who has applied for a Social Security number (SSN) as part of their application for benefits cannot have benefits delayed, denied, or terminated pending the issuance of the SSN by the Social Security Administration (SSA).

(2) The following immigrants are not required to apply for an SSN:

(a) An alien, regardless of immigration status, who is applying for a program listed in WAC 388-476-0005(7);

(b) A PRUCOL (permanently residing under color of law) alien (~~(as defined in WAC 388-424-0001)~~) who is not in one of the PRUCOL groups listed in WAC 388-424-0010(4); and

(c) Members of a household who are not applying for benefits for themselves.

(3) "Qualified aliens," as defined in WAC 388-424-0001, and PRUCOL aliens in any of the PRUCOL groups listed in WAC 388-424-0010(4), who are applying for federal benefits but who are not authorized to work in the U.S., must still apply for a nonwork SSN. The department must assist them in this application without delay.

(4) An immigrant who is otherwise eligible for benefits may choose not to provide the department with an SSN without jeopardizing the eligibility of others in the household. See WAC 388-450-0140 for how the income of such individuals is treated.

AMENDATORY SECTION (Amending WSR 09-15-082, filed 7/14/09, effective 8/14/09)

WAC 388-424-0010 Citizenship and alien status—Eligibility (~~(restrictions)~~) for TANF, (~~(nonemergency)~~) medicaid, and (~~(SCHIP)~~) CHIP. (1) To receive temporary assistance for needy families(TANF), (~~(nonemergency)~~) medicaid, or (~~(SCHIP)~~) children's health insurance program (CHIP) benefits, (~~(you)~~) an individual must meet all other eligibility requirements and be one of the following as defined in WAC 388-424-0001:

(a) A United States (U.S.) citizen;

(b) A U.S. national;

(c) An American Indian born outside the U.S.;

(d) A "qualified alien";

(e) A victim of trafficking; or

(f) A Hmong or Highland Lao(~~(; or~~

~~(g) A special immigrant from Iraq or Afghanistan eligible for eight months of federally funded assistance from your date of entry into the United States or from the date you received special immigrant status)).~~

(2) A "qualified alien" who first physically entered the U.S. before August 22, 1996 as described in WAC 388-424-0006(1) may receive TANF, (~~(nonemergency)~~) medicaid, and (~~(SCHIP)~~) CHIP.

(3) A "qualified alien" who first physically entered the U.S. on or after August 22, 1996 cannot receive TANF, (~~(nonemergency)~~) medicaid, or (~~(SCHIP)~~) CHIP for five years after obtaining status as a qualified alien unless(~~(;~~

~~(a) He or she is an alien as described in WAC 388-424-0006(4); or~~

~~(b) He or she is an alien as described in WAC 388-424-0006(5) applying for nonemergency medicaid or SCHIP)) the criteria in WAC 388-424-0006 (4) or (5) are met.~~

(4) A child or pregnant woman in one of the following PRUCOL (permanently residing under color of law) groups may receive medicaid or CHIP:

(a) A citizen of a compact of free association state (Micronesia, Marshall Islands or Palau) who has been admitted to the U.S. as a nonimmigrant;

(b) An individual in temporary resident status as an amnesty beneficiary;

(c) An individual in temporary protected status;

(d) A family unity beneficiary;

(e) An individual currently under deferred enforced departure;

(f) An individual who is a spouse or child of a U.S. citizen with an approved Visa petition pending adjustment of status;

(g) A parent or child of an individual with special immigration status;

(h) A fiance of a U.S. citizen;

(i) A religious worker;

(j) An individual assisting the Department of Justice in a criminal investigation; or

(k) An individual with a petition of status pending of three years or longer.

(5) An alien who is ineligible for TANF, medicaid or CHIP because of the five-year bar or because of their immigration status may be eligible for:

(a) Emergency benefits as described in WAC 388-436-0015 (consolidated emergency assistance program) and WAC 388-438-0110 (alien (~~(emergency)~~) medical program); or

(b) State-funded cash or chemical dependency benefits as described in WAC 388-424-0015 (state family assistance (SFA), general assistance (GA) and the alcohol and drug addiction treatment and support act (ADATSA)), and medical benefits as described in WAC 388-424-0016; or

(c) Pregnancy medical benefits as described in WAC 388-462-0015; or

(d) (~~(Children's healthcare benefits)~~) Apple health for kids as described in WAC 388-505-0210 (2) or (5).

WSR 10-15-069

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Medicaid Purchasing Administration)

[Filed July 16, 2010, 3:14 p.m., effective August 16, 2010]

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

Purpose: To implement necessary language regarding:

(1) Exemption of certain property from resources for medicaid and children's health insurance program (CHIP) eligibility for Native Americans, as required under the American Recovery and Reinvestment Act (ARRA) of 2009 (Recovery Act); and

(2) Payments or interest accrued on payments made under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) listed as excluded resources for SSI-related medical programs.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0040, 388-450-0080, 388-455-

0005, 388-455-0015, 388-470-0045, 388-475-0350, 388-475-0550, and 388-475-0600.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: ARRA of 2009 (Recovery Act), Public Law 111-5, Section 5006(b); 42 C.F.R. 435.601, EEOICPA of 2000, Public Law 106398, Sec. 1, app., Title XXXVI (Oct. 30, 2000) (Section 1 adopting as Appendix H.R. 5408), Section 3646 of the Appendix.

Adopted under notice filed as WSR 10-11-041 on May 11, 2010.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 8, Repealed 0.

Date Adopted: July 15, 2010.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-16 issue of the Register.

WSR 10-15-072
PERMANENT RULES
HIGHER EDUCATION
COORDINATING BOARD

[Filed July 16, 2010, 3:58 p.m., effective August 16, 2010]

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

Purpose: Establishes procedures for the disbursement of the WAVE scholarship as direct grants to students.

Statutory Authority for Adoption: RCW 28B.76.670.

Adopted under notice filed as WSR 10-11-111 on May 18, 2010.

Changes Other than Editing from Proposed to Adopted Version: No substantive change - minor revision of WAC 250-85-040 (6) and (7) to remove language regarding tuition payment to in-state institution.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 13, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 13, Amended 0, Repealed 0.

Date Adopted: July 15, 2010.

Julie Japhet
Assistant Director of
Student Financial Assistance

Chapter 250-85 WAC

**WASHINGTON AWARD FOR VOCATIONAL
EXCELLENCE (WAVE) PROGRAM**

NEW SECTION

WAC 250-85-010 What is the Washington award for vocational excellence (WAVE) program? The Washington award for vocational excellence program, also known as WAVE, recognizes the outstanding achievements of vocational or technical students graduating from high school, or attending a community college or technical college, while in the state of Washington.

To the extent that funds are appropriated by the legislature, the WAVE program provides a scholarship to help pay the costs of undergraduate level coursework at participating in-state public or private colleges and universities, or at in-state private career colleges and schools licensed by the workforce training and education coordinating board.

NEW SECTION

WAC 250-85-020 What is the application process for the WAVE scholarship? Contact the workforce training and education coordinating board or the on-campus WAVE coordinator at your high school, skills center, or public community or technical college for application information.

NEW SECTION

WAC 250-85-030 What eligibility requirements must a recipient meet to use the WAVE scholarship? In addition to the usage and time limitations stated in WAC 250-85-050, a WAVE recipient must:

- (1) Be a Washington resident as defined in chapter 250-18 WAC.
- (2) Be a student enrolled in undergraduate level coursework.
- (3) Attend a participating college, university, or private career college or school located within the state, as defined in RCW 28B.76.670 and WAC 250-85-100.
- (4) Not pursue a degree in theology.
- (5) Receive a minimum grade point average (GPA) of 3.0, or the equivalent, for the last academic term of attendance at a participating institution to receive the scholarship for the next academic term of attendance.

(a) If the grade point average is below 3.0 for the last academic term of attendance, the WAVE recipient must perform at least one academic term of study without the scholarship at a participating institution and receive at least a 3.0 grade point average for that academic term before again qualifying to receive the scholarship.

(b) The grade point requirement applies only to enrollment at participating institutions, as defined in WAC 250-85-100. GPAs earned for coursework taken through out-of-state institutions or ineligible in-state institutions are not used to determine a recipient's ongoing eligibility for the WAVE scholarship.

(c) The minimum grade point average requirement applies after the recipient's first use of the scholarship.

NEW SECTION

WAC 250-85-040 What other conditions apply to the use of the WAVE scholarship? The WAVE recipient:

(1) May use the scholarship for nonconsecutive academic terms of study.

(2) May attend school full time or less than full time and receive the scholarship.

(3) Uses one term of WAVE eligibility for each academic term the scholarship is received, without regard to enrollment status (i.e., full time or less than full time) or the dollar value of the scholarship paid for the academic term. Exceptions may apply.

(4) May transfer from one participating in-state school to another and continue to receive the scholarship as long as all other eligibility requirements are met.

(5) May use and receive the scholarship for study at only one institution at a time in any given academic term. An exception may be authorized by the higher education coordinating board; however, scholarship value and usage restrictions may apply.

(6) May receive the scholarship at a participating institution for study abroad in some circumstances. For this exception to apply, the recipient must be enrolled (i.e., have concurrent or dual enrollment) at the in-state participating institution (also known as the "school of record") in an institution-approved (or institution-affiliated) program of study abroad. The grade point average, or grade point equivalent, for the academic term(s) of study abroad must transfer to the in-state school of record so that the recipient's ongoing eligibility for the WAVE scholarship may be determined.

(7) May receive the scholarship at a participating institution for undergraduate level coursework while attending an out-of-state campus location of the same school in some circumstances. For this exception to apply, the recipient must be enrolled (i.e., have concurrent or dual enrollment) at the in-state participating institution (also known as the "parent institution"). The grade point average, or grade point equivalent, must transfer to the parent institution in-state so that the recipient's ongoing eligibility for the WAVE scholarship may be determined.

NEW SECTION

WAC 250-85-050 What are the term usage and time limits for the WAVE scholarship? (1) Individuals awarded

the WAVE scholarship may receive up to six academic quarters, or four semesters, or the equivalent combination of academic quarters and semesters, of scholarship for undergraduate level coursework.

