WSR 07-13-003
PERMANENT RULES
SPOKANE REGIONAL CLEAN AIR AGENCY

[Filed June 7, 2007, 12:01 p.m., effective July 8, 2007]

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

Purpose: Amend Notice of Construction and Notice of Intent permitting fees to achieve full cost recovery. The revised regulation outlines the fee component structure and requires SRCAA's board of directors to utilize the fee structure and allows them to set the fees and periodically review them. They may be adjusted following a public notice, comment period and hearing.

Citation of Existing Rules Affected by this Order: Amending SRCAA Regulation I, Article II, Section 2.14 and Article X, Sections 10.07 - 10.08.

Statutory Authority for Adoption: RCW 70.94.141(1), 70.94.152 - [70.94.]155.

Other Authority: Chapter 70.94 RCW.

Adopted under notice filed as WSR 07-09-041 on April 11, 2007.

A final cost-benefit analysis is available by contacting Brenda Smits, 1101 West College, Suite 403, Spokane, WA 99201, phone (509) 477-4727, fax (509) 477-6828, e-mail bsmits@scapca.org. This is a local agency rule and RCW 34.05.328 does not apply pursuant to RCW 70.94.141(1).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: June 7, 2007.

B. Smits
Air Quality Specialist II

AMENDATORY SECTION

SECTION 2.14 WASHINGTON ADMINISTRATIVE CODES (WACS)

A. The Authority implements and enforces the following Washington State WACs:

1. Chapter 173-400 WAC - General regulations for air pollution sources

a. Except for the following sections;

(1) Source Registration…

(a) WAC 173-400-100 - Source classifications

(b) WAC 173-400-102 - Scope of registration and reporting requirements

(i) SRCAA Regulation I, Article IV, replaces the registration requirements in WACs 173-400-100 & 102 for all air pollution sources in Spokane County.

(2) Stationary, portable and temporary source permitting

(a) WAC 173-400-035 - Portable and temporary sources,

(i) SRCAA Regulation I, Article V, Sections 5.02.A.9, 5.02.I, and 5.08 replace the permitting requirements in WAC 173-400-035 for all portable and temporary sources in Spokane County.

(b) WAC 173-400-110 - New source review,

(i) SRCAA Regulation I, Article V replaces the permitting requirements in WAC 173-400-110 for all new stationary sources installed or operated in Spokane County.

(3) Fees SRCAA has its own fee structure).

(a) WAC 173-400-045 - Control technology fees,

(i) SRCAA Regulation I, Article X, Section((~~s 10.08.C~~)) 10.07 replaces the review fees in WAC 173-400-045 for performing a Reasonably Available Control Technology (RACT) determination pursuant to Chapter 173-400-040 WAC and/or RCW 70.94.154 in Spokane County.

(b) WAC 173-400-104 - Registration fees,

(i) SRCAA Regulation I, Article X, Sections 10.06 replaces registration fees assessed in WAC 173-400-104 for each air pollution source registered with SRCAA.

(c) WAC 173-400-116 - New source review fees,

(i) SRCAA Regulation I, Article X, Sections 10.07 replaces the fees assessed in WAC 173-400-116 to each facility that installs or operates a new air pollution source in Spokane County.

(4) Prevention of significant deterioration (PSD) program…

(c) WAC 173-400-750 Revisions to PSD permits.

(i) Ecology administers the Prevention of significant deterioration program (PSD); however, SRCAA enforces it in Spokane County…

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

REPEALER

The following sections of Spokane Regional Clean Air Agency (SRCAA) Regulation 1 are repealed:

SRCAA REGULATION I, ARTICLE X, SECTION 10.07 APPLICATION AND PERMIT FEES FOR NOTICE OF CONSTRUCTION AND APPLICATION FOR APPROVAL (NOC) AND FOR NOTICE OF INTENT TO INSTALL AND OPERATE A TEMPORARY STATIONARY SOURCE (NOI)

SRCAA REGULATION I, ARTICLE X, SECTION 10.08 MISCELLANEOUS FEES

NEW SECTION

SRCAA REGULATION I, ARTICLE X FEES AND CHARGES

SECTION 10.07 APPLICATION AND PERMIT FEES FOR NOTICE OF CONSTRUCTION AND APPLICATION FOR APPROVAL (NOC) AND FOR NOTICE OF INTENT TO INSTALL AND OPERATE A TEMPORARY STATIONARY SOURCE (NOI)

The fees contained in Section 10.07 do not apply to air operating permit sources.

A. NOC and NOI Fees

1. Base Fee

a. For each project required by Article V to file a NOC or a NOI, the applicant shall pay a base fee pursuant to the fee schedule. Base fee classes are listed below.

i. Class I - Notice of Intent Permit

Notice of Intent permits for portable stationary sources and temporary stationary sources include the following:

	Source/Source Category Description	Article IV, Exhibit R Category
(a)	Asphalt plant	15
(b)	Concrete batch plant/ready mix plant	22
(c)	Rock crusher	36

ii. Class II - Simple Notice of Construction Permit

Simple permits generally conform to a template and involve minimal off-site impact evaluation. They include the following:

	Source/Source Category Description	Article IV, Exhibit R Category
(a)	Boiler and other fuel-burning equipment	27
(b)	Coffee roaster	20
(c)	Concrete batch plant/ready mix plant	22
(d)	Dry cleaner	23
(e)	Emergency generator	52
(f)	Gasoline dispensing facility	28
(g)	Lithographic printing/screen printing	9.e.5
(h)	Material handling that exhausts ≥ 1,000 acfm	24
(i)	Rock crusher	36
(j)	Spray booth/surface coating operation	57
(k)	Stationary internal combustion engine	53
(l)	Sterilizer	9.e.8
(m)	Stump/wood waste grinder	54

iii. Class III - Standard Notice of Construction Permit

Standard permits generally include those that don't conform to a template and involve minimal off-site impact evaluation. They include the following:

	Source/Source Category Description	Article IV, Exhibit R Category
(a)	Soil and groundwater remediation operation	9.e.7
(b)	Burn out oven	43
(c)	Chrome plating	35
(d)	Incinerator/crematory	31

iv. Class IV - Complex Notice of Construction Permit

Complex permits generally include those that don't conform to a template and involve more complex off-site impact evaluation. They include the following:

	Source/Source Category Description	Article IV, Exhibit R Category
(a)	Asphalt plant	15
(b)	Composting	21
(c)	Refuse systems	48
(d)	Rendering	49
(e)	Sewerage systems	50

b. For sources/source categories not listed in Section 10.07.A.1.a, above, NOI and NOC application review will be assigned to Class I, II, II or IV by the Control Officer on a case-by-case basis.

c. For sources with one or more emission points under one NOC application, as allowed in Section 5.02.G, a separate base fee applies to each emissions unit, or each group of like-kind emissions units, being installed or modified. A group of emissions units shall be considered as like-kind if the same set of emission calculations can be used to characterize emissions from each of the emissions units.

2. Modification/Revision Fee

a. Equipment Modification Fee

Applicants of sources requesting a change in equipment (e.g., replacement or substantial alteration of emission control technology) pursuant to Section 5.10.C of this Regulation shall pay a fee pursuant to the fee schedule.

b. Permit Condition Revision Fee

Applicants of sources requesting a change in conditions pursuant to Section 5.10.C of this Regulation shall pay a fee pursuant to the fee schedule.

3. Additional Fees (for each application)

a. SEPA Review Fee

Where review of an Environmental Impact Statement (EIS), Environmental Checklist, or an Addendum to, or adoption of, an existing environmental document pursuant to the State Environmental Policy Act (SEPA) Chapter 197-11 WAC is required, in association with a NOC or a NOI, the applicant shall pay a SEPA or EIS review fee pursuant to the fee schedule.

b. Toxics Review Fee

For any new source of air pollution which requires review pursuant to Chapter 173-460 WAC, a toxic air pollutant review fee shall be paid. For sources with one or more emission points under one NOC application, as allowed in Section 5.02.G, a separate toxic air pollutant review fee applies to each emissions unit, or each group of like-kind emissions units, being installed or modified. A group of emissions units shall be considered as like-kind if the same set of emission calculations can be used to characterize emissions from each of the emissions units. The toxic air pollutant review fee shall be as follows:

i. Small Quantity Emission Rate (SQER)

For a new source using WAC 173-460-080 (2)(e), SQER, to demonstrate that ambient impacts are sufficiently

low to protect human health and safety, as required WAC 173-460-070 & WAC 173-460, the applicant shall pay a SQER review fee pursuant to the fee schedule.

ii. Dispersion Modeling

For a new source using dispersion screening models (e.g., EPA SCREEN or TSCREEN) under WAC 173-460-080 (2)(c) to demonstrate that ambient impacts are sufficiently low to protect human health and safety, as required WAC 173-460-070, the applicant shall pay a dispersion modeling review fee pursuant to the fee schedule.

iii. Advanced Modeling

For a new source using more refined dispersion models (e.g., EPA ISC3) under WAC 173-460-080 (2)(c) to demonstrate that ambient impacts are sufficiently low to protect human health and safety, as required WAC 173-460-070; or for a new or modified source using a second tier analysis under WAC 173-460-090 or a risk management decision under WAC 173-460-100 to demonstrate that ambient impacts are sufficiently low to protect human health and safety, as required WAC 173-460-070, the applicant shall pay the advanced modeling review fee in the fee schedule.

c. New Source Performance Standards (NSPS) Review Fee

Applicants of any new air pollution source subject to WAC 173-400-115 (NSPS) and 40 CFR Parts 60 shall pay a NSPS review fee according to the fee schedule.

d. National Emission Standard for Hazardous Air Pollutants (NESHAP) Review Fee

Applicants of any new air pollution source subject to WAC 173-400-075 (NESHAP) and 40 CFR Parts 61 and 63 shall pay a NESHAP fee according to the fee schedule.

e. Best Available Control Technology (BACT) Review Fee

i. Generic BACT

Where no BACT review is required (e.g., the applicant demonstrates there is an established and/or recognized BACT standard for the source category type), a BACT review fee is not applicable.

ii. Non-Generic BACT Review

A non-generic BACT review is one where a generic BACT standard is not applicable and a top-down BACT review is not required. Applicants of any new air pollution source subject to a non-generic BACT review shall pay a non-generic BACT review fee according to the fee schedule.

iii. Top-Down BACT Review (as described in EPA's Draft New Source Review Workshop Manual from October 1990 and as summarized below)

A top-down BACT review is one that requires available control technologies be ranked in descending order of control effectiveness. The most stringent or "top" control technology is first examined. That control technology is established as BACT unless the applicant demonstrates, and the ((Authority)) Agency concurs, that technical considerations, energy, environmental, or economic impacts justify a conclusion that the most stringent technology is not achievable in for the project being proposed. If the most stringent control technology is eliminated in this fashion, the next most stringent control technology is considered, and so on. Applicants of any new air pollution source subject to a top-down BACT review shall pay a top-down BACT review fee according to the fee schedule.