(2) Recipients have three years to begin using the WAVE scholarship and six years to complete using the scholarship. This means that a WAVE recipient must:

(a) Begin using the scholarship no later than the fall term three years after designation as a WAVE recipient. Failure to do so results in forfeiture of all eligibility to use the scholarship. For example, a student named as a WAVE recipient in spring 2008 must receive the scholarship for at least one academic term no later than the end of fall term 2011.

(b) Complete using the scholarship no later than the fall term six years after designation as a WAVE recipient. Any unused portion of the scholarship is forfeited at the end of the sixth year. For example, a student named as a WAVE recipient in spring 2008 must complete use of the full scholarship no later than the end of fall term 2014. Any unused eligibility is forfeited by the recipient at the end of fall 2014.

NEW SECTION

WAC 250-85-060 What is the monetary value of the WAVE scholarship? (1) The scholarship value is indexed to undergraduate, resident tuition, and service and activity fees at the state's public colleges and universities, not to exceed the cost at the public research universities. The scholarship value does not include the cost of technology fees or other miscellaneous fees.

(2) The scholarship will not exceed the value of public tuition and service and activity fees for full-time enrollment at the fifteen credit level for an academic term.

(3) The scholarship is reduced for less than full-time enrollment or withdrawal from all classes. See WAC 250-85-070, What is the result of dropping a class after receiving the WAVE scholarship funds?

(4) The scholarship for WAVE recipients enrolled at participating independent institutions, or licensed private career colleges or schools, will not exceed the maximum scholarship values for recipients enrolled full time at the public research universities.

(5) The scholarship value may be adjusted and is payable to the extent that funding is appropriated for the WAVE program. Scholarship values may be reduced in a fiscal year to remain within available dollars as funding dictates or as required by the legislature. Participating institutions are notified if adjustments are necessary during the course of an academic or fiscal year.

NEW SECTION

WAC 250-85-070 What is the result of dropping a class after receiving the WAVE scholarship funds? The scholarship value may be reduced if the tuition charge is decreased for an academic term in which a WAVE recipient drops one or more classes.

(1) If a WAVE recipient drops a class or withdraws within the institution's tuition refund period, the student must reimburse the difference between the original scholarship value already paid and the decreased scholarship value. The

institution shall return any overpaid amount to the higher education coordinating board.

(2) If the recipient drops or withdraws from class after the institution's tuition refund period has expired, the recipient may, but is not required to, reimburse the WAVE scholarship already paid for an academic term. The options regarding repayment of the WAVE scholarship include:

(a) Performing one academic term at a participating institution without the scholarship and receiving a qualifying GPA for the term in order to regain eligibility to use the WAVE scholarship.

(b) Repaying in full the scholarship amount received to restore eligibility for the term of usage. The institution shall return any reimbursed amount to the higher education coordinating board.

NEW SECTION

WAC 250-85-080 What educational costs may be paid with the WAVE scholarship? Individuals must decide which educational expenses to pay with the WAVE funds for the academic term. The WAVE scholarship will not cover all educational costs. Examples of expenses in the student budget for which the scholarship may be used are: Tuition, room and board, books and supplies, transportation, or other miscellaneous personal expenses.

NEW SECTION

WAC 250-85-090 What are the payment priorities for the WAVE scholarship? Because the scholarships are paid from limited funds appropriated to the program, payments are subject to the following priorities:

(1) First priority is to recipients attending during the regular academic year who are identified to the higher education coordinating board by the college or university on or before the twentieth day of the fall term as enrolled, or planning to enroll later, during the same academic year. The phrase "regular academic year" means the time frame which includes the fall, winter, and spring academic terms.

(2) Second priority is to recipients identified to the higher education coordinating board by the college or university after the twentieth day of the fall term as enrolled, or planning to enroll later, during the same regular academic year.

(3) Third priority is for recipients enrolled for the summer term, if funds are available. Due to limited funds availability, WAVE scholarships for summer term study may be prorated and are paid on a first-come, first-served basis.

(4) In the event that funds appropriated to the program are fully expended, or reduced in a fiscal year or biennial budget, or if payment of the scholarships at full value is expected to exceed available dollars, the scholarships will be proportionally reduced or eliminated to remain within available funds.

NEW SECTION

WAC 250-85-100 Where may a recipient use the WAVE scholarship? The scholarship may be used only for undergraduate level coursework at approved postsecondary

institutions in the state of Washington that meet one of the definitions described later in this section. The postsecondary institution must have current, valid, signed, and approved institutional participation and electronic access agreements in effect with the higher education coordinating board for a recipient to receive the WAVE scholarship while attending the school. A school that meets both requirements is a "participating institution."

A participating institution must meet one of the following definitions:

(1) The Washington public institutions of higher education, including the state research universities, the state regional universities, The Evergreen State College, the state community colleges, and the state technical colleges.

(2) A private, nonprofit educational institution that:

(a) Has a main campus which is permanently situated in this state.

(b) Provides programs of education beyond the high school level leading at least to the baccalaureate degree.

(c) Is accredited by the northwest association of schools and colleges, or another accrediting body approved by the higher education coordinating board as meeting equivalent standards as those institutions accredited by the northwest association.

(3) A private career college or school that has a physical campus located in the state, licensed to operate within the state of Washington by the workforce training and education coordinating board, and offering postsecondary education to prepare persons for a vocation or profession.

NEW SECTION

WAC 250-85-110 What are the responsibilities of a WAVE scholarship recipient? A recipient of the WAVE scholarship is responsible:

(1) To notify the institution's scholarship coordinator of the intent to use the WAVE scholarship for each academic term as well as any enrollment status changes, such as dropping or adding a class, a leave of absence, withdrawing entirely, or planning to transfer to another school.

(2) To pay the tuition and services and activities fees to the college or university, or to make arrangements with the institution for payment of those costs.

(3) To reimburse all or part of the scholarship if dropping or withdrawing from class in an academic term after receiving payment as described in WAC 250-85-070, What is the result of dropping a class after receiving the WAVE scholarship funds?

(4) To notify the higher education coordinating board and the workforce training and education coordinating board of name and other contact information changes.

NEW SECTION

WAC 250-85-120 What are the responsibilities of the workforce training and education coordinating board? The workforce training and education coordinating board:

(1) Has primary responsibility for program policy for the WAVE program.

(2) Administers the application and recipient selection processes for the WAVE program.

(3) Provides the higher education coordinating board with all pertinent information for the purpose of paying the WAVE scholarship to recipients selected after June 30, 1994.

NEW SECTION

WAC 250-85-130 What are the responsibilities of the higher education coordinating board? The higher education coordinating board:

- (1) Serves as fiscal agent for payment of the WAVE scholarship for undergraduate coursework to recipients selected after June 30, 1994.
- (2) Is responsible for policy related to scholarship payment and fiscal issues, in consultation with the workforce training and education coordinating board.
- (3) Enters into the necessary agreements with eligible participating institutions for payment of the scholarship.
- (4) Adopts all necessary rules and guidelines for payment of WAVE scholarships.
- (5) Maintains payment records on all WAVE recipients.
- (6) Monitors ongoing student eligibility to receive and maintain the scholarship.
- (7) Provides the workforce training and education coordinating board with relevant recipient usage information.

WSR 10-15-084

PERMANENT RULES

DEPARTMENT OF HEALTH

(Chiropractic Quality Assurance Commission)

[Filed July 19, 2010, 1:32 p.m., effective August 19, 2010]

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

Purpose: The adopted rules clarify and define that documentation of care must be legible and completed in a timely manner. Chiropractors, ancillary staff, patients, and other stakeholders should better understand the expectations of adequate documentation of care. This will further enhance public protection.

Citation of Existing Rules Affected by this Order: Amending WAC 246-808-560.

Statutory Authority for Adoption: RCW 18.25.0171.

Other Authority: Chapter 18.25 RCW.

Adopted under notice filed as WSR 10-02-079 on January 5, 2010.

Changes Other than Editing from Proposed to Adopted Version: Subsection (1) added "whether or not symptoms are present" for clarity: Subjective health status updates, whether or not symptoms are present, must be documented for every patient encounter. Subsection (4) moved "if applicable" to read: The region(s) of all treatment and, if applicable, the specific level(s) of chiropractic adjustments must be recorded in the patient encounter documentation.

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

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

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: April 15, 2010.

Ronald G. Rogers, DC
Chair

AMENDATORY SECTION (Amending WSR 96-16-074, filed 8/6/96, effective 9/6/96)

WAC 246-808-560 Documentation of care. ~~((1) The recordkeeping procedures of a chiropractor shall be adequate to provide documentation of the necessity and rationale for examination, diagnostic/analytical procedures, and chiropractic services. The required documentation shall include, but not necessarily be limited to, the patient's history and/or subjective complaints; examination findings and/or objective findings; and a record of all chiropractic services performed.~~

~~(2) Chiropractic examinations shall be documented by specifying subjective complaints, objective findings, an assessment or appraisal of the patient's condition and the plan for care. Daily chart notes may be brief notations recorded in the patient's chart file between examinations. These notations shall indicate any changes in the care or progress of the patient and the chiropractic, diagnostic, or analytical services performed or ordered. Detailed entries need not be documented on every visit as long as examinations are performed at reasonable intervals and those examinations are documented as specified in this section.~~

~~(3) If a code is utilized by the doctor in connection with recordkeeping, a code legend shall be included in the records.)~~ A doctor of chiropractic must keep complete and accurate documentation on all patients and patient encounters. This documentation is necessary to protect the health, well-being and safety of the patient.

(1) The patient record must detail the patient's clinical history, the rationale for the examination, diagnostic or analytical procedures, and treatment services provided. The diagnosis or clinical impression must be contained in the patient record, not merely recorded on billing forms or statements. Subjective health status updates, whether or not symptoms are present, must be documented for every patient encounter.