B. Payment of Fees

1. At the Time of Application

The base fee shall be paid at the time of application. Review of the application will not commence until the applicable base fee is received.

2. After Application

a. Payment of Fees for Complete Applications

The Agency will invoice the owner, operator, or applicant for all other applicable fees without regard to whether the request(s) associated with this section are approved or denied.

b. Payment of Fees for Incomplete Applications

If an owner, operator, or applicant notifies SRCAA in writing that an incomplete application will not be completed or cancels the application (i.e., the application is neither approved or denied), applicable fees for review performed pursuant to A.2 and A.3 of this section shall be invoiced. If an application remains incomplete for more than 3 months, the owner, operator, or applicant shall be invoiced applicable fees for review performed pursuant to A.2 and A.3 of this section. If review of the application recommences, applicable review fees apply.

C. Incomplete Applications

Applications not accompanied by the base fee will be considered incomplete. In addition, if information requested by the Agency is not provided, the application will be considered incomplete and review of the application will be suspended. Review of the application will commence, or recommence when applicable, when all required fees and information requested by the Agency is received. An application will be cancelled if it remains incomplete for more than 18 months from initial receipt. For review of the cancelled application to resume, the applicant must pay all outstanding invoice fees, if applicable, and resubmit the applicable base fee.

D. Compliance Investigation Fee

Where a compliance investigation is conducted pursuant to Section 5.12 of this Regulation, the compliance investigation fee shall be assessed pursuant to the fee schedule. The fee shall be assessed for each emissions unit, or group of like-kind emissions units, being installed or modified. A group of emissions units shall be considered as like-kind if the same set of emission calculations can be used to characterize emissions from each of the emissions units.

E. Periodic Fee Review

The Board shall periodically review the fee schedule and determine if the total actual fee revenue collected and projected fee revenue to be collected pursuant to this Section is sufficient to fully recover program costs. Any proposed fee revisions shall include opportunity for public review and comment. Accordingly, the Agency shall account for program costs, including employee costs and overhead. If the Board determines that the total project fee revenue is either significantly excessive or deficient for this purpose, then the Board shall amend the fee schedule to more accurately recover program costs. In general, fees will be greater for permits that are typically more complex or take more time to review and process.

SECTION 10.08 MISCELLANEOUS FEES

A. Miscellaneous Fees

1. Emission Reduction Credit

Review of emission reduction credits pursuant to WAC 173-400-131 shall require the applicant to pay an emission reduction credit fee pursuant to the fee schedule.

2. Variance Request

Processing a variance request pursuant to RCW 70.94.181 or Article III of this Regulation shall require the applicant to pay a fee pursuant to the fee schedule.

3. Alternate Opacity

Review of an alternate opacity limit pursuant to RCW 70.94.331 (2)(c) shall require the applicant to pay an alternate opacity fee pursuant to the fee schedule.

4. Other

Applicants of other services including those listed below shall pay a fee pursuant to the fee schedule.

(a) Requests pursuant to the following sections of this Regulation: Sections 6.13.E.3.j; 6.13.F.4; 6.13.F.6; 6.13.F.9; 6.13.F.10; and 6.13.F.11.

(b) Registration exemption requests.

(c) Other.

B. Periodic Fee Review

The Board shall periodically review the fee schedule and determine if the total actual fee revenue collected and projected fee revenue to be collected pursuant to this Section is sufficient to fully recover program costs. Any proposed fee revisions shall include opportunity for public review and comment. Accordingly, the Agency shall account for program costs, including employee costs and overhead. If the Board determines that the total project fee revenue is either significantly excessive or deficient for this purpose, then the Board shall amend the fee schedule to more accurately recover program costs. Fees in the fee schedule will be based on actual and projected employee costs and overhead. Fees will be set at an hourly rate.

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

WSR 07-13-005
PERMANENT RULES
BEER COMMISSION

[Filed June 7, 2007, 1:44 p.m., effective July 8, 2007]

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

Purpose: The Washington beer commission is proposing to establish rules relating to the collection of assessment authorized under RCW 15.89.110. The assessments will begin with fourth quarter 2006 production, due and payable to the commission no sooner than July 2007. The second assessment will be due and payable to the commission no sooner than January 2008 and will be based upon 2007 beer production. Thereafter, assessments will be collected annually no sooner than January and will be based on the previous year's production. The proposal also establishes rules for the collection of unpaid assessments.

Statutory Authority for Adoption: RCW 15.89.110(2).

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 07-08-112 on April 4, 2007.

Changes Other than Editing from Proposed to Adopted Version: (1) WAC 16-505-010(3) originally read: "payable to the commission **in** July 2007." Adopted version reads: "payable to the commission **no sooner than** July 2007."

(2) WAC 16-505-010(4) originally read: "payable to the commission **in** January 2008." Adopted version reads: "payable to the commission **no sooner than** January 2008."

(3) WAC 16-505-010(5) originally read: "payable to the commission annually **in** January." Adopted version reads: "payable to the commission annually **no sooner than** January."

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 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 2, Amended 0, Repealed 0.

Date Adopted: June 6, 2007.

Arlen Harris

Executive Director

Chapter 16-505 WAC

WASHINGTON BEER COMMISSION

NEW SECTION

WAC 16-505-010 Collection of assessment. (1) The Washington beer commission is authorized under RCW 15.89.040 and 15.89.110(1) to collect an assessment upon beer produced by an affected producer. The annual assessment is ten cents per barrel of beer produced, up to ten thousand barrels per location, as verified by federal excise tax reports.

(2) The commission shall directly bill affected producers by providing written notice in the form of an assessment invoice. Affected producers shall calculate their assessment on the assessment invoice using the annual production figure as based upon their federal excise tax report. Affected producers must submit the completed assessment invoice, the assessment payment due and a copy of the affected producer's federal excise tax report for verification to the commission at the address specified on the assessment invoice.

(3) The first assessment will be due and payable to the commission no sooner than July 2007 and will be based upon beer production during the fourth quarter of 2006.

(4) The second assessment will be due and payable to the commission no sooner than January 2008 and will be based upon beer production during the calendar year of 2007.

(5) Assessments thereafter will be due and payable to the commission annually no sooner than January and will be based upon the previous year's production.

(6) At this time, assessments due and payable to the commission shall not be reduced based on in-kind contributions.

(7) Failure to receive an invoice for the previous year's product does not relieve an affected producer of its obligation to pay any assessment when due.

NEW SECTION

WAC 16-505-015 Failure to pay assessment. (1) In the event any affected producer fails to pay the commission the full amount of such assessment or such other sum on or before the date due, the commission may add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collection of the amount due.

(2) In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the commission may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

WSR 07-13-008
PERMANENT RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2005-07—Filed June 8, 2007, 8:49 a.m., effective July 9, 2007]

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

Purpose: These new rules follow the general format of the NAIC model regulation to allow for greater consistency in the implementation of coordination of benefit standards.

Citation of Existing Rules Affected by this Order: Repealing WAC 284-51-010, 284-51-115, 284-51-020, 284-51-030, 284-51-040, 284-51-045, 284-51-050, 284-51-060, 284-51-075, 284-51-080, 284-51-090, 284-51-100, 284-51-110, 284-51-120, 284-51-130, 284-51-140, 284-51-150, 284-51-170, and 284-51-185.

Statutory Authority for Adoption: RCW 48.20.60 [48.20.060], 48.21.200, 48.44.050, and 48.46.200.

Adopted under notice filed as WSR 07-07-125 on March 21, 2007.

Changes Other than Editing from Proposed to Adopted Version: 1. WAC 284-51-195(1) - clarification that a secondary plan is not required to pay an amount in excess of its maximum benefit plus accrued savings. Additional clarification that Medicare applies to Part A and Part B or Part C.

2. WAC 284-51-195 (12)(c)(xi) - language modified to reflect that "plan" does not include benefits provided as part of a direct agreement with a direct patient-provider primary care practice, as defined at section 3, chapter 267, Laws of 2007.

3. WAC 284-51-200(3) - clarification that appendix language changes are permissible that don't conflict with rule.

4. WAC 284-51-200(7) - "plan year" changed to "claim determination period," consistent with other references in rule.

5. WAC 284-51-230(1) - eliminated nonessential language that was confusing and inconsistent with claim adjudication.

6. WAC 284-51-235 - reference to "explanation of benefits" changed to "enrollee contract or booklet."

7. WAC 284-51-235 - changed "will" to "may" since Medicare does not always submit claims to the secondary carrier.

8. WAC 284-51-255 Section D (4) - eliminated language inconsistent with the underlying definition of "allowable expense."

9. WAC 284-51-255 and 284-51-260 - modifications to both for consistency with the change to WAC 284-51-195 relative to the payment obligations of the secondary plan.

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 15, Amended 0, Repealed 19.

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 15, Amended 0, Repealed 19.

Date Adopted: June 8, 2007.

Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-51-190 Purpose. (1) The purpose of this chapter is to:

(a) Establish a uniform order of benefit determination under which plans pay claims;

(b) Reduce duplication of benefits by permitting a reduction of the benefits to be paid by plans that, under rules established by this chapter, do not have to pay their benefits first; and

(c) Provide greater efficiency in the processing of claims when a person is covered under more than one plan.

(2) This chapter does not require the use of coordination of benefits provisions in a plan. However, if a plan contains any provision for the reduction of benefits payable because of other insurance, it must be consistent with the requirements of this chapter. A plan of coverage designed to be supplementary over the underlying basic plan of coverage may provide coverage that is excess to the basic plan of coverage.

NEW SECTION

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

(1) "Allowable expense," except as outlined below means any health care expense, including coinsurance or copayments and without reduction for any applicable deductible, that is covered in full or in part by any of the plans covering the person. When coordinating benefits, any secondary plans must pay an amount which, together with the payment made by the primary plan, totals the higher of the allowable expenses. In no event will a secondary plan be required to pay an amount in excess of its maximum benefit plus accrued savings. When Medicare, Part A and Part B or Part C are primary, Medicare's allowable amount is the highest allowable expense.