(2) Documentation for the initial record must include at a minimum:

(a) The patient's history;

(b) Subjective presentation;

(c) Examination findings or objective findings relating to the patient's presenting condition;

- (d) Any diagnostic testing performed;
- (e) A diagnosis or impression;
- (f) Any treatment or care provided; and
- (g) Plan of care.

(3) Reexaminations, being necessary to monitor the progress or update the current status of a patient, must be documented at reasonable intervals sufficient to reflect the effectiveness of the treatment. Reexaminations must also be documented whenever there is an unexpected change in the subjective or objective status of the patient. Reexamination documentation must include the subjective presentation and objective findings. This documentation shall also reflect changes in the patient's care and progress and in the treatment plan.

(4) Documentation between examinations must be recorded for every patient encounter. Documentation must sufficiently record all the services provided, as well as any changes in the patient's presentation or condition. The region(s) of all treatment and, if applicable, the specific level(s) of chiropractic adjustments must be recorded in the patient encounter documentation.

(5) Patient records must be legible, permanent, and recorded in a timely manner. Documentation that is not recorded on the date of service must designate both the date of service and the date of the chart note entry. Corrections or additions to the patient's records must be corrected by a single line drawn through the text and initialed so the original entry remains legible. In the case of computer-organized documentation, unintended entries may be identified and corrected, but must not be deleted from the record. Errors in spelling and grammar may be corrected and deleted.

(6) Correspondence relating to any referrals concerning the diagnosis or treatment of the patient must be retained in the patient record.

(7) Patient records should clearly identify the provider of services by name, initials, or signature. If the chiropractor uses a code in the documentation, a code legend must be made available upon request.

WSR 10-15-092

PERMANENT RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2009-01—Filed July 20, 2010, 9:16 a.m., effective August 20, 2010]

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

Purpose: The rules will:

1. Establish the information required for the filing of rates for title insurance under RCW 48.29.147;
2. Establish standards for title insurance rate filings to satisfy RCW 48.29.147;
3. Identify statistics that title insurance agents must collect and report to the title insurers that have appointed them, in order that the insurers can file accurate and appropriate expense data to support their rate filings;
4. Identify title insurance statistics that title insurers and title insurance agents must collect and report to the commissioner in order for the commissioner to determine whether

the title insurance rates comply with chapters 48.143 and 48.147 RCW;

5. Establish a date by which title insurers must file every manual of rules and rates, rating plan, rate schedule, minimum rate, class rate, and rating rule, and every modification of any of these filings under RCW 48.29.143 and 48.29.147;

6. Require title insurers to file rates and forms through the system for electronic rate and form filing (SERFF).

Statutory Authority for Adoption: RCW 48.02.060 and 48.29.005.

Adopted under notice filed as WSR 10-12-103 on June 2, 2010.

A final cost-benefit analysis is available by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail jimt@oic.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 16, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 16, Amended 0, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 16, Amended 0, Repealed 0.

Date Adopted: July 20, 2010.

Mike Kreidler
Insurance Commissioner

Chapter 284-29A WAC

TITLE INSURANCE RATES

NEW SECTION

WAC 284-29A-010 Finding and purpose. Title insurance protects against financial loss from defects in insured titles of real property. Losses from title insurance policies are not the primary cost to title insurers and title insurance agents. The primary costs incurred by title insurers and title insurance agents are maintenance of tract indexes and research to find title defects before the policies are issued. Title insurance is regulated differently than property and casualty insurance because loss ratios for title insurance are relatively low and expense ratios are fairly high. To implement and administer chapter 48.29 RCW, the commissioner needs detailed information about the costs underlying title insurance policies to regulate rates and ensure consumers are offered fair and equitable premiums. The purpose of this chapter is to adopt rules that establish:

- (1) Standards for determining whether a premium rate complies with RCW 48.29.143;

(2) Standards and procedures that apply to RCW 48.29.147;

(3) The date after which title insurers must use rates that have been filed and approved under RCW 48.29.147; and

(4) Requirements for submitting all rate filings through SERFF.

NEW SECTION

WAC 284-29A-020 Definitions. The definitions in this section apply to this chapter:

"Commitment" means the same as in RCW 48.29.010 (3)(c).

"Complete filing" means a package of information containing rates, supporting information, documents and exhibits submitted to the commissioner electronically using the system for electronic rate and form filing (SERFF).

"Date filed" means the date a complete filing has been received and accepted by the commissioner.

"Filer" means a person, organization or other entity that files title insurance rates with the commissioner for a title insurer.

"NAIC" means the National Association of Insurance Commissioners.

"Objection letter" means correspondence created in SERFF and sent by the commissioner to the filer that:

(a) Requests clarification, documentation or other information;

(b) Explains errors or omissions in the filing; or

(c) Disapproves the filing under RCW 48.29.147.

"Policy" means a title policy as defined in RCW 48.29.010 (3)(a), and includes endorsements.

"Producer" means:

(a) A "producer of title insurance" as defined in WAC 284-29-205(8); and

(b) An "associate of producers" as defined in RCW 48.29.010 (3)(f).

"Rate" or "rates" means all classification manuals, rate and rule manuals, rating plans, rating schedules, minimum rates, class rates, and rating rules that title insurers must file under RCW 48.29.147.

"SERFF" means the system for electronic rate and form filing. SERFF is a proprietary NAIC computer-based application that allows insurers and other entities to create and submit rate, rule and form filings electronically to the commissioner.

"Title insurance agent" or "agent" has the same meaning as in RCW 48.17.010(15).

"Title insurance" has the same meaning as in RCW 48.11.100.

"Title insurer" means a title insurance company authorized to conduct title insurance business in this state under chapter 48.05 RCW.

NEW SECTION

WAC 284-29A-030 Transition to prior approval system. (1) On and after January 1, 2012, all rates used in Washington state must be filed and approved under RCW 48.29.147.

(2) Title insurers must submit the rate filings required under RCW 48.29.147 and subsection (1) of this section to the commissioner by September 1, 2011, for rates to be effective on January 1, 2012. This rule allows the commissioner time to take final action on rates filed under this chapter before the effective date of January 1, 2012.

(3) Rates filed under RCW 48.29.140(2) must not be used for commitments issued on or after January 1, 2012.

NEW SECTION

WAC 284-29A-040 Supporting information required under RCW 48.29.147. (1) When a title insurer files rates with the commissioner, the title insurer must demonstrate that the proposed rates comply with RCW 48.29.143. To the extent possible:

(a) Each title insurer must provide credible data to support the proposed rates. If credible data are not available, the title insurer must provide supporting documentation that describes its process for developing the proposed rates and demonstrates that they meet the requirements of RCW 48.29.143.

(b) Data used to support the proposed rates should be from the state of Washington. If data from other states are used, the title insurer must explain why those data are similar to what would be expected in Washington.

(2) If a title insurer proposes to use rates that are identical to the rates of another title insurer, the rate filing must include supporting information that demonstrates that the title insurer's proposed rates meet the requirements of RCW 48.29.143. It is not sufficient simply to state that the proposed rates are identical to those of another title insurer or that the rates are being filed for competitive purposes.

(3) Under RCW 48.29.143(2), a title insurer's provision for underwriting profit must be consistent with its cost of capital. The rate filing must demonstrate that expected underwriting profit, plus expected investment income on reserves and surplus, minus expected federal income taxes corresponds to an appropriate target after-tax rate of return on the title insurer's equity or net worth.

(4) The rate filing must provide sufficient information so that the commissioner may determine whether the proposed rates comply with RCW 48.29.147(3).

NEW SECTION

WAC 284-29A-050 Unfairly discriminatory rates. Situations in which the rates are unfairly discriminatory under RCW 48.29.143(1) include, but are not limited to:

(1) Rating rules that provide for a waiver of the cancellation fee or reduction of the cancellation fee, after a commitment has been issued, to an amount that is less than the expected average cost for the title insurer and its agents to issue a commitment in the defined geographical area covered by the rating rules;

(2) Negotiation or bidding of price;

(3) Rating rules that do not have a definite charge for every bracket of coverage;

(4) Discounts not provided to all qualifying risks; and

(5) Rating plans in which policies:

- (a) Generating higher premiums subsidize smaller policies; or
- (b) From one geographical area subsidize those from another geographical area.
- (6) A title insurer's application of more than one rate schedule to similarly situated risks in a county or other defined geographical area. For example, it is unfairly discriminatory for a title insurer to use different rate schedules for business produced by different title insurance agents in a specific rating territory.

NEW SECTION

WAC 284-29A-060 Judgment rating. If the rates for a title insurance policy (including endorsements) depend in whole or in part upon the judgment of the title insurer or agent, the title insurer must:

- (1) File rating rules that describe the specific criteria used for making the rates;
- (2) Document the rationale for each judgment rate referencing the filed rating rule;
- (3) Retain supporting documentation required under this section for at least three years following the effective date of the policy;
- (4) Make the documentation available for examination by the commissioner on request; and
- (5) Treat all similarly situated risks equitably. If a title insurer files a judgment rate that reduces the rate for a particular endorsement to a percentage of the base rate, then the title insurer must reduce the rate for all similarly situated risks that meet the same criteria. For example, if the title insurer charges an insured that meets specific criteria a premium of ten percent of the base rate for the endorsement, another insured meeting the same criteria must also be charged a premium of ten percent of the base rate.

NEW SECTION

WAC 284-29A-070 Referral fees and marketing expenses. (1) Under RCW 48.29.210 and WAC 284-29-200 through 284-29-265, title insurers and title insurance agents:

- (a) Are prohibited from giving anything of value to any person for the referral of title insurance business;
- (b) Are prohibited from giving most things of value to persons who are in a position to refer or influence the referral of title insurance business;
- (c) Must charge and collect for the costs of providing certain listed information, services, and other items of value that title insurers and their agents give to persons who are in a position to refer or influence the referral of title insurance business; and
- (d) Are permitted to give specified things of value to producers of title insurance at no charge.
- (2) Therefore, in making rates a title insurer must not include income or expenses related to the costs of:
 - (a) Giving anything of value to any person for the referral of title insurance business;
 - (b) Providing information, services, and other items of value that a title company is prohibited from giving to a producer of title insurance business under RCW 48.29.210 and WAC 284-29-200 through 284-29-265; and

(c) Providing information, services, and other items of value that the title insurer or a title insurance agent may give to producers if the title insurer or title insurance agent is paid for the information, services, or other items identified in WAC 284-29-200 through 284-29-265.