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

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

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

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

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

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

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

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

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

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

(a) Services (including supplies);

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

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

(d) An indemnification.

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

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

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

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

(8) "Custodial parent" means:

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

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

(c) In cases where a court decree awards more than half of the calendar year's residential time to one parent without the use of "custodial" terminology, the parent to whom the greater residential time is awarded.

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

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

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

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

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

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

(b) "Plan" includes:

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

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

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

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

(c) "Plan" does not include:

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

(ii) Accident only coverage;

(iii) Specified disease or specified accident coverage;

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

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

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

(vii) Medicare supplement policies;

(viii) A state plan under Medicaid;

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

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

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

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

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

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

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

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

NEW SECTION

WAC 284-51-200 Use of model COB contract provision. (1) WAC 284-51-255, Appendix A contains a model COB provision for use in contracts. The use of this model COB provision is subject to the provisions of subsections (2), (3), and (4) of this section and to the provisions of this chapter.

(2) WAC 284-51-260, Appendix B is a plain language description of the COB process that explains to the covered person how health plans will implement coordination of benefits. It is not intended to replace or change the provisions that are in the contract. Its purpose is to explain the process to be used by two or more plans to pay for or provide benefits as allowed by the provisions of this chapter.

(3) Issuers need not use the specific words and format provided in WAC 284-51-255 and the plain language explanation in WAC 284-51-260. Editing changes may be made by the issuer to fit the language and style of the rest of its contract or to reflect differences among plans that provide services, that pay benefits for expenses incurred and that indemnify. Modifications may be made provided they do not conflict with the requirements of this chapter.

(4) A COB provision may not be used that permits a plan to reduce its benefits on the basis that:

(a) Another plan exists and the covered person did not enroll in that plan;

(b) A person could have been covered under another plan; or

(c) A person has elected an option under another plan providing a lower level of benefits than another option that could have been elected.

(5) No plan may contain a provision that its benefits are "always excess" or "always secondary" except under the rules permitted in this chapter.

(6) No plan may use a COB provision, or any other provision that allows it to reduce its benefits with respect to any other coverage its insured may have that does not meet the definition of plan as defined in this chapter.

(7) If a person has met the requirements for coverage under the primary plan, a closed panel plan in secondary position must pay benefits as if the covered person had met the requirements of the closed panel plan. Further, coordination of benefits may occur during the claim determination period even where there are no savings in the closed panel plan.

NEW SECTION

WAC 284-51-205 Rules for coordination of benefits. (1) When a person is covered by two or more plans, the rules for determining the order of benefit payments are as follows:

(a) The primary plan must pay or provide its benefits as if the secondary plan or plans did not exist.

(b) If the primary plan is a closed panel plan and the secondary plan is not a closed panel plan, the secondary plan must pay or provide benefits as if it were the primary plan when a covered person uses a nonpanel provider, except for emergency services or authorized referrals that are paid or provided by the primary plan.

(c) When multiple contracts providing coordinated coverage are treated as a single plan under this chapter, this section applies only to the plan as a whole, and coordination among the component contracts is governed by the terms of the contracts. If more than one issuer pays or provides benefits under the plan, the issuer designated as primary within

the plan is responsible for the plan's compliance with this chapter.

(d) If a person is covered by more than one secondary plan, the order of benefit determination rules of this chapter decide the order in which secondary plans' benefits are determined in relation to each other. Each secondary plan must take into consideration the benefits of the primary plan or plans and the benefits of any other plan, which, under the rules of this chapter, has its benefits determined before those of that secondary plan.

(2)(a) Except as provided in (b) of this subsection, a plan that does not contain order of benefit determination provisions that are consistent with this chapter is always the primary plan unless the provisions of both plans, regardless of the provisions of this section, state that the complying plan is primary.

(b) Coverage that is obtained by virtue of membership in a group and designed to supplement a part of a basic package of benefits may provide that the supplementary coverage is excess to any other parts of the plan provided by the contract holder. Examples include major medical coverages that are superimposed over base plan hospital and surgical benefits, and insurance coverages that are written in connection with a closed panel plan to provide out-of-network benefits.

(3) A plan may take into consideration the benefits paid or provided by another plan only when, under the rules of this chapter, it is secondary to that other plan.

(4) Order of benefit determination. Each plan determines its order of benefits using the first of the following rules that applies:

(a) Nondependent or dependent.

(i) Subject to (a)(ii) of this subsection, the plan that covers the person other than as a dependent, for example as an employee, member, subscriber, policyholder or retiree, is the primary plan and the plan that covers the person as a dependent is the secondary plan.

(ii)(A) If the person is a Medicare beneficiary, and, as a result of the provisions of Title XVIII of the Social Security Act and implementing regulations, Medicare is:

(I) Secondary to the plan covering the person as a dependent; and

(II) Primary to the plan covering the person as other than a dependent (e.g., a retired employee);

(B) Then the order of benefits is reversed so that the plan covering the person as an employee, member, subscriber, policyholder or retiree is the secondary plan and the other plan covering the person as a dependent is the primary plan.

(b) Dependent child covered under more than one plan. Unless there is a court decree stating otherwise, plans covering a dependent child must determine the order of benefits as follows:

(i) For a dependent child whose parents are married or are living together, whether or not they have ever been married:

(A) The plan of the parent whose birthday falls earlier in the calendar year is the primary plan; or

(B) If both parents have the same birthday, the plan that has covered the parent longest is the primary plan.

(ii) For a dependent child whose parents are divorced or separated or are not living together, whether or not they have ever been married:

(A) If a court decree states that one of the parents is responsible for the dependent child's health care expenses or health care coverage and the plan of that parent has actual knowledge of those terms, that plan is primary. If the parent with responsibility has no health care coverage for the dependent child's health care expenses, but that parent's spouse does, that parent's spouse's plan is the primary plan. This does not apply to any plan year during which benefits are paid or provided before the plan has actual knowledge of the court decree provision;

(B) If a court decree states one parent is to assume primary financial responsibility for the dependent child but does not mention responsibility for health care expenses, the plan of the parent assuming financial responsibility is primary;

(C) If a court decree states that both parents are responsible for the dependent child's health care expenses or health care coverage, the provisions of (b)(i) of this subsection determine the order of benefits;

(D) If a court decree states that the parents have joint custody without specifying that one parent has financial responsibility or responsibility for the health care expenses or health care coverage of the dependent child, the provisions of (b)(i) of this subsection determine the order of benefits; or

(E) If there is no court decree allocating responsibility for the child's health care expenses or health care coverage, the order of benefits for the child is as follows:

(I) The plan covering the custodial parent, first;

(II) The plan covering the custodial parent's spouse, second;

(III) The plan covering the noncustodial parent, third; and then

(IV) The plan covering the noncustodial parent's spouse, last.

(iii) For a dependent child covered under more than one plan of individuals who are not the parents of the child, the order of benefits is determined, as applicable, under (b)(i) or (ii) of this subsection as if those individuals were parents of the child.

(c) Active employee or retired or laid-off employee.

(i) The plan that covers a person as an active employee that is, an employee who is neither laid off nor retired or as a dependent of an active employee is the primary plan. The plan covering that same person as a retired or laid-off employee or as a dependent of a retired or laid-off employee is the secondary plan.

(ii) If the other plan does not have this rule, and as a result, the plans do not agree on the order of benefits, this rule does not apply.

(iii) This provision does not apply if the provision in (a) of this subsection can determine the order of benefits.

(d) COBRA or state continuation coverage.

(i) If a person whose coverage is provided under COBRA or under a right of continuation according to state or other federal law is covered under another plan, the plan covering the person as an employee, member, subscriber or retiree or covering the person as a dependent of an employee, member, subscriber or retiree is the primary plan and the plan

covering that same person under COBRA or under a right of continuation according to state or other federal law is the secondary plan.

(ii) If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of benefits, this rule does not apply.

(iii) This provision does not apply if the provision in (a) of this subsection can determine the order of benefits.

(e) Longer or shorter length of coverage.

(i) If the preceding rules do not determine the order of benefits, the plan that covered the person for the longer period of time is the primary plan and the plan that covered the person for the shorter period of time is the secondary plan.

(ii) To determine the length of time a person has been covered under a plan, two successive plans are treated as one if the covered person was eligible under the second plan within twenty-four hours after coverage under the first plan ended.

(iii) The start of a new plan does not include:

(A) A change in the amount or scope of a plan's benefits;

(B) A change in the entity that pays, provides or administers the plan's benefits; or

(C) A change from one type of plan to another, such as, from a single employer plan to a multiple employer plan.

(iv) The person's length of time covered under a plan is measured from the person's first date of coverage under that plan. If that date is not readily available for a group plan, the date the person first became a member of the group must be used as the date to determine the length of time the person's coverage under the present plan has been in force.

(f) If none of the preceding rules determines the order of benefits, the allowable expenses must be shared equally between the plans.

NEW SECTION

WAC 284-51-210 Coordination procedures. Issuers must use the following claims administration practices to expedite claim payments where coordination of benefits is involved:

(1) Claim personnel must participate in continuing education programs.

(2) All requests for information must be handled in an accurate and prompt manner by the inquiring issuer and the responding issuer, including the disclosure of the amounts allowed and paid or to be paid by the primary plan for each claim.

(3) Claim personnel of all issuers, whether primary or secondary, must make every reasonable effort, including use of the telephone or e-mail, to speed up exchange of coordination of benefits information. Delay of payment for lack of complete coordination of benefits information does not constitute a reasonable effort and compliance with WAC 284-51-215 is required.

NEW SECTION

WAC 284-51-215 Time limit. Each issuer must establish time limits for payment of a claim and may not unreasonably delay payment through the application of a coordination of benefits provision. Time limits established by a primary plan must be no less favorable than those contained in WAC 284-43-321. Any time limit established by a secondary plan that is in excess of ninety days from receipt of a claim will be considered unreasonable. When payment is necessarily delayed for reasons other than the application of a coordination of benefits provision, investigation of other plan coverage must be conducted concurrently to avoid delay in the ultimate payment of benefits. Any issuer that is required by the time limit to make payment as the primary plan because it has insufficient information to make it a secondary plan may exercise its rights under its "right of recovery" provision for recovery of any excess payments. Any issuer that is knowingly responsible for payment as the secondary plan must make a reasonable estimate of the primary plan payment and base its secondary payment on that amount. After payment information is received from the primary plan, the secondary plan may recover any excess amount paid under its "right of recovery" provision.