(3) However, in making rates a title insurer may include its income or expenses related to the costs of giving permitted things of value to producers of title insurance business and the title insurer's and title insurance agents' other marketing expenses.

NEW SECTION

WAC 284-29A-080 Expense component of rates. (1) In support of the expense component of the rates, the title insurer must:

- (a) Include estimates of expected expenses to issue title insurance policies and commitments;
- (b) Exclude the expected expenses related to escrow and other activities not directly related to title insurance;
- (c) Exclude the expected expenses described in WAC 284-29A-070(2); and
- (d) Show how those estimates were calculated and demonstrate how those estimates are connected to the proposed rates.
- (2) The expense categories that must be considered when making rates include:
 - (a) Employees' salaries and wages;
 - (b) Owners' and partners' salaries and wages representing reasonable compensation for personal services actually performed by owners and partners;
 - (c) Employee benefits;
 - (d) Rent;
 - (e) Insurance;
 - (f) Legal expense;
 - (g) Licenses, taxes, and fees;
 - (h) Title plant expense and maintenance;
 - (i) Office supplies;
 - (j) Depreciation;
 - (k) Automobile expense;
 - (l) Communication expense;
 - (m) Education expense;
 - (n) Bad debts;
 - (o) Interest expense;
 - (p) Employee travel and lodging;
 - (q) Loss and loss adjustment expense;
 - (r) Accounting and auditing expense;
 - (s) Public relations expense; and
 - (t) Other specifically identified expenses.
- (3) To support the agent commission component of rates, it is not sufficient to state the commission rate and perform calculations based on that percentage. The title insurer's rate filing must include data that supports the expense component that applies to its title insurance agents.
- (4) The supporting information required under this section may aggregate the data from agent reports received by the title insurer in one or more years under the provisions of WAC 284-29A-110.

NEW SECTION

WAC 284-29A-090 Rates must include all costs. All premium rates filed under RCW 48.29.147 and this chapter must include all costs related to the title insurance transaction, including the costs to:

- (1) Maintain the tract indexes;
- (2) Search and examine the title or title to be insured;
- (3) Issue preliminary commitments;
- (4) Determine that each insured estate has been created, conveyed or modified as shown in the policy;
- (5) Evaluate coverage and amend the policy as needed with appropriate and reasonable exceptions, conditions or modifications; and
- (6) Any other direct or indirect cost associated with performing these activities.

NEW SECTION

WAC 284-29A-100 Effect of premium split on filing of premium rates. If the title agency contracts between a title insurer and the title insurer's appointed title agents provide for a split of premiums between the title insurer and the title insurance agent, the title insurer must file premium rate schedules using supporting data and information that are consistent with that contractual premium split. The title insurer's base rates should be consistent with its actual contractual split of premiums between the title insurer and its agents. The title insurer's use of more than one premium split with its agents, if any, must be addressed through the filing of rating rules that specify the situations in which other premium splits are used and the adjustments that result from their use.

NEW SECTION

WAC 284-29A-110 Title insurance agents must report data to title insurers. (1) Each title insurance agent must report premium, policy count, and expense data annually to each title insurer for which it produces business in the state of Washington by April 1st of each year. These data must be reported following the instructions published by the commissioner on the commissioner's web site at www.insurance.wa.gov. These instructions, called the *Title Insurance Agent Annual Report*, are incorporated into this chapter by reference.

(2) Each annual report required by this section must include:

- (a) The following premium and policy count data:
 - (i) Title insurance premiums for all of the agent's business; and
 - (ii) Title insurance premiums produced for the title insurer to which the report is sent.
 - (iii) Number of policies issued by all of the title insurers with which the agent does business; and
 - (iv) Number of policies issued by the title insurer to which the report is sent.
- (b) The following expense data related to issuing title insurance policies and commitments for all of the agent's business, excluding all expenses related to escrow and other activities not directly related to title insurance:
 - (i) Employees' salaries and wages;

(ii) Owners' and partners' salaries and wages representing reasonable compensation for personal services actually performed by owners and partners;

- (iii) Employee benefits;
- (iv) Rent;
- (v) Insurance;
- (vi) Legal expense;
- (vii) Licenses, taxes, and fees;
- (viii) Title plant expense and maintenance;
- (ix) Office supplies;
- (x) Depreciation;
- (xi) Automobile expense;
- (xii) Communication expense;
- (xiii) Education expense;
- (xiv) Bad debts;
- (xv) Interest expense;
- (xvi) Employee travel and lodging;
- (xvii) Loss and loss adjustment expense;
- (xviii) Accounting and auditing expense;
- (xix) Public relations expense; and
- (xx) Other specifically identified expenses.

(c) An explanation that:

(i) Describes how expenses are allocated between the title operations and escrow or other operations of the title insurance agent; and

(ii) Demonstrates that the expenses described in WAC 284-29A-070(2) have been excluded.

(d) The estimated average cost to issue a title insurance commitment.

(3) If a title insurer does not receive a report required under this section by April 1st of each year, the title insurer must notify the commissioner by April 15th. This notice must include the name of the agent that did not send the report on time.

NEW SECTION

WAC 284-29A-120 Filing documents incorporated by reference into this chapter. SERFF is a dynamic application that the NAIC will revise and enhance over time. To be consistent with NAIC filing standards and provide timely instructions to filers, the commissioner will incorporate documents posted on the SERFF web site and on the commissioner's web site into this chapter. By reference, the commissioner incorporates these documents into this chapter:

- (1) The *SERFF Industry Manual* posted on the SERFF web site (www.serff.com); and
- (2) The *Washington State SERFF Title Insurance Rate Filing General Instructions* posted on the commissioner's web site (www.insurance.wa.gov).

NEW SECTION

WAC 284-29A-130 General rate filing rules. Filers must submit complete rate filings that comply with the *SERFF Industry Manual* posted on the SERFF web site (www.serff.com) and the *Washington State SERFF Title Insurance Rate Filing General Instructions* posted on the commissioner's web site (www.insurance.wa.gov). All rate filings must comply with these rules:

(1) Filers must submit all rate filings and related documents to the commissioner electronically using SERFF.

(2) Filers must send all written correspondence related to a rate filing in SERFF.

(3) Each rate filing must be accurate and internally consistent.

(4) Filers must not submit combined rate and form filings.

NEW SECTION

WAC 284-29A-140 The commissioner may reject filings. (1) The commissioner may reject and close any filing that does not comply with WAC 284-29A-120. If the commissioner rejects a filing, the title insurer has not filed rates with the commissioner.

(2) If the commissioner rejects a filing and the filer resubmits it as a new filing, the date filed will be the date the commissioner receives and accepts the new filing.

NEW SECTION

WAC 284-29A-150 Responding to objection letters. If the commissioner disapproves a filing under RCW 48.29.147, the objection letter will state the reason(s) for disapproval, including relevant law and administrative rules. Filers must:

(1) Provide a complete response to an objection letter. A complete response includes:

- (a) A separate response to each objection; and
- (b) If appropriate, revised exhibits and supporting documentation.

(2) Respond to the commissioner in a timely manner.

NEW SECTION

WAC 284-29A-160 Filing authorization rules. A title insurer may authorize a third-party filer to file rates on its behalf. For the purposes of this section, "third-party filer" means a person or entity in the business of providing insurance regulatory compliance services.

(1) If a title insurer delegates filing authority to a third-party filer, each filing must include as supporting documentation a letter signed by an officer of the title insurer authorizing the third-party filer to make filings on behalf of the title insurer.

(2) The title insurer may not delegate responsibility for the content of a filing to a third-party filer. The commissioner considers errors and omissions made by the third-party filer to be errors and omissions of the title insurer.

(3) If a third-party filer has a pattern of making filings that do not comply with this chapter, the commissioner may reject a delegation of filing authority from the title insurer.

WSR 10-15-093

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Hearing and Speech)

[Filed July 20, 2010, 11:16 a.m., effective July 26, 2010]

Effective Date of Rule: July 26, 2010.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: This effective date is necessary to implement 2009 legislation that created the new speech-language pathology assistant profession and amended chapter 18.35 RCW.

Purpose: Amending chapter 246-828 WAC, Hearing and speech, to add the requirements, including fees, for the new speech-language pathology assistant profession.

Citation of Existing Rules Affected by this Order: Amending WAC 246-828-025, 246-828-075, 246-828-300, and 246-828-990.

Statutory Authority for Adoption: RCW 18.35.161, 43.70.250.

Adopted under notice filed as WSR 10-10-102 on May 4, 2010.

Changes Other than Editing from Proposed to Adopted Version: A sentence under WAC 246-828-112(3) was removed to eliminate confusion regarding supervision. Supervision is defined in statute and other rule sections as "direct" and "indirect."

A final cost-benefit analysis is available by contacting Janette Benham, P.O. Box 47852, Tumwater, WA 98504-7852, phone (360) 236-4857, fax (360) 236-2901, e-mail janette.benham@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 4, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 4, Repealed 0.

Date Adopted: June 14, 2010.

Rhonda Friedlander, Chair
Board of Hearing and Speech

AMENDATORY SECTION (Amending WSR 06-19-109, filed 9/20/06, effective 10/21/06)

WAC 246-828-025 Definitions. (1) "Board-approved institution of higher education" means:

(a) An institution offering a program in audiology or speech-language pathology leading to a master's degree, or its equivalent, or a doctorate degree or its equivalent, that has been accredited by the council on academic accreditation in

audiology and speech-language pathology, or an equivalent program.

(b) An institution offering a speech-language pathology assistant program or a speech, language, and hearing program approved by the state board for community and technical colleges, the higher education coordinating board, or an equivalent body from another state or province. This program must lead to an associate of arts or sciences degree, certificate of proficiency, or bachelor of arts or sciences degree.

(c) A board-approved institution shall integrate instruction in multicultural health as part of its basic education preparation curriculum under RCW 43.70.615.

(2) "Postgraduate professional work experience" means a supervised full-time professional experience, or the part-time equivalent, as defined in these rules, involving direct patient/client contact, consultations, ~~((record-keeping))~~ recordkeeping, and administrative duties relevant to a bona fide program of clinical work.

(a) "Full-time professional experience" means at least 30 hours per week over 36 weeks. Postgraduate professional work experience must be obtained over a period of at least 36 weeks. Applicants who obtain an Au.D. at a board-approved institution of higher education are considered to have met the postgraduate professional work experience requirement.

(b) "Part-time equivalent" means any of the following:

- (i) 15-19 hours per week over 72 weeks;
- (ii) 20-24 hours per week over 60 weeks;
- (iii) 25-29 hours per week over 48 weeks.

~~(3) ((Applicants who obtain an Au.D. at a board approved institution of higher education are considered to have met the postgraduate professional work experience requirement-))~~ "Supervising speech-language pathologist" means a licensed speech-language pathologist or speech-language pathologist certified as an educational staff associate by the superintendent of public instruction.

(4) "Direct supervision of a speech-language pathology assistant" means the supervising speech-language pathologist is on-site and in view during the procedures or tasks.

(5) "Indirect supervision of a speech-language pathology assistant" means the procedures or tasks are performed under the speech-language pathologist's overall direction and control, but the speech-language pathologist's presence is not required during the performance of the procedures or tasks.

AMENDATORY SECTION (Amending WSR 06-19-109, filed 9/20/06, effective 10/21/06)

WAC 246-828-075 Supervisors of students. (1) Students enrolled in a board approved program may perform the duties of a hearing instrument fitter/dispenser, audiologist ~~((or)),~~ speech-language pathologist, or speech-language pathology assistant in the course of their training under appropriate supervision.

(a) Speech-language pathology students must be supervised by a speech-language pathologist licensed under chapter 18.35 RCW, in good standing for at least two years.

(b) Audiology students must be supervised by an audiologist licensed under chapter 18.35 RCW, in good standing for at least two years.

(c) Hearing instrument fitter and dispenser students must be supervised by either a hearing instrument fitter/dispenser or a licensed audiologist licensed under chapter 18.35 RCW, in good standing for at least two years.

(2) Students may perform only those activities that are within the scope of the profession as defined by the training program in which they are enrolled.

(3) The student shall at all times wear an identification badge readily visible to the public that identifies him or her as a student.

(4) The licensee who is supervising hearing instrument fitting and dispensing students must be physically present on the premises at all times. The supervisor must cosign all purchase agreements for the sale of hearing instruments.

(5) The licensee who is supervising speech-language pathology or audiology students may include simultaneous observations with the student or the submission of written reports or summaries by the student for supervisor monitoring, review and approval. At least fifty percent of each student's time in each diagnostic evaluation, including screening and identification, must be observed directly by a supervisor. The observations may take place on site or by closed-circuit television.

NEW SECTION

WAC 246-828-112 Speech-language pathology assistants—Minimum standards of practice. (1) A speech-language pathology assistant may only perform procedures or tasks delegated by the speech-language pathologist and must maintain patient/client/student confidentiality as directed by the speech-language pathologist.

(2) Speech-language pathology assistants may not represent themselves as speech-language pathologists.

(3) The speech-language pathology assistant must be continually supervised by the speech-language pathologist. The following procedures or tasks may only be performed under direct supervision and at the speech-language pathologist's discretion:

(a) Participating during parent conferences, case conferences, or interdisciplinary team meetings with the speech-language pathologist present.

(b) Assisting the speech-language pathologist during evaluations/assessments of patients/clients/students.

(4) The following procedures or tasks may be performed under direct or indirect supervision at the discretion of the supervising speech-language pathologist:

(a) Perform speech-language and hearing screenings for the speech-language pathologist. The speech-language pathology assistant may not interpret the results.

(b) Document patient/client/student performance (such as data, charts, graphs, progress notes, and treatment notes) and report this information to the speech-language pathologist.

(c) Implement treatment plans and protocols including individualized education programs (IEP) or individualized family service plans (IFSP) developed by the speech-language pathologist. These plans, programs, and protocols may include speech, language, augmentative and alternative com-

munication (AAC), assistive technology (AT), and oral-motor therapies.

(d) Perform clerical duties such as preparing materials and scheduling activities as directed by the speech-language pathologist.

(e) Check and maintain equipment as directed by the speech-language pathologist.

(f) Sign treatment notes, progress notes, and other paperwork as directed by the speech-language pathologist.

(5) The following procedures and tasks are excluded from the speech-language pathology assistant scope of practice:

(a) Tasks that require diagnosis, evaluation, or clinical interpretation.

(b) Screening and diagnosis of feeding and swallowing disorders.

(c) Development or modification of treatment plans.

(d) Implementation of therapy outside of the treatment plan.

(e) Selection of caseload.

(f) Discharge or exit patients/clients/students.

(g) Referral of patients/clients/students for additional services.

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

WAC 246-828-300 Expired license or certification.

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

(2) If the license or certification has expired for over three years, and the practitioner has been in active practice in another United States jurisdiction, the practitioner must:

(a) Submit verification of active practice from any other United States jurisdiction;

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

(3) If the license or certification has expired for over three years, and the practitioner has not been in active practice in another United States jurisdiction, the practitioner must:

(a) Successfully pass the examination as provided in RCW 18.35.050;

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

NEW SECTION

WAC 246-828-617 Requirements for speech-language pathology assistant certification. An applicant for certification as a speech-language pathology assistant must have the following minimum qualifications:

(1) An associate of arts or sciences degree, or a certificate of proficiency, with transcripts showing forty-five quarter hours or thirty semester hours of speech-language pathology course work and transcripts showing forty-five quarter hours or thirty semester hours of general education credit from a board-approved institution of higher education as defined in WAC 246-828-025 (1)(b). Transcripts must reflect, or applicant must demonstrate, one hundred hours of

supervised patient/client/student work experience completed within a one-year time frame, or clinical experience practicum, with at least fifty of those hours under direct supervision; or

(2) A bachelor of arts or bachelor of sciences degree with transcripts from a speech, language, and hearing program from a board-approved institution of higher education as defined in WAC 246-828-025 (1)(b). Transcripts must reflect, or applicant must demonstrate, one hundred hours of supervised patient/client/student work experience completed within a one-year time frame, or clinical experience practicum, with at least fifty of those hours under direct supervision; or

(3) A completed work experience verification form and competency checklist form developed by the board and submitted as part of the application verifying 600 hours of supervised experience within three years of application. Both forms must be submitted by July 1, 2011, to qualify for certification under this subsection. The competency checklist form shall indicate and verify that the applicant has demonstrated competencies in all the following categories:

(a) Interpersonal skills;

(b) Understanding of critical supervision issues;

(c) Administering treatment protocols;

(d) Maintaining clinical documentation and communication;

(e) Upholding ethical behavior and maintaining confidentiality;

(f) Following health and safety precautions;

(g) Foundational knowledge of the profession.

AMENDATORY SECTION (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

WAC 246-828-990 Hearing instrument fitter/dispenser, audiologist ~~(and)~~, speech language pathologist~~(*)~~, and speech-language pathology assistant fees and renewal cycle. (1) ~~(Licenses)~~ Credentials must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) ~~(Licensees)~~ Practitioners must pay the following nonrefundable fees:

~~(Title of)~~ Audiologist/Speech-Language Pathologist

Fee Type:	Fee
(License application)	\$125.00)
<u>Interim permit</u>	
<u>Application</u>	\$125.00
<u>Permit</u>	100.00

((Title of)) Audiologist/Speech-Language Pathologist

Fee Type:	Fee
Initial license	((100.00
Interim permit	100.00))
<u>Application</u>	<u>125.00</u>
<u>License</u>	<u>100.00</u>
Renewal	200.00
Inactive license	75.00
Late renewal penalty	100.00
Expired license reissuance	100.00
Expired inactive license reissuance	50.00
License verification	15.00
Duplicate license	15.00

Hearing Instrument Fitter/Dispenser

Fee Type:	Fee
<u>License application</u>	<u>\$125.00</u>
<u>Initial license</u>	<u>100.00</u>
<u>Renewal</u>	<u>200.00</u>
<u>Inactive license</u>	<u>75.00</u>
<u>Late renewal penalty</u>	<u>100.00</u>
<u>Expired license reissuance</u>	<u>100.00</u>
<u>Expired inactive license reissuance</u>	<u>50.00</u>
<u>License verification</u>	<u>15.00</u>
<u>Duplicate license</u>	<u>15.00</u>

Speech-Language Pathology Assistant

Fee Type:	Fee
<u>Application</u>	<u>\$125.00</u>
<u>Renewal</u>	<u>70.00</u>
<u>Inactive credential</u>	<u>50.00</u>
<u>Late renewal penalty</u>	<u>50.00</u>
<u>Expired credential reissuance</u>	<u>50.00</u>
<u>Expired inactive credential reissuance</u>	<u>50.00</u>
<u>Credential verification</u>	<u>15.00</u>
<u>Duplicate credential</u>	<u>15.00</u>

WSR 10-15-100

PERMANENT RULES

STATE BOARD OF HEALTH

[Filed July 20, 2010, 3:49 p.m., effective August 20, 2010]

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

Purpose: WAC 246-760-100 is being changed in order to be consistent with statute. In 2009, ESSB 5889 was passed, allowing ophthalmologists, optometrists, and opticians to volunteer their services as vision screeners in schools.

Citation of Existing Rules Affected by this Order:
Amending WAC 246-760-100.

Statutory Authority for Adoption: RCW 28A.210.020.

Adopted under notice filed as WSR 10-10-125 on May 5, 2010.

Changes Other than Editing from Proposed to Adopted Version: Added the phrase "in a manner consistent with RCW 28A.210.020" to the first sentence of subsection (1) of the rule.

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

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

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

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

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

Date Adopted: July 20, 2010.