NEW SECTION

WAC 284-51-220 Facility of payment. A plan providing for coordination of benefits must contain a "facility of payment" provision substantially as follows: "If payments that should have been made under this plan are made by another plan, the issuer has the right, at its discretion, to remit to the other plan the amount it determines appropriate to satisfy the intent of this provision. To the extent of such payments, the issuer is fully discharged from liability under this plan."

NEW SECTION

WAC 284-51-225 Right of recovery. A plan providing for coordination of benefits must contain a "right of recovery" provision substantially as follows: "The issuer has the right to recover excess payment whenever it has paid allowable expenses in excess of the maximum amount of payment necessary to satisfy the intent of this provision. The issuer may recover excess payment from any person, other issuer or plan that has received payment.

NEW SECTION

WAC 284-51-230 Procedure to be followed by secondary plan to calculate benefits and pay a claim. (1) In determining the amount to be paid by the secondary plan on a claim, should the plan wish to coordinate benefits, the secondary plan must make payment in an amount so that, when combined with the amount paid by the primary plan, the total benefits paid or provided by all plans for the claim equal one hundred percent of the total allowable expense for that claim. However, in no event shall the secondary carrier be required to pay an amount in excess of its maximum benefit plus accrued savings. In no event should the enrollee be responsible for a deductible amount greater than the highest of the two deductibles.

(2) If a plan by its terms contains gatekeeper requirements as defined in subsection (3) of this section, and a person fails to comply with such requirements, these provisions will have the following effect in the absence of an alternative

procedure agreed upon between both plans and the covered person:

(a) If the plan is secondary, all secondary gatekeeper requirements will be waived if the gatekeeper requirements of the primary plan have been met.

(b) If the primary plan becomes secondary during a course of treatment, the new primary plan must make reasonable provision for continuity of care if one or more treating providers are not in the new primary plan's network.

(3) For the purpose of this section, "gatekeeper requirements" means any requirement that an otherwise eligible person must fulfill prior to receiving the benefits of a plan. These requirements include but are not limited to use of network providers, prior authorization, primary care physician referrals, or other similar case management requirements.

(4) When a plan is secondary, it may reduce its benefits so that the total benefits paid or provided by all plans during a claim determination period do not exceed one hundred percent of the total allowable expenses. The secondary plan must calculate its savings by subtracting the amount that it paid as a secondary plan from the amount it would have paid had it been primary. These savings are recorded as a benefit reserve for the covered person and must be used by the secondary plan to pay any allowable expenses not otherwise paid, that are incurred by the covered person during the claim determination period. As each claim is submitted, the issuer of the secondary plan must:

(a) Determine its obligation under its plan;

(b) Determine whether a benefit reserve has been recorded for the covered person; and

(c) Determine whether there are any unpaid allowable expenses during that claims determination period.

(d) Use any amount that has accrued in the covered person's recorded benefit reserve to make payment so that one hundred percent of the total allowable expenses incurred are paid during the claim determination period.

NEW SECTION

WAC 284-51-235 Notice to covered persons. A plan must include the following statement in the enrollee contract or booklet provided to covered persons: "If you are covered by more than one health benefit plan, you or your provider should file all your claims with each plan at the same time. If Medicare is your primary plan, Medicare may submit your claims to your secondary carrier for you."

NEW SECTION

WAC 284-51-240 Small claim waivers. In appropriate cases, issuers are encouraged to waive the investigation of possible other plan coverage on claims less than fifty dollars. However, if additional liability is incurred which raises the claim above fifty dollars, the entire liability may be included in the coordination of benefits computation.

NEW SECTION

WAC 284-51-245 Miscellaneous provisions. (1) A secondary plan that provides benefits in the form of services may recover the reasonable cash value of the services from the primary plan, to the extent that benefits for the services are covered by the primary plan and have not already been paid or provided by the primary plan. Nothing in this provision requires a plan to reimburse a covered person in cash for the value of services provided by a plan that provides benefits in the form of services.

(2)(a) A plan with order of benefit determination rules that comply with this chapter (complying plan) may coordinate its benefits with a plan that is "excess" or "always secondary" or that uses order of benefit determination rules that are inconsistent with those contained in this chapter (noncomplying plan) on the following basis:

(i) If the complying plan is the primary plan, it must pay or provide its benefits first;

(ii) If the complying plan is the secondary plan under the order of benefit determination in this chapter, it must pay or provide its benefits first, but the amount of the benefits payable must be determined as if the complying plan were the secondary plan. In this situation, the payment is the limit of the complying plan's liability; and

(iii) If the noncomplying plan does not provide the information needed by the complying plan to determine its benefits within forty-five days after the date on the letter making the request, the complying plan may assume the benefits of the noncomplying plan are identical to its own, and pay its benefits accordingly. If, within twenty-four months after payment, the complying plan receives information as to the actual benefits of the noncomplying plan, it must adjust payments accordingly between the plans.

(b) If the noncomplying plan reduces its benefits so that the covered person receives less in benefits than the covered person would have received had the complying plan paid or provided its benefits as the secondary plan and the noncomplying plan paid or provided its benefits as the primary plan, and governing state law allows the right of subrogation outlined below, then the complying plan may advance to the covered person or on behalf of the covered person an amount equal to the difference.

(c) In no event may the complying plan advance more than the complying plan would have paid had it been the primary plan less any amount it previously paid for the same expense or service. In consideration of the advance, the complying plan is subrogated to all rights of the covered person against the noncomplying plan. The advance by the complying plan must be without prejudice to any claim it may have against a noncomplying plan in the absence of subrogation.

(3) COB differs from subrogation. Provisions for one may be included in plans without compelling the inclusion or exclusion of the other.

(4) If the plans cannot agree on the order of benefits within thirty calendar days after the plans have received the information needed to pay the claim, the plans must immediately pay the claim in equal shares and determine their relative liabilities following payment. No plan is required to pay more than it would have paid had it been the primary plan.

NEW SECTION

WAC 284-51-250 Applicability and scope—Effective date for existing contracts. This chapter applies to all plans,

as defined in WAC 284-51-195 that are issued, amended or renewed after December 31, 2007. All plans issued prior to January 1, 2008 must be compliant with this chapter on that date.

NEW SECTION

WAC 284-51-255 Appendix A—Model COB contract provisions.

COORDINATION OF THIS CONTRACT'S BENEFITS WITH OTHER BENEFITS

The Coordination of Benefits (COB) provision applies when a person has health care coverage under more than one **Plan. Plan** is defined below.

The order of benefit determination rules govern the order in which each **Plan** will pay a claim for benefits. The **Plan** that pays first is called the **Primary plan.** The **Primary plan** must pay benefits according to its policy terms without regard to the possibility that another **Plan** may cover some expenses. The **Plan** that pays after the **Primary plan** is the **Secondary plan.** The **Secondary plan** may reduce the benefits it pays so that payments from all **Plans** do not exceed 100% of the total **Allowable expense.**

DEFINITIONS

A. A **Plan** is any of the following that provides benefits or services for medical or dental care or treatment. If separate contracts are used to provide coordinated coverage for members of a group, the separate contracts are considered parts of the same plan and there is no COB among those separate contracts. However, if COB rules do not apply to all contracts, or to all benefits in the same contract, the contract or benefit to which COB does not apply is treated as a separate plan.

(1) **Plan** includes: Group, individual or blanket disability insurance contracts, and group or individual contracts issued by health care service contractors or health maintenance organizations (HMO), closed panel plans or other forms of group coverage; medical care components of long-term care contracts, such as skilled nursing care; and Medicare or any other federal governmental plan, as permitted by law.

(2) **Plan** does not include: Hospital indemnity or fixed payment coverage or other fixed indemnity or fixed payment coverage; accident only coverage; specified disease or specified accident coverage; limited benefit health coverage, as defined by state law; school accident type coverage; benefits for non-medical components of long-term care policies; automobile insurance policies required by statute to provide medical benefits; Medicare supplement policies; Medicaid coverage; or coverage under other federal governmental plans, unless permitted by law.

Each contract for coverage under (1) or (2) is a separate **Plan.** If a **Plan** has two parts and COB rules apply only to one of the two, each of the parts is treated as a separate **Plan.**

B. **This plan** means, in a **COB** provision, the part of the contract providing the health care benefits to which the **COB** provision applies and which may be reduced because of the benefits of other plans. Any other part of the contract providing health care benefits is separate from this plan. A contract may apply one **COB** provision to certain benefits, such as dental benefits, coordinating only with similar benefits, and may apply another **COB** provision to coordinate other benefits.

C. The order of benefit determination rules determine whether **This plan** is a **Primary plan** or **Secondary plan** when the person has health care coverage under more than one **Plan.**

When **This plan** is primary, it determines payment for its benefits first before those of any other **Plan** without considering any other **Plan's** benefits. When **This plan** is secondary, it determines its benefits after those of another **Plan** and must make payment in an amount so that, when combined with the amount paid by the primary plan, the total benefits paid or provided by all plans for the claim equal 100% of the **Total Allowable expense** for that claim. This means that when this **Plan** is **Secondary,** it must pay the amount which, when combined with what the **Primary plan** paid, totals 100% of the highest **Allowable expense.** In addition, if this **Plan** is **Secondary,** it must calculate its savings (its amount paid subtracted from the amount it would have paid had it been the **Primary plan**) and record these savings as a benefit reserve for the covered person. This reserve must be used to pay any expenses during that calendar year, whether or not they are an **Allowable expense** under this **Plan.** If this **Plan** is **Secondary,** it will not be required to pay an amount in excess of its maximum benefit plus any accrued savings.

D. **Allowable expense** is a health care expense, including deductibles, coinsurance and copayments, that is covered at least in part by any **Plan** covering the person. When a **Plan** provides benefits in the form of services, the reasonable cash value of each service will be considered an **Allowable expense** and a benefit paid. An expense that is not covered by any **Plan** covering the person is not an **Allowable expense.**

The following are examples of expenses that are not **Allowable expenses:**

(1) The difference between the cost of a semi-private hospital room and a private hospital room is not an **Allowable expense,** unless one of the **Plans** provides coverage for private hospital room expenses.