Craig McLaughlin

Executive Director

AMENDATORY SECTION (Amending WSR 02-20-079, filed 9/30/02, effective 10/31/02)

WAC 246-760-100 What are the qualifications for visual screening personnel? (1) Screening must be performed in a manner consistent with RCW 28A.210.020 by persons competent to administer screening procedures as a function of their professional training and background or special training and demonstrated competence under supervision.

(2) Technicians and nonprofessional volunteers must have adequate preparation and thorough understanding of the tests as demonstrated by their performance under supervision.

(3) Supervision, training, reporting and referral shall be the responsibility of a professional person specifically designated by the school administration. He or she may be a school nurse or public health nurse, a special educator, teacher or administrator who possesses basic knowledge of the objectives and methods of visual acuity screening, supervisory experience and ability, demonstrated ability to teach others and demonstrated capacity to work well with people.

~~((4) Screening may not be performed by ophthalmologists, optometrists, or opticians or any individuals who may have a conflict of interest.))~~

WSR 10-15-103
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed July 20, 2010, 4:02 p.m., effective January 1, 2011]

Effective Date of Rule: January 1, 2011.

Purpose: The purpose of these rules are to establish certification requirements for home care aides. The rules clarify which long-term care workers must obtain certification. They also define certification, examination and continuing education requirements, as well as fees.

Statutory Authority for Adoption: Chapters 18.88B and 74.39A RCW.

Adopted under notice filed as WSR 10-03-055 on January 15, 2010.

Changes Other than Editing from Proposed to Adopted Version: The department has made technical and clarifying changes to the rules based on comments received during comment period and hearing. None of the changes made are substantive.

WAC 246-980-040, 246-980-050 and 246-980-060, all rule titles under the heading "Requirements for long-term care workers that are required to be certified as a home care aide" have had the word "nonexempt" added to clarify that the rule applies to nonexempt long-term care workers.

WAC 246-980-040, 246-980-070 and 246-980-080, these rules were changed to replace "successfully complete the home care aide certification examination" with "successfully pass the home care aide certification examination" to clarify that the applicant must pass the exam.

WAC 246-980-040, 246-980-070 and 246-980-080, these rules were changed to clarify that a certificate of completion must be signed by a department of social and health services (DSHS) approved instructor. In addition, these portions of the rules have been changed to add that the department of health will also accept the certificate of completion directly from the approved training program.

WAC 246-980-010 was changed to add the RCW 74.39A.009(9) definition of "direct care worker." The definition of "elderly" has been removed because it is not needed.

WAC 246-980-020 was changed to clarify that the rule pertains only to persons hired on or after January 1, 2011.

WAC 246-980-030 was changed to add the word "non-exempt" before "long-term worker." to clarify that the rule applies to nonexempt long-term care workers. The rule has also been renumbered and the last sentence contains a grammatical correction.

WAC 246-980-040(4) is changed to add "Beginning January 1, 2012" to clarify when the requirements will begin.

WAC 246-980-050 (1)(b) was changed to make grammatical corrections.

WAC 246-980-050 (1)(c) was eliminated because DSHS will address the requirement in their training rules.

WAC 246-980-070 (2)(i) was changed to remove nurse technicians from the exemption. Nurse technicians are only allowed to work in the nursing home and hospital settings. These are settings where a home care aide certification is not required, so no exemption is necessary and may cause confusion.

WAC 246-980-070 (2)(d) was changed to clarify that long-term care workers are exempt if they were working the

year prior to January 1, 2011, not on January 1, 2011. Currently, the language allows only those working on January 1, 2011, to be exempt. Grammatical corrections have also been made to subsections (i) and (ii).

WAC 246-980-990 has been changed to reduce the application and renewal fee from \$110 to \$60 and the late renewal penalty fee and the expired certification activation fee from \$55 to \$30.

A final cost-benefit analysis is available by contacting Kendra Pitzler, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4723, fax (360) 236-2406, e-mail kendra.pitzler@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 13, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 13, Amended 0, Repealed 0.

Date Adopted: July 20, 2010.

Mary C. Selecky
Secretary

Chapter 246-980 WAC

HOME CARE AIDE RULES

NEW SECTION

WAC 246-980-010 Definitions. The definitions in this section and in RCW 74.39A.009 apply throughout this chapter unless the context clearly requires otherwise.

(1) "Activities of daily living" means self-care abilities related to personal care such as bathing, body care, bed mobility, eating, locomotion, use of the toilet, personal hygiene, dressing, and transfer. Activities of daily living include instrumental activities of daily living.

(2) "Date of hire" means:

(a) The date of service authorization for individual providers hired by the department of social and health services.

(b) The date the long-term care worker is hired by an employer other than the department of social and health services.

(3) "Department" means the department of health.

(4) "Direct care worker" means a paid caregiver who provides hands-on personal care services to individuals with disabilities or the elderly requiring long-term care.

(5) "Individual provider" means a person, including a personal aide, who has contracted with the department of social and health services to provide personal care or respite care services to functionally disabled persons under the med-

icaid personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and support to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.-270.

(6) "Instrumental activities of daily living" means routine activities performed in the home or the community such as meal preparation, shopping, house cleaning, laundry, maintaining employment, travel to medical services, use of the telephone, and management of personal finances.

(7) "Long-term care worker" means all persons who are long-term care workers for the elderly or persons with disabilities, including, but not limited to, individual providers of home care services; direct care employees of home care agencies; providers of home care services to persons with developmental disabilities under Title 71A RCW; all direct care workers in state-licensed boarding homes, assisted living facilities, and adult family homes; respite care providers; community residential service providers; and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities. "Long-term care worker" does not include:

(a) Persons employed by the following facilities or agencies: Nursing homes subject to chapter 18.51 RCW; hospitals or other acute care settings; residential habilitation centers under chapter 71A.20 RCW; facilities certified under 42 CFR, Part 483; hospice agencies subject to chapter 70.127 RCW; adult day care centers; and adult day health care centers; or

(b) Persons who are not paid by the state or by a private agency or facility licensed by the state to provide personal care services.

(8) "Personal care services" means physical or verbal assistance with activities of daily living and instrumental activities of daily living provided because of a person's functional disability.

(9) "Supported living provider" means a person or entity certified as a supported living provider by the department of social and health services, including the state operated living alternative (SOLA) program, who delivers services and support to meet a client's identified needs. Supported living providers provide instruction, support, and services under chapter 388-101 WAC to clients in their own home to help them live independently.

REQUIREMENTS FOR LONG-TERM CARE WORKERS THAT ARE REQUIRED TO BE CERTIFIED AS A HOME CARE AIDE

NEW SECTION

WAC 246-980-020 Who must be certified as a home care aide? (1) Any person who is hired on or after January 1, 2011, as a long-term care worker for the elderly or persons with disabilities, regardless of the employment title, must obtain certification as a home care aide. This includes, but is not limited to:

(a) An individual provider of home care services who is reimbursed by the state;

(b) A direct care employee of a home care agency;

(c) A provider of home care services to persons with developmental disabilities under Title 71A RCW;

(d) A direct care worker in a state licensed boarding home;

(e) A direct care worker in a state licensed adult family home;

(f) A respite care provider who is reimbursed by the state or employed by a private agency or facility licensed by the state to provide personal care services;

(g) A community residential service provider who is reimbursed by the state or employed by a private agency or facility licensed by the state to provide personal care service; and

(h) Any other direct care workers providing home or community-based services to the elderly or persons with developmental disabilities.

(2) Long-term care workers who meet the above criteria but are exempted under WAC 246-980-070 are not required to obtain certification.

NEW SECTION

WAC 246-980-030 Can a nonexempt long-term care worker work before obtaining certification as a home care aide? (1) A nonexempt long-term care worker may provide care before receiving certification as a home care aide if all the following conditions are met:

(a) Before providing care, the long-term care worker must complete the training required by RCW 74.39A.073 (4)(a) and (b).

(b) The long-term care worker must submit an application for home care aide certification to the department within three days of hire. An application is considered to be submitted on the date it is post-marked or, for applications submitted in person or on-line, the date it is accepted by the department.

(2) The long-term care worker may not work for more than one hundred fifty calendar days from their date of hire without obtaining certification.

NEW SECTION

WAC 246-980-040 What must a nonexempt long-term care worker do to be eligible for a home care aide certification and what documentation is required? (1) To qualify for certification as a home care aide, the applicant must:

(a) Successfully complete the entry level training required by RCW 74.39A.073 before taking the examination;

(b) Successfully pass the home care aide certification examination; and

(c) Complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(2) Applicants must submit directly to the examination contractor:

(a) A completed application for examination provided by the examination contractor;

(b) The fee required by the examination contractor; and

(c) A certificate of completion signed by an instructor approved by the department of social and health services. The certificate must indicate that the applicant has successfully completed the entry level training required by RCW 74.39A.073. The certificate of completion may also be submitted directly from the approved instructor or training program.

(3) Applicants must submit to the department:

(a) A completed application for certification on forms provided by the department;

(b) The required fee; and

(c) A certificate of completion indicating that the applicant has successfully completed the entry level training required by RCW 74.39A.073.

(4) Beginning January 1, 2012, applicants must submit to a state and federal background check as required by RCW 74.39A.055.

NEW SECTION

WAC 246-980-050 How long does a nonexempt long-term care worker have to complete the home care aide training and certification requirements? (1) Training:

(a) A long-term care worker must successfully complete all training required by RCW 74.39A.073 within one hundred twenty calendar days of the date of hire as a long-term care worker.

(b) A long-term care worker who has not completed the training within one hundred twenty calendar days is no longer eligible to provide care until certification as a home care aide has been granted.

(2) Certification: A long-term care worker who has not been issued a home care aide certification within one hundred fifty days of the date of hire must stop providing care until the certification has been granted.

NEW SECTION

WAC 246-980-060 How does a nonexempt home care aide renew a certification or reinstate an expired certification? (1) To renew a home care aide certification:

(a) Certificates must be renewed every year by the home care aide's birthday as provided in chapter 246-12 WAC, Part 2.

(b) Verification of twelve hours of continuing education as required by RCW 74.39A.340 and WAC 246-980-110 must accompany the certification renewal.

(2) To reinstate an expired certification:

(a) If the certification has been expired for less than three years, the applicant must submit proof of twelve continuing education hours as required by RCW 74.39A.340 and WAC 246-980-110 for each year it has been expired, and meet the requirements of chapter 246-12 WAC, Part 2.

(b) If the certification has been expired for more than three years, the applicant must successfully repeat the training and examination requirements in WAC 246-980-040 and meet the requirements of chapter 246-12 WAC, Part 2.

REQUIREMENTS FOR LONG-TERM CARE WORKERS EXEMPT FROM CERTIFICATION AS A HOME CARE AIDE

NEW SECTION

WAC 246-980-070 Who is exempt from obtaining a home care aide certification? (1) The following individuals are not required to obtain certification as a home care aide. If they choose to voluntarily become certified, they must successfully pass the entry level training required by RCW 74.39A.073, successfully complete the home care aide certification examination and meet all other requirements of WAC 246-980-080(1).

(a) An individual who is employed by a nursing home subject to chapter 18.51 RCW, hospital, or other acute care setting; hospice agency subject to chapter 70.127 RCW; adult day care center; or adult day health center, and who does not hold a current health care credential described under subsection (2)(a) of this section.

(b) An individual provider caring only for a biological, step, or adoptive child or parent.

(c) An individual hired prior to June 30, 2014, as an individual provider who provides twenty hours or less of care for one person in any calendar month. Individual providers hired after June 30, 2014, will be required to obtain certification.

(d) An individual employed by a supported living provider.

(e) An individual employed by a residential habilitation center licensed under chapter 71A.20 RCW or a facility certified under 42 CFR, Part 483.

(f) Direct care employees who are not paid by the state or by a private agency or facility licensed by the state to provide personal care services.

(2) The following long-term care workers are not required to obtain certification as a home care aide. If they choose to voluntarily become certified, they must successfully pass the home care aide certification examination and meet all other requirements of WAC 246-980-080(2). The training requirements under RCW 74.39A.073 are not required.

(a) An individual who holds an active credential by the department as a:

(i) Registered nurse, a licensed practical nurse, or advanced registered nurse practitioner under chapter 18.79 RCW;

(ii) Nursing assistant-certified under chapter 18.88A RCW;

(iii) Certified counselor or advisor under chapter 18.19 RCW;

(iv) Speech language pathologist assistant or audiologist under chapter 18.35 RCW;

(v) Occupational therapist under chapter 18.59 RCW; or

(vi) Physical therapist assistant under chapter 18.74 RCW.

(b) A home health aide who is employed by a medicare certified home health agency and has met the requirements of 42 CFR, Part 483.35.

(c) An individual with special education training and an endorsement granted by the superintendent of public instruction under RCW 28A.300.010.

(d) An individual employed as a long-term care worker on December 31, 2010, or who was employed as a long-term care worker at some point during the calendar year 2010, and who completes all of the training requirements in effect as of the date of hire. This exemption expires if the long-term care worker has not provided care for over three years.

(i) The department may require the exempt long-term care worker who is employed on or before December 31, 2010, to provide proof of that employment. Proof may include a letter or similar documentation from the employer that hired the long-term care worker on or before December 31, 2010, indicating the first and last day of employment, the job title, a job description, and proof of completing training requirements. Proof of training will also be accepted directly from the approved instructor or training program, if applicable. For an individual provider reimbursed by the department of social and health services, the department will accept verification from the department of social and health services or the Training Partnership.

(ii) A long-term care worker who is employed on or before January 1, 2011, but has not completed all of his or her training requirements in effect the day he or she was hired, must complete the training within one hundred twenty days of the date of hire to qualify for this exemption.

NEW SECTION

WAC 246-980-080 How does an exempt individual apply for certification as a home care aide? (1) An individual exempt from certification under WAC 246-980-070(1) may apply for certification as a home care aide as follows:

(a) To qualify for certification as a home care aide, the applicant must:

(i) Successfully complete entry level training as required by RCW 74.39A.073 before taking the examination;

(ii) Successfully pass the home care aide certification examination; and

(iii) Complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(b) Applicants must submit directly to the examination contractor:

(i) A completed application for examination provided by the examination contractor;

(ii) The fee required by the examination contractor; and

(iii) A certificate of completion signed by a department of social and health services approved instructor. The certificate must indicate that the applicant has successfully completed entry level training required by RCW 74.39A.073. The certificate of completion may also be submitted directly from the approved instructor or training program.

(c) Applicants must submit to the department:

(i) A completed application for certification on forms provided by the department;

(ii) The required fee; and

(iii) A certificate of completion signed by a department of social and health services approved instructor. The certificate must indicate that the applicant has successfully com-

pleted the entry level training as required by RCW 74.39A.-073. The certificate of completion may also be submitted directly from the approved instructor or training program.

(d) Applicants must submit to a state and federal background check as required by RCW 74.39A.055.

(2) A long-term care worker exempt from certification under WAC 246-980-070(2) may apply for certification as a home care aide as follows:

(a) To qualify for certification as a home care aide, the applicant must:

(i) Successfully complete the home care aide certification examination; and

(ii) Complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(b) Applicants must submit directly to the examination contractor a completed application for examination and the fee required by the examination contractor.

(c) Applicants must submit to the department:

(i) A completed application for certification on forms provided by the department; and

(ii) Proof the individual qualifies for exemption under WAC 246-840-070(2); and

(iii) The required fee.

(d) Applicants must submit to a state and federal background check as required by RCW 74.39A.055.

NEW SECTION

WAC 246-980-090 How does an exempt home care aide renew a home care aide certification or reinstate an expired home care aide certification? (1) To renew a home care aide certification:

(a) Certificates must be renewed every year by the home care aide's birthday as provided in chapter 246-12 WAC, Part 2.

(b) Verification of twelve hours of continuing education as required by RCW 74.39A.340 and WAC 246-980-110 must accompany the certification renewal.

(2) To reinstate a certification that has been expired for less than three years, the applicant must submit proof of twelve continuing education hours as required by RCW 74.39A.340 and WAC 246-980-110 for each year it has been expired, and meet the requirements of chapter 246-12 WAC, Part 2.

(3) To reinstate a certification that has been expired for more than three years:

(a) A long-term care worker exempt from certification under WAC 246-980-070(1) must:

(i) Submit proof that the applicant has worked at least eight hours as a long-term care worker within the last three years and submit twelve hours of continuing education per year as required by RCW 74.39A.340 and WAC 246-980-110; or

(ii) Successfully repeat the training and examination requirements in WAC 246-980-080.

(b) A long-term care worker exempt from certification under WAC 246-980-070(2) must:

(i) Submit proof that the applicant has worked at least eight hours as a long-term care worker within the past three years and submit twelve hours of continuing education per

year as required by RCW 74.39A.340 and WAC 246-980-110; or

(ii) Successfully repeat the certification examination requirements in WAC 246-980-080.

GENERAL REQUIREMENTS FOR THE APPLICATION FOR HOME CARE AIDE CERTIFICATION BY BOTH REQUIRED AND VOLUNTARY HOME CARE AIDES

NEW SECTION

WAC 246-980-100 Examination and reexamination for home care aide certification. (1) The certification examination will consist of both a written knowledge test and a skills demonstration.

(2) The certification examination will test the core competencies, including but not limited to, communication skills, worker self-care, problem solving, maintaining dignity, consumer directed care, cultural sensitivity, body mechanics, fall prevention, skin and body care, home care aide roles and boundaries, supporting activities of daily living, and food preparation and handling.

(3) The applicant must apply directly to the examination contractor to take the examination.

(4) The examination contractor will notify the applicant of the date, time, and place of the examination.

(5) The examination contractor will notify both the department and the applicant of the examination results.

(a) An applicant who does not successfully pass any portion of the examination can follow the examination contractor's procedures for review and appeal.

(b) An applicant who does not successfully pass any portion of the examination may retake that portion of the examination two times.

(i) To retake the examination, an applicant must submit an application for reexamination, along with the required reexamination fee directly to the examination contractor.

(ii) An application for reexamination may be submitted any time after the applicant receives notice of not successfully completing any portion of the certification examination.

(c) An applicant who does not successfully pass both portions of the certification examination within two years of successfully completing the required training or who does not successfully pass both portions of the certification examination after completing the certification examination three times:

(i) Must retake and successfully complete the core competencies portion of the entry-level training as required by RCW 74.39A.073; and

(ii) Cannot continue to provide care as a long-term care worker until the certification has been issued.

NEW SECTION

WAC 246-980-110 Continuing education. (1) Home care aides must demonstrate completion of twelve hours of continuing education per year as required by RCW 74.39A.-340. The required continuing education must be obtained

during the period between renewals. Continuing education is subject to the provisions of chapter 246-12 WAC, Part 7.

(2) Verification of completion of the continuing education requirement is due upon renewal. If the first renewal period is less than a full year from the date of certification, no continuing education will be due for the first renewal period.

NEW SECTION

WAC 246-980-120 Home care aide—Application—Conviction data—Criteria for denial or conditional license. (1) Applicants who have any criminal history may be denied certification or may be granted certification with conditions pursuant to RCW 18.130.055.

(2) In determining whether to deny certification or grant certification with conditions due to the applicant's criminal history, the department may consider the following factors:

(a) The severity of the crime as classified under law;

(b) The number of convictions and whether the applicant has exhibited a pattern of criminal conduct;

(c) The amount of time elapsed since the date of conviction or the date of offense;

(d) The amount of time the applicant has spent in the community after release from custody;

(e) Whether any conviction is listed by the department of social and health services as a disqualifying crime, including those offenses listed in RCW 43.43.830 (5), (6), or (7);

(f) Whether the applicant has complied with court-ordered conditions such as treatment, restitution, or other remedial or rehabilitative measures;

(g) Other remediation or rehabilitation by the applicant subsequent to the conviction date;

(h) Whether the applicant disclosed the conviction on the certification application; and

(i) Any other factor relating to the applicant's ability to practice as a home care aide with reasonable skill and safety.