(2) If a person is covered by two or more **Plans** that compute their benefit payments on the basis of usual and customary fees or relative value schedule reimbursement method or other similar reimbursement method, any amount in excess of the highest reimbursement amount for a specific benefit is not an **Allowable expense.**

(3) If a person is covered by two or more **Plans** that provide benefits or services on the basis of negotiated fees, an amount in excess of the highest of the negotiated fees is not an **Allowable expense.**

E. **Closed panel plan** is a **Plan** that provides health care benefits to covered persons in the form of services through a panel of providers who are primarily employed by the **Plan,** and that excludes coverage for services provided by other providers, except in cases of emergency or referral by a panel member.

F. **Custodial parent** is the parent awarded custody by a court decree or, in the absence of a court decree, is the parent with whom the child resides more than one half of the calendar year excluding any temporary visitation.

ORDER OF BENEFIT DETERMINATION RULES

When a person is covered by two or more **Plans,** the rules for determining the order of benefit payments are as follows:

A. The **Primary plan** pays or provides its benefits according to its terms of coverage and without regard to the benefits under any other **Plan.**

B. (1) Except as provided in subsection (2), a **Plan** that does not contain a coordination of benefits provision that is consistent with this chapter is always primary unless the provisions of both **Plans** state that the complying plan is primary.

(2) Coverage that is obtained by virtue of membership in a group that is designed to supplement a part of a basic package of benefits and provides that this supplementary coverage is excess to any other parts of the **Plan** provided by the contract holder. Examples include major medical coverages that are superimposed over hospital and surgical benefits, and insurance type coverages that are written in connection with a **Closed panel plan** to provide out-of-network benefits.

C. A **Plan** may consider the benefits paid or provided by another **Plan** in calculating payment of its benefits only when it is secondary to that other **Plan.**

D. Each **Plan** determines its order of benefits using the first of the following rules that apply:

(1) Non-Dependent or Dependent. The **Plan** that covers the person other than as a dependent, for example as an employee, member, policyholder, subscriber or retiree is the **Primary plan** and the **Plan** that covers the person as a dependent is the **Secondary plan.** However, if the person is a Medicare beneficiary and, as a result of federal law, Medicare is secondary to the **Plan** covering the person as a dependent, and primary to the **Plan** covering the person as other than a dependent (e.g., a retired employee), then the order of benefits between the two **Plans** is reversed so that the **Plan** covering the person as an employee, member, policyholder, subscriber or retiree is the **Secondary plan** and the other **Plan** is the **Primary plan.**

(2) Dependent Child Covered Under More Than One Plan. Unless there is a court decree stating otherwise, when a dependent child is covered by more than one **Plan** the order of benefits is determined as follows:

(a) For a dependent child whose parents are married or are living together, whether or not they have ever been married:

• The **Plan** of the parent whose birthday falls earlier in the calendar year is the **Primary plan;** or

• If both parents have the same birthday, the **Plan** that has covered the parent the longest is the **Primary plan.**

(b) For a dependent child whose parents are divorced or separated or not living together, whether or not they have ever been married:

(i) If a court decree states that one of the parents is responsible for the dependent child's health care expenses or health care coverage and the **Plan** of that parent has actual knowledge of those terms, that **Plan** is primary. This rule applies to claim determination periods commencing after the **Plan** is given notice of the court decree;

(ii) If a court decree states one parent is to assume primary financial responsibility for the dependent child but does not mention responsibility for health care expenses, the plan of the parent assuming financial responsibility is primary;

(iii) If a court decree states that both parents are responsible for the dependent child's health care expenses or health care coverage, the provisions of subparagraph (a) above determine the order of benefits;

(iv) If a court decree states that the parents have joint custody without specifying that one parent has responsibility for the health care expenses or health care coverage of the dependent child, the provisions of subsection (a) above determine the order of benefits; or

(v) If there is no court decree allocating responsibility for the dependent child's health care expenses or health care coverage, the order of benefits for the child are as follows:

• The **Plan** covering the **Custodial parent,** first;

• The **Plan** covering the spouse of the **Custodial parent,** second;

• The **Plan** covering the **non-custodial parent,** third; and then

• The **Plan** covering the spouse of the **non-custodial parent,** last

(c) For a dependent child covered under more than one **Plan** of individuals who are not the parents of the child, the provisions of subsection (a) or (b) above determine the order of benefits as if those individuals were the parents of the child.

(3) Active Employee or Retired or Laid-off Employee. The **Plan** that covers a person as an active employee, that is, an employee who is neither laid off nor retired, is the **Primary plan.** The **Plan** covering that same person as a retired or laid-off employee is the **Secondary plan.** The same would hold true if a person is a dependent of an active employee and that same person is a dependent of a retired or laid-off employee. If the other **Plan** does not have this rule, and as a result, the **Plans** do not agree on the order of benefits, this rule is ignored. This rule does not apply if the rule under section D(1) can determine the order of benefits.

(4) COBRA or State Continuation Coverage. If a person whose coverage is provided under COBRA or under a right of continuation provided by state or other federal law is covered under another **Plan,** the **Plan** covering the person as an employee, member, subscriber or retiree or covering the person as a dependent of an employee, member, subscriber or retiree is the **Primary plan** and the COBRA or state or other federal continuation coverage is the **Secondary plan.** If the other **Plan** does not have this rule, and as a result, the **Plans** do not agree on the order of benefits, this rule is ignored. This rule does not apply if the rule under section D(1) can determine the order of benefits.

(5) Longer or Shorter Length of Coverage. The **Plan** that covered the person as an employee, member, policyholder, subscriber or retiree longer is the **Primary plan** and the **Plan** that covered the person the shorter period of time is the **Secondary plan.**

(6) If the preceding rules do not determine the order of benefits, the **Allowable expenses** must be shared equally between the **Plans** meeting the definition of **Plan.** In addition, **This plan** will not pay more than it would have paid had it been the **Primary plan.**

EFFECT ON THE BENEFITS OF THIS PLAN

When **This plan** is secondary, it may reduce its benefits so that the total benefits paid or provided by all **Plans** during a claim determination period are not more than the total **Allowable expenses.** In determining the amount to be paid for any claim, the **Secondary plan** must make payment in an amount so that, when combined with the amount paid by the primary plan, the total benefits paid or provided by all plans for the claim equal one hundred percent of the total **Allowable expense** for that claim **Total Allowable expense** is the highest **Allowable expense** of the **Primary plan** or the **Secondary plan.** In addition, the **Secondary plan** must credit to its plan deductible any amounts it would have credited to its deductible in the absence of other health care coverage.

RIGHT TO RECEIVE AND RELEASE NEEDED INFORMATION

Certain facts about health care coverage and services are needed to apply these **COB** rules and to determine benefits payable under **This plan** and other **Plans.** [Organization responsibility for **COB** administration] may get the facts it needs from or give them to other organizations or persons for the purpose of applying these rules and determining benefits payable under **This plan** and other **Plans** covering the person claiming benefits. [Organization responsibility for **COB** administration] need not tell, or get the consent of, any person to do this. Each person claiming benefits under **This plan** must give [Organization responsibility for **COB** administration] any facts it needs to apply those rules and determine benefits payable.

FACILITY OF PAYMENT

If payments that should have been made under **This plan** are made by another **Plan,** the issuer has the right, at its discretion, to remit to the other **Plan** the amount it determines appropriate to satisfy the intent of this provision. The amounts paid to the other **Plan** are considered benefits paid under **This plan.** To the extent of such payments, the issuer is fully discharged from liability under **This plan.**

RIGHT OF RECOVERY

The issuer has the right to recover excess payment whenever it has paid allowable expenses in excess of the maximum amount of payment necessary to satisfy the intent of this provision. The issuer may recover excess payment from any person to whom or for whom payment was made or any other issuers or plans.

Questions about Coordination of Benefits?
Contact Your State Insurance Department

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 284-51-260 Appendix B—Consumer explanatory booklet.

COORDINATION OF BENEFITS

IMPORTANT NOTICE

This is a summary of only a few of the provisions of your health plan to help you understand coordination of benefits, which can be very complicated. This is not a complete description of all of the coordination rules and procedures, and does not change or replace the language contained in your insurance contract, which determines your benefits.

Double Coverage

It is common for family members to be covered by more than one health care plan. This happens, for example, when a husband and wife both work and choose to have family coverage through both employers.

When you are covered by more than one health plan, state law permits issuers to follow a procedure called "coordination of benefits" to determine how much each should pay when you have a claim. The goal is to make sure that the combined payments of all plans do not add up to more than your covered health care expenses.

Coordination of benefits (COB) is complicated, and covers a wide variety of circumstances. This is only an outline of some of the most common ones. If your situation is not described, read your evidence of coverage or contact your state insurance department.

Primary or Secondary?

You will be asked to identify all the plans that cover members of your family. We need this information to determine whether we are the "primary" or "secondary" benefit payer. The primary plan always pays first when you have a claim.

Any plan that does not contain your state's COB rules will always be primary.

When This Plan is Primary

If you or a family member is covered under another plan in addition to this one, we will be primary when:

Your Own Expenses

• The claim is for your own health care expenses, unless you are covered by Medicare and both you and your spouse are retired.

Your Spouse's Expenses

• The claim is for your spouse, who is covered by Medicare, and you are not both retired.

• **Your Child's Expenses.** The claim is for the health care expenses of your child who is covered by this plan; and

• You are married and your birthday is earlier in the year than your spouse's or you are living with another individual, regardless of whether or not you have ever been married to that individual, and your birthday is earlier than that other individual's birthday. This is known as the "birthday rule"; or

• You are separated or divorced and you have informed us of a court decree that makes you responsible for the child's health care expenses; or

• There is no court decree, but you have custody of the child.

Other Situations

We will be primary when any other provisions of state or federal law require us to be.

How We Pay Claims When We Are Primary

When we are the primary plan, we will pay the benefits according to the terms of your contract, just as if you had no other health care coverage under any other plan.

How We Pay Claims When We Are Secondary

When we are knowingly the secondary plan, we will make a reasonable estimate of the primary plan payment and base our payment on that amount. After payment information is received from the primary plan, we may recover from the primary plan any excess amount paid under the "right of recovery" provision in the plan. We may not delay our payments because of lack of information from the primary plan. We are required to pay claims within ninety days of receipt.

• If there is a difference between the amounts the plans allow, we will base our payment on the higher amount. However, if the primary plan has a contract with the provider, our combined payments will not be more than the amount called for in our contract or the amount called for in the contract of the primary plan, whichever is higher. Health maintenance organizations (HMOs) and health care service contractors usually have contracts with their providers as do some other plans.

• We will determine our payment by subtracting the amount we estimate that the primary plan will pay from the amount we would have paid if we had been primary. We must make payment in an amount so that, when combined with the amount paid by the primary plan, the total benefits paid or provided by all plans for the claim equal to one hundred percent of the total allowable expense (the highest of the amounts allowed under each plan involved) for your claim. We are not required to pay an amount in excess of our maximum benefit plus any accrued savings. If your provider negotiates reimbursement amounts with the plan(s) for the service provided, your provider may not bill you for any excess amounts once he/she has received payment for the highest of the negotiated amounts. When our deductible is fully credited, we will place any remaining amounts in a savings account to cover future claims which might not otherwise have been paid. For example, if the primary plan covers similar kinds of health care expenses, but allows expenses that we do not cover, we may pay for those expenses.

Questions About Coordination of Benefits?
Contact Your State Insurance Department

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 284-51-010	Purpose and scope.
WAC 284-51-015	Amount of reduction allowed.
WAC 284-51-020	Required provisions for coordination of benefits.
WAC 284-51-030	Benefits subject to coordination.
WAC 284-51-040	"Plan" defined.
WAC 284-51-045	"Preventive care" defined.
WAC 284-51-050	Allowable expense.
WAC 284-51-060	Claim determination period.
WAC 284-51-075	Order of benefit determination.
WAC 284-51-080	Determination of length of coverage.
WAC 284-51-090	Coordination procedures.
WAC 284-51-100	Time limit.
WAC 284-51-110	Small claim waivers.
WAC 284-51-120	Facility of payment.
WAC 284-51-130	Right of recovery.
WAC 284-51-140	Right to receive and release necessary information.
WAC 284-51-150	Disclosure of coordination.
WAC 284-51-170	Effective date.
WAC 284-51-185	Appendix B, form for "effect on benefits" provision.

WSR 07-13-010
PERMANENT RULES
TRANSPORTATION COMMISSION
[Filed June 8, 2007, 11:00 a.m., effective July 9, 2007]

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

Purpose: The commission is required to establish toll rates for vehicles using the Tacoma Narrows Bridge that are adequate to cover the debt, operations and maintenance. This rule defines terms for toll facilities and establishes the toll rates for the Tacoma Narrows Bridge. In addition, the rule defines what vehicles are exempt from paying tolls and when authorized emergency vehicles may apply for credits.

Statutory Authority for Adoption: RCW 47.56.030, 47.46.100.

Adopted under notice filed as WSR 07-10-128 on May 2, 2007.

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 10, 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: June 5, 2007.

Reema Griffith
Executive Director

Chapter 468-270 WAC

SETTING TOLL AMOUNTS FOR TOLL FACILITIES IN WASHINGTON STATE

NEW SECTION

WAC 468-270-010 Who sets the toll rates and exemptions? The Washington state transportation commission determines and establishes toll rates for toll facilities in Washington pursuant to RCW 47.56.030; 47.46.100 (Tacoma Narrows Bridge); and RCW 47.56.403 (SR 167 HOT lanes).

NEW SECTION

WAC 468-270-020 Who collects the tolls? The department is ultimately responsible for collecting tolls. However, the department may contract with one or more independent toll collection companies to manage the day-to-day toll collection activities at its various toll facilities. All toll related revenues collected by any independent toll collection company through WSDOT are payable to the state of Washington.

NEW SECTION

WAC 468-270-030 Definitions. "Authorized emergency vehicle" includes but is not limited to a vehicle of any fire department, police department, sheriff's office, coroner, prosecuting attorney, Washington state patrol, ambulance service, public or private or any other emergency vehicle as defined in RCW 46.04.040.

"Bona fide emergency" occurs when an authorized emergency vehicle, as defined herein, responds to or returns from an emergency call.

"Cash customer" means a toll customer who is heading eastbound and is paying the toll in cash on a trip-by-trip basis.

"Citizens advisory committee" means the citizens committee established by RCW 47.46.090 that advises the transportation commission on Tacoma Narrows Bridge toll rates.

"Department" means the Washington state department of transportation (WSDOT).

"Electronic toll collection (ETC) lane" means a lane in which the electronic toll collection system will read the transponder of each vehicle and automatically collect the toll without requiring the vehicle to slow its speed or stop.

"Good To Go!™" is the name of the department's electronic toll collection system.

""Good To Go!™" customer" means a toll customer who participates in the department's "Good To Go!™" toll collection system.

"High-occupancy toll (HOT) lanes" means one or more lanes of a highway that charges tolls as a means of regulating access to or the use of the lanes in order to maintain travel speed and reliability. HOT lane supporting facilities include, but are not limited to, approaches, enforcement areas, improvements, buildings, and equipment.

"Transponder" means a radio frequency identification (RFID) unit attached to a toll customer's vehicle that transmits a radio signal to a reader mounted in the toll facility. The purpose of the transponder is to automatically identify the toll customer's vehicle as it passes through the toll facility. You will receive a transponder when you open a "Good to Go!™" account.

"Transportation commission" means the Washington state transportation commission whose duties and composition are set out in chapter 47.01 RCW.

NEW SECTION

WAC 468-270-040 How are the tolls determined? In determining toll amounts, the transportation commission considers data and information provided by the department of transportation, public opinion and advice from any required citizen advisory committee. For the Tacoma Narrows Bridge only, in accordance with chapter 47.46 RCW, the commission must consider the toll rate advice of the citizen advisory committee and must set toll amounts that cover the debt and operations and maintenance until the indebtedness is repaid as required by law.

NEW SECTION

WAC 468-270-050 What toll facilities are currently subject to this chapter? Currently, the Tacoma Narrows Bridge and SR 167 HOT lanes are covered by this chapter.

NEW SECTION

WAC 468-270-060 How often will the toll rates for each toll facility be reviewed for potential change? The toll rates will be reviewed and subject to change at least annually and more often as necessary to ensure the toll revenue of each facility is meeting the payment requirements and/or traffic efficiency requirements for that facility.

NEW SECTION

WAC 468-270-070 What will the toll rates be?

Rate table $3.00 cash/$1.75 "Good to Go!™"
(two axle vehicles)

Tacoma Narrows Bridge			
	Cash toll rate	"Good To Go!™" toll rates	
2 axle	$3.00	$1.75	

Rate table $3.00 cash/$1.75 "Good to Go!™"
(two axle vehicles)

Tacoma Narrows Bridge			
3 axle	$4.50	$2.65	(3)
4 axle	$6.00	$3.50	
5 axle	$7.50	$4.40	(3)
6 or more axles	$9.00	$5.25	

SR 167 HOT lanes	
To be determined	

Notes: (1) The base toll rate is the toll rate per axle. It is only used to calculate multi-axle rates, which are calculated as a multiplier of the base toll rate ($1.50 for cash and $0.875 for "Good to Go!™" toll rates).
(2) The "Good To Go!™" toll rates are in effect through June 30, 2008, or until changed by the commission. If no further action is taken by the commission, on July 1, 2008, the cash toll rate column becomes the toll rate for all vehicles.
(3) Rate rounded up to nearest five cents.

NEW SECTION

WAC 468-270-080 When are these toll rates in effect? The toll rates for each facility will take effect upon commencement of the tolling program on each new toll facility. Check the WSDOT web site at wsdot.wa.gov/goodtogo for updated information on the opening dates for the tolling programs.

(1) For the Tacoma Narrows Bridge toll rates will remain in effect until changed by the commission or removed due to final repayment of the project as provided by law.

(2) For the SR 167 HOT lanes, the tolls will remain in effect until changed by the commission.

NEW SECTION

WAC 468-270-090 What vehicles are exempt from paying tolls on the Tacoma Narrows Bridge? Except as provided herein, all vehicles crossing the Tacoma Narrows Bridge in an eastbound direction must pay the required toll. All vehicles that use the ETC lanes on the Tacoma Narrows Bridge must have a transponder and a valid "Good To Go!™" account. Emergency vehicles not equipped with transponders must pay cash as a cash customer.

(1) Only the following vehicles providing service directly to the Tacoma Narrows Bridge are exempt from paying tolls, but must be equipped with transponders:

(a) Washington state department of transportation (WSDOT) maintenance vehicles directly involved in bridge and roadway maintenance on the Tacoma Narrows Bridge;

(b) Washington state patrol vehicles directly providing service to the SR 16 corridor in the vicinity of the Tacoma Narrows Bridge;

(c) Vehicles under the Tacoma Narrows Bridge design build contract that must cross the bridge as part of their construction duties to complete the requirements of the design build contract. This exemption status will expire on July 1, 2008, or upon completion of their construction duties, whichever comes first.

(2) Authorized emergency vehicles on bona fide emergencies as defined herein may apply for credit for their emergency trips and for the return trip from an emergency call.

(a) To be eligible for a credit, an authorized emergency vehicle must be equipped with a transponder and have an authorized prepaid account.

(b) Emergency vehicles that use the ETC lanes on a bona fide emergency may apply for a credit for each emergency trip. The credit must be applied for within six months of the trip date. The department will establish and oversee the procedure for emergency vehicle toll credits.

NEW SECTION

WAC 468-270-100 What vehicles are exempt from paying tolls on the SR 167 HOT lanes? RCW 47.56.403 establishes an exempt category of vehicles. The transportation commission may include other exempt vehicles before tolling commences.

WSR 07-13-019
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed June 11, 2007, 2:14 p.m., effective July 12, 2007]

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

Purpose: The department is amending WAC 388-406-0040 What happens if the processing of my application is delayed?, in order to describe the department's current policy on when we deny food benefits for households that fail to keep or reschedule an intake interview.

Citation of Existing Rules Affected by this Order: Amending WAC 388-406-0040.

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

Adopted under notice filed as WSR 07-05-053 on February 16, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, 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 1, Repealed 0.

Date Adopted: June 7, 2007.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-22-039, filed 10/28/03, effective 12/1/03)

WAC 388-406-0040 What happens if the processing of my application is delayed? (1) We process your application for benefits as soon as possible. We do not intentionally delay processing your application for benefits for any reason. If we have enough information to decide eligibility for:

(a) Basic Food, we promptly process your request for benefits even if we need more information to determine eligibility for cash or medical;

(b) Medical assistance, we promptly process your request for medical even if we need more information to determine eligibility for cash or Basic Food.

(2) If ((~~your application for Basic Food assistance is not processed within the first thirty days~~)) you have completed your required interview under WAC 388-452-0005 and we have enough information to determine eligibility, then we promptly process your application even if it is after thirty days from the date of your application.