NEW SECTION

WAC 246-980-990 Home care aide certification fees.

(1) Certifications must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged for home care aide:

Title of Fee	Fee
Application	\$60.00
Certification renewal	60.00
Late renewal penalty	30.00
Expired certification reactivation	30.00
Duplicate certification	15.00
Verification	25.00

WSR 10-15-105
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed July 20, 2010, 4:08 p.m., effective September 1, 2010]

Effective Date of Rule: September 1, 2010.

Purpose: This rule change will update department policy regarding injured workers traveling out of his/her immediate residential area to the nearest point of adequate treatment or other services, including vocational retraining. The effects will be to ensure a payment methodology that is reasonable, fair and cost efficient. Also the language allowing reimbursement for worker travel to treatment at department rehabilitation center will be deleted. This will have no effect because the department rehabilitation center no longer exists. Finally, the term *attending doctor* will be updated to *attending provider* to be consistent with the definition of an attending provider as stated in WAC 296-20-01002.

Citation of Existing Rules Affected by this Order:
Amending WAC 296-20-1103.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030.

Adopted under notice filed as WSR 10-11-106 on May 18, 2010.

Changes Other than Editing from Proposed to Adopted Version: In response to a testimony received during the March 24, 2010, public hearing, the department removed proposed language from the revision of WAC 296-20-1103 regarding vocational services travel. Language regarding vocational retraining was also added to the adopted version.

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

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

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

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

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

Date Adopted: July 20, 2010.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 93-16-072, filed 8/1/93, effective 9/1/93)

WAC 296-20-1103 Travel expense. The department or self-insurer will reimburse travel expense incurred by workers for the following reasons:

- (1) Examinations at department's or self-insurer's request;
- (2) Vocational services at department's or self-insurer's request;

(3) ~~((treatment at department rehabilitation center;~~
~~(4))~~ Fitting of prosthetic device; and
~~((5))~~ (4) Upon prior authorization for treatment or vocational retraining when worker must travel more than ~~((ten))~~ fifteen miles one-way from the worker's home to the nearest point of adequate treatment or vocational retraining. Travel expense *is not* payable when adequate treatment is available within ~~((ten))~~ fifteen miles of injured worker's home, yet the injured worker prefers to report to an attending ~~((doctor))~~ provider outside the worker's home area.

Under subsections (3) and (4) of this section, when travel expense is authorized the first fifteen miles one-way are not payable. The first and last fifteen miles are not payable on an authorized round trip.

Travel expenses will be reimbursed at the current department rate.

Receipts are required for all expenses except parking expenses under ten dollars.

Claims for reimbursement of travel expenses must be received by the department or self-insurer within one year after the date expenses are incurred. Refer to WAC 296-20-125 and to department policy for additional rules.

WSR 10-15-106
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed July 20, 2010, 4:10 p.m., effective September 1, 2010]

Effective Date of Rule: September 1, 2010.

Purpose: WAC 296-828-100 Scope.

Added language to the scope section to clarify how the formaldehyde rule applies to certain labs in relation to this rule.

Current Language: "When your laboratory operation is covered by this chapter, and you use any of the substances in Table 2, the following applies:" followed by a bulleted list.

New Language: "When your laboratory operation is covered by this chapter, and you use any of the substances in Table 2, the following applies with the exception of formaldehyde use in histology, pathology, and anatomy laboratories. In histology, pathology, and anatomy laboratories you must follow the requirements in chapter 296-856 WAC, Formaldehyde. This chapter applies to all other formaldehyde laboratory uses as defined in Table 1." The same bulleted list then follows.

Reasons Supporting Proposal: The revision made clearer the relationship between the requirements of DOSH's hazardous chemicals in laboratories standard and the requirements of the formaldehyde standard, thereby eliminating confusion and clarifying employer obligations. Eliminating confusion and clarifying employer obligations should increase employee safety while reducing compliance costs.

Citation of Existing Rules Affected by this Order:
Amending WAC 296-828-100 Scope.

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

Other Authority: Chapter 49.17 RCW.

Adopted under notice filed as WSR 10-09-093 on April 20, 2010.

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

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

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

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

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

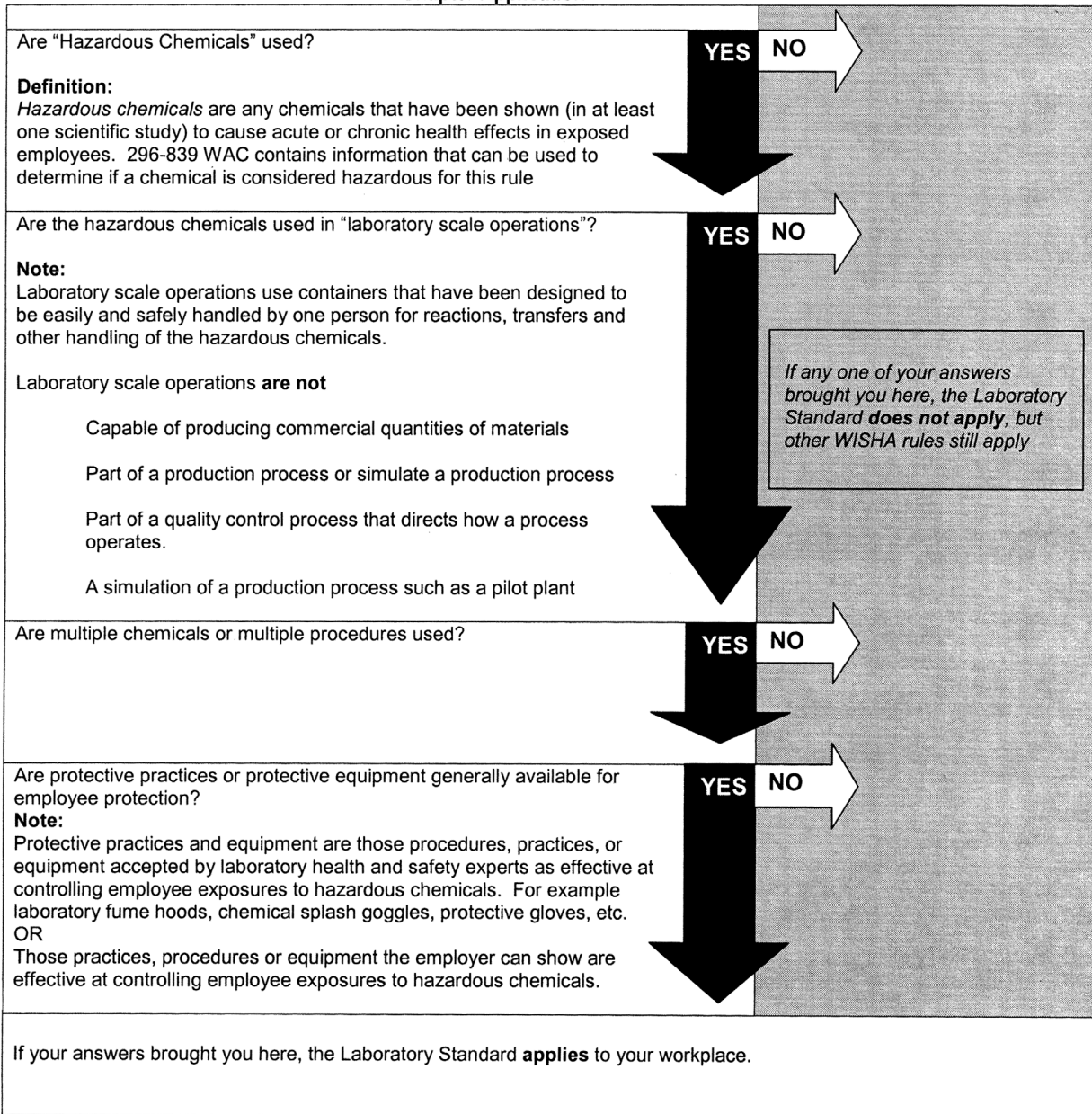
Date Adopted: July 20, 2010.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 07-05-062, filed 2/20/07, effective 4/1/07)

WAC 296-828-100 Scope. This chapter applies to the laboratory use of hazardous chemicals. To determine if this chapter applies to your workplace, use Table 1.

**Table 1
Chapter Application**



IMPORTANT:

• When your laboratory operation is covered by this chapter, and you use any of the substances in Table 2, the following applies with the exception of formaldehyde use in histology, pathology, and anatomy laboratories. In histology, pathology, and anatomy laboratories you must follow the requirements in chapter 296-856 WAC, Formaldehyde. This chapter applies to all other formaldehyde laboratory uses as defined in Table 1:

– The exposure limits and any requirement protecting employees from skin and eye contact in the rules listed in Table 2 will still apply.

– Where the action level (or where no action level exists, the permissible exposure limit) is exceeded for a substance listed in Table 2, the exposure evaluation and medical surveillance requirements in the substance rule will still apply.

– You are not required to meet other requirements of the substance rule.

• To get the permissible exposure limits (PELs) for hazardous chemicals used in your laboratory, see chapter 296-841 WAC, Airborne contaminants.

Table 2
WISHA Regulated Hazardous Chemicals

Acrylonitrile
Arsenic (inorganic)
Asbestos
Benzene
Butadiene
Cadmium
Coke ovens
Cotton dust
1, 2-Dibromo-3-chloropropane
Ethylene oxide
Formaldehyde
Lead
Methylene chloride
Methylenedianiline
Vinyl chloride
Ionizing radiation
4-Nitrobiphenyl
Alpha-Naphthylamine
4,4' Methylene bis (2 - chloroaniline)
Methyl chloromethyl ether
3,3'-Dichlorobenzidine (and its salts)
Bis-Chloromethyl ether
Beta-Naphthylamine benzidine
4-Aminodiphenyl
Ethyleneimine
Beta-Propiolactone
2-Acetylaminofluorene
4-Dimethylaminoazobenzene
N-Nitrosodimethylamine