(3) If additional information is needed to determine eligibility, we give you:

(a) A written request for the additional information; and

(b) An additional thirty days to provide the information.

(((~~3~~))) (4) If you fail to keep or reschedule your interview in the first thirty calendar days after filing your application, your application will be denied on the thirtieth day, or the first business day after the thirtieth day. If you are still interested in Basic Food benefits, you will need to reapply. Benefits will be based on your second application date.

(5) If we have not processed your application for Basic Food by the sixtieth day and:

(a) You are responsible for the delay, we deny your request for benefits.

(b) If we are responsible for the delay, we:

(((~~a~~))) (i) Promptly process your request if we have the information needed to determine eligibility; or

(((~~b~~))) (ii) Deny your request if we don't have enough information to determine eligibility. If we deny your request we notify you of your right to file a new application and that you may be entitled to benefits lost.

(6) If you reapply by the sixtieth day of your first application, met your interview requirements under WAC 388-452-0005, and are eligible, we give you benefits lost from:

(((~~i~~))) (a) The date of your first application if we caused the delay in the first thirty days; or

(((~~ii~~))) (b) The month following the month of your first application if you caused the delay in the first thirty days.

WSR 07-13-023
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed June 11, 2007, 3:52 p.m., effective July 12, 2007]

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

Purpose: WAC 458-18-060 explains how equity value is determined relative to the deferral of property taxes on residences of qualifying (senior or disabled) claimants. Equity value takes the interest on the deferred taxes into account. In 2006, the legislature amended the statute (RCW 84.38.100) to change the interest rate on deferred taxes from 8% to 5%. This amendment to the rule implements the legislative change (chapter 275, Laws of 2006).

Citation of Existing Rules Affected by this Order: Amending WAC 458-18-060 Deferral of special assessments and/or property taxes—Limitations of deferral—Interest.

Statutory Authority for Adoption: RCW 84.38.180.

Adopted under notice filed as WSR 07-08-092 on April 3, 2007.

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 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: June 11, 2007.

Janis P. Bianchi
Assistant Director
Interpretations and
Technical Advice Division

AMENDATORY SECTION (Amending Order PT 88-9, filed 6/9/88)

WAC 458-18-060 Deferral of special assessments and/or property taxes—Limitations of deferral—Interest. No deferral shall be granted if the liens created by the deferrals of special assessments and/or real property taxes equal or exceed eighty percent of the claimant's equity value in said property. Equity value will be determined as of January 1 in the year the taxes are to be deferred.

The liens shall include:

(1) The total amount of special assessments and/or real property taxes deferred, plus

(2) Interest on the amount deferred. For deferrals granted before June 7, 2006, the interest accrues at the rate of eight percent per year, from the time it could have been paid before delinquency until ((~~said~~)) the lien is paid. For deferrals granted after June 7, 2006, involving special assessments or taxes due prior to January 1, 2007, the interest accrues at the rate of eight percent per year, from the time it could have been paid before delinquency until the lien is paid. For deferrals granted after June 7, 2006, involving special assessments or taxes to be collected in 2007 and thereafter, the interest accrues at the rate of five percent per year, from the time it could have been paid before delinquency until the lien is paid. When a declaration is filed ((~~after the taxes are delinquent, interest at the rate of eight percent per year on the amount deferred will begin accruing on~~)) as a result of the

requirement under RCW 84.64.050 related to a treasurer's foreclosure action, the interest accrues from the date the declaration is filed and ((~~will~~)) continues until the obligation is paid, at the appropriate rate as set forth above.

WSR 07-13-024
PERMANENT RULES
UNIVERSITY OF WASHINGTON

[Filed June 11, 2007, 3:40 p.m., effective July 12, 2007]

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

Purpose: To extend tuition waivers to eligible veterans and children and spouses of veterans who qualify under RCW 28B.15.621 and WAC 478-160-163 that seek their first graduate or professional degree at the University of Washington.

Citation of Existing Rules Affected by this Order: Amending WAC 478-160-163.

Statutory Authority for Adoption: RCW 28B.15.621 and 28B.20.130.

Adopted under notice filed as WSR 07-09-082 on April 17, 2007.

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: June 7, 2007.

Rebecca Goodwin Deardorff
UW Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 06-12-008, filed 5/26/06, effective 6/26/06)

WAC 478-160-163 Waivers of tuition and fees. (1) The board of regents is authorized to grant tuition and fee waivers to students pursuant to RCW 28B.15.910 and the laws identified therein. Each of these laws, with the exception of RCW 28B.15.543 and 28B.15.545, authorizes, but does not require, the board of regents to grant waivers for different categories of students and provides for waivers of different fees. The board of regents must affirmatively act to implement the legislature's grant of authority under each individual law. A list of waivers that the board has implemented can be found in the *University of Washington General Catalog*, which is published biennially. The most recent list may be found in the online version of the *General Catalog* at www.washington.edu/students/reg/tuition_exempt_reductions.html.

(2) Even when it has decided to implement a waiver listed in RCW 28B.15.910, the university, for specific reasons and a general need for flexibility in the management of its resources, may choose not to award waivers to all students who may be eligible under the terms of the laws. Where the university has chosen to impose specific limitations on a waiver listed in RCW 28B.15.910, those limitations are delineated in subsection (5) of this section. If the university has not imposed specific limitations on a waiver listed in RCW 28B.15.910, the waiver is not mentioned in subsection (5) of this section. The university's description of the factors it may consider to adjust a waiver program to meet emergent or changing needs is found in subsection (7) of this section. All waivers are subject to subsection (7) of this section.

(3) The board of regents also has the authority under RCW 28B.15.915 to grant waivers of all or a portion of operating fees as defined in RCW 28B.15.031. Waiver programs adopted under RCW 28B.15.915 are described in the *General Catalog*. The most recent list may be found in the online version of the *General Catalog* at www.washington.edu/students/reg/tuition_exempt_reductions.html. Waivers granted under RCW 28B.15.915 are subject to subsection (7) of this section.

(4) Waivers will not be awarded to students participating in self-sustaining courses or programs because they do not pay "tuition," "operating fees," "services and activities fees," or "technology fees" as defined in RCW 28B.15.020, 28B.15.031, 28B.15.041, or 28B.15.051, respectively.

(5) Specific limitations on waivers are as follows:

(a) Waivers authorized by RCW 28B.15.621 (2)(a) for eligible veterans and National Guard members, shall be awarded only to:

(i) Undergraduate students pursuing their first bachelor's degree to a maximum of 225 college-level credits, including credits transferred from other institutions of higher education; and

(ii) Full-time graduate or professional degree students pursuing their first advanced degree (including advanced degrees earned at other institutions), provided however, that graduate and professional degree students who received a waiver authorized by RCW 28B.15.621 (2)(a) as undergraduates at any Washington state institution of higher education shall not be eligible for this waiver.

(b) Waivers authorized by RCW 28B.15.621 (2)(b) and (c) for children or spouses of eligible veterans and National Guard members who became totally disabled, or lost their lives, while engaged in active federal military or naval service, or who are prisoners of war or missing in action, shall be awarded only to:

(i) Undergraduate students pursuing their first bachelor's degree to a maximum of 225 college-level credits, including credits transferred from other institutions of higher education; and

(ii) Full-time graduate or professional degree students pursuing their first advanced degree (including advanced degrees earned at other institutions), provided however, that graduate and professional degree students who received a waiver authorized by RCW 28B.15.621 (2)(b) or (c) as

undergraduates at any Washington state institution of higher education shall not be eligible for this waiver.

(c) Waivers of nonresident tuition authorized by RCW 28B.15.014 for university faculty and classified or professional staff shall be restricted to four consecutive quarters from their date of employment with the University of Washington. The recipient of the waiver must be employed by the first day of the quarter for which the waiver is awarded. Waivers awarded to immigrant refugees, or the spouses or dependent children of such refugees, shall be restricted to persons who reside in Washington state and to four consecutive quarters from their arrival in Washington state.

(d) Waivers authorized by RCW 28B.15.380 for children of police officers or fire fighters who are deceased or permanently disabled, shall be awarded only to undergraduate students pursuing their first bachelor's degree to a maximum of 225 college-level credits, including credits transferred from other institutions of higher education.

(e) Waivers authorized by RCW 28B.15.558 shall be awarded only to:

(i) University of Washington employees who are employed half-time or more, hold qualifying appointments as of the first day of the quarter for which the waivers are requested, are paid monthly, and, for classified staff new to the university, have completed their probationary periods prior to the first day of the quarter; or

(ii) State of Washington permanent employees who are employed half-time or more, are not University of Washington permanent classified employees, are permanent classified or exempt technical college paraprofessional employees, or are permanent faculty members, counselors, librarians or exempt employees at other state of Washington public higher education institutions.

(6) To qualify an individual as an "eligible veteran or National Guard member," the person seeking the waiver must present proof of domicile in Washington state and a DD form 214 (Report of Separation) indicating their service related to specific United States military operations or campaigns fought on foreign soil or in international waters.

(7) The university may modify its restrictions or requirements pursuant to changes in state or federal law, changes in programmatic requirements, or in response to financial or other considerations, which may include, but are not limited to, the need to adopt fiscally responsible budgets, the management of the overall levels and mix of enrollments, management initiatives to modify enrollment demand for specific programs and management decisions to eliminate or modify academic programs. The university may choose not to exercise the full funding authority granted under RCW 28B.15.910 and may limit the total funding available under RCW 28B.15.915.

WSR 07-13-035
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed June 13, 2007, 11:38 a.m., effective July 22, 2007]

Effective Date of Rule: July 22, 2007.

Purpose: The purpose of the rules is to provide the guidelines, eligibility criteria, procedures, and other information related to the Washington assessment of student learning needed to: (1) Utilize the objective alternative assessments authorized in RCW 28A.655.065 and 28A.655.061; (2) apply for waivers for transfer students; and (3) apply for appeals for students with special, unavoidable circumstances.

Statutory Authority for Adoption: RCW 28A.655.061 and 28A.655.065.

Adopted under notice filed as WSR 07-03-131 on January 23, 2007.

Changes Other than Editing from Proposed to Adopted Version: Changes were made to reflect amendments to the authorizing statutes made by the 2007 legislature in ESSB 6023 (e.g., # of times required to take the WASL, additional SAT, ACT and AP options, 3.2 GPA eligibility for WASL/grades option, phase-out of the PSAT-math option in August 2008). In addition, the following changes were made: Eligibility/decision criteria for special, unavoidable circumstances were made more flexible; out-of-state transfer students were allowed access to the alternative assessments without having to take the WASL and allowed to use scores from exit examinations; the requirement that students must be in "Level 2" on the WASL was removed; and language was added that allows appeals under the Administrative Procedure Act.

Brief description of differences between the proposed rules and adopted rules as required by RCW 34.05.340.

In January 2007, the superintendent of public instruction proposed rules for the certificate of academic achievement options (CAA options), waivers for transfer students, and appeals for students with special, unavoidable circumstances. A public hearing was held on February 27, 2007. A total of thirteen oral or written comments were received.

Based on the comments, further analysis of the rules, and changes in the authorizing legislation that were made by the 2007 legislature, the following nonediting changes were made to the rules prior to being adopted.

(1) Legislative changes:

Changes resulting from legislative action. The most significant changes resulted from the adoption of ESSB 6023, which was approved by the legislature between the time the rules were proposed and adopted.

These changes included:

(1) Allowing students to access the certificate of academic achievement options after taking the Washington assessment of student learning once;

(2) The addition of reading, English, and writing scores on the ACT and SAT;

(3) The addition of advanced placement examination scores;

(4) The phase-out of PSAT mathematics scores after August 31, 2008; and

(5) Requiring students to have a cumulative grade point average of 3.2 or higher to access the WASL/grades comparison option.

(2) WASL/grades comparison option:

Changing the WASL/grades eligibility criteria. The WASL/grades eligibility requirements in the proposed rules that students be in Level 2 on the WASL was removed.

Rationale: With the addition of the requirement that students have a 3.2 or higher cumulative GPA, it was concluded it was not necessary to require students to also be in Level 2 on the WASL. In addition, if a student has significant issues with taking on-demand standardized tests, requiring students to be in Level 2 on the WASL may unintentionally exclude students in which the option was intended. This change was requested by the Columbia Legal Services.

Using the student's "most recent" courses. In the proposed rules, a student's "highest-level" courses were to be used in identifying the student's cohorts. In the adopted rule, this was changed to the "most recent" courses.

Rationale: Educators who are serving on a group to implement this option indicated that it would be difficult to determine the "highest-level" courses. In their view, identifying the "most recent" mathematics and English language arts classes taken by a student would be easier to identify for individuals compiling the cohort and result in more consistent results.

(3) PSAT, SAT, ACT and AP test scores:

Temporarily removing the mathematics scores from the adopted rules. The proposed scores for the mathematics components of the PSAT, SAT, and ACT in the proposed rules were removed. The legislature expanded the list of tests that could be used, and required the state board to set additional cut scores for the ACT and SAT in reading and writing by December 1, 2007. Once the scores are approved, all of the scores will be posted on the office of superintendent of public instruction (OSPI) web site.

Rationale: At this point in time, the cut scores for the additional tests in ESSB 6023 have not been approved by the state board of education.

(4) Transfer students:

Use of exit exams in other states for transfer students. The proposed rules only allowed assessments that were approved by the federal government for purposes on the "No Child Left Behind" Act. In the adopted rules, transfer students from other states will be able to use scores from exit exams in other states.

Rationale: During the review period, it was brought to the attention of the agency that some states use different tests for exit exam and for federal NCLB accountability purposes. In addition, some states (e.g., Massachusetts) use a lower cut score for purposes of the state's graduation requirement compared to the score used for proficiency for NCLB accountability.

Access to the alternative assessment by transfer students. The proposed rules would have required transfer students to take the WASL before accessing the alternative assessments. In the adopted rules, transfer students who arrive in their junior or senior years are allowed to access the alternative assessments without first taking the WASL.

Rationale: This change was in response to comments from several individuals who recommended that transfer students be able to use PSAT, SAT, and ACT scores without having to take the WASL. This will allow these students to use the alternatives without having to wait to take the WASL and to receive their results late in their high school career. In addition, these tests will be more accessible for students in community college high school completion programs because these tests are administered throughout the year and, in most cases, on Saturdays. Taking these tests on Saturdays will not require students in high school completion programs to miss classes.

Use of approved assessments used in Department of Defense schools. The proposed rules allowed students who transferred from a school operated by the Department of Defense or other federal agency to use scores from assessments approved under the federal Elementary and Secondary Education Act. This provision was removed.

Rationale: Upon further research, it was determined that Department of Defense schools are not required to comply with the accountability provisions of the federal Elementary and Secondary Education Act. As a result, these students do not take comparable standards-based assessments that identify if students are proficient in reading, writing, and mathematics. However, many of these students take the PSAT, SAT, and/or ACT. Under the adopted rules, transfer students will be able to access the PSAT, SAT, ACT and AP comparison option alternative assessment without having to first take the WASL, which will help address the needs of transfer students in military families.

(5) Special, unavoidable circumstances:

Modifying the definition of a "special, unavoidable circumstance." The definition of a special, unavoidable circumstances was expanded in three different ways by adding language that allows: (1) other unavoidable events of a similar compelling magnitude; (2) the failure of a student in the transitional bilingual education program to receive an accommodation that was scheduled to be provided; and (3) students who transfer into the state after March 1 in their senior year.

Rationale: The first two additions were made in response to comments received from the Columbia Legal Services requesting that the definition of a special, unavoidable circumstance to be expanded to include other unforeseen situations and the failure of a school district to provide appropriate accommodations to students who are English language learners. The third addition was made for students who arrive so late in their senior year that they do not have an opportunity to take the WASL or complete an alternative assessment prior to their scheduled graduation date.

Modifying the approval criteria for granting a special, unavoidable circumstance waiver. The proposed rules required that the high school graduation certificate review board and the OSPI find that the student has "a high probability" of having the skills and knowledge required to achieve the standards. The adopted rules modified this threshold and require that the student "more likely than not possesses the skills and knowledge" required to meet the state standard.

Rationale: Upon further analysis, it was concluded that the proposed standard of requiring a "high probability" of having the needed skills and knowledge would be too diffi-

cult to ascertain given the information (e.g., GPA, other assessment results) that will be available to the review board and the OSPI. The "more likely than not" standard was deemed more appropriate given the additional criteria set forth in the rule that will be used to evaluate a student's application.

(6) Review of decisions:

Judicial review of the superintendent's decision. New sections were added to each of the alternative assessments, appeals, and waivers that state that decisions made by the superintendent of public instruction may be reviewed as provided in the Administrative Procedure Act (APA) as provided in RCW 34.05.514.

Rationale: This was done in response to comments received from Columbia Legal Services to ensure that parents, students, and others will be aware of the right to appeal decisions made by the superintendent of public instruction as provided in the APA.

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 25, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: June 8, 2007.

Dr. Terry Bergeson
Superintendent of
Public Instruction

Chapter 392-501 WAC

ACADEMIC ACHIEVEMENT, ACCOUNTABILITY AND ASSESSMENT

NEW SECTION

WAC 392-501-001 Authority. The authority for this chapter is RCW 28A.655.065 and 28A.655.061, which direct the superintendent of public instruction to:

(1) Develop and implement eligibility requirements and guidelines for objective alternative assessments for students to demonstrate achievement of state standards in content areas in which the student has not yet met the standard on the high school Washington assessment of student learning (WASL); and

(2) Develop guidelines and appeal processes for waiving specific requirements in RCW 28A.655.061 pertaining to the certificate of academic achievement and to the certificate of individual achievement for students who:

(a) Transfer to a Washington public school in their junior or senior year with the intent of obtaining a public high school diploma; and

(b) Have special, unavoidable circumstances.

NEW SECTION

WAC 392-501-002 Purpose. The purpose of this chapter is to provide the guidelines, eligibility criteria, procedures, and other information needed to:

(1) Utilize the objective alternative assessments authorized in RCW 28A.655.065 and 28A.655.061;

(2) Apply for waivers for transfer students; and

(3) Apply for appeals for students with special, unavoidable circumstances.

PSAT, SAT, ACT, AND AP COMPARISON OPTION

NEW SECTION

WAC 392-501-102 General description. The PSAT, SAT, ACT and AP comparison option is an objective alternative assessment authorized in RCW 28A.655.061 (10)(b) that allows a student to use a score from the following tests to demonstrate that the student has met or exceeded the state standard for reading, writing, or mathematics on:

(1) The mathematics component of the PSAT;

(2) The reading or English, writing, or mathematics component of the SAT or ACT; or

(3) Advanced placement examinations listed in WAC 392-501-104(2).

NEW SECTION

WAC 392-501-103 Eligibility. (1) A student is eligible for the PSAT, SAT, ACT and AP comparison option if the student has taken the applicable component of the Washington assessment of student learning (WASL) at least once and has not met the standard for which the student is applying to use this option. To meet these criteria, a student must have sat for and generated a scale score during the administration of the WASL.

(2) To be eligible for the PSAT mathematics option, the student must have taken the PSAT prior to September 1, 2008.

(3) A student may use a score earned on the PSAT, SAT, ACT or an advanced placement examination prior to or after taking the WASL once.

NEW SECTION

WAC 392-501-104 Required scores. (1) As required in RCW 28A.655.061 (10)(b), the state board of education shall identify the score students must achieve on the mathematics portion of the PSAT and the reading or English, writing, and mathematics components of the SAT and ACT.

(2) A student who scores at least a three on the grading scale of one to five on the following advanced placement examinations shall meet the applicable high school standard:

(a) For meeting the mathematics standard, the calculus or statistics advanced placement examination;

(b) For meeting the writing standard, the English language and composition advanced placement examination; or

(c) For meeting the reading standard, the English literature and composition, macroeconomics, microeconomics, psychology, United States history, world history, United States government and politics, or comparative government and politics advanced placement examination.

NEW SECTION

WAC 392-501-105 Application process. (1) The superintendent of public instruction shall develop and make available to students and school district personnel a PSAT, SAT, and ACT mathematics comparison application for documenting that a student has met the eligibility requirements in WAC 392-501-103 and achieved the scores required in WAC 392-501-104.

(2) If the student is eligible, the student shall complete an application and submit the application to the school principal or designee.

(3) If the school principal or designee agrees that the eligibility criteria have been met, the principal or designee shall transmit a facsimile or mail a copy of the application and the copy of the student's official PSAT, SAT, ACT, or AP score report that was sent to the school and to the office of superintendent of public instruction (OSPI).

(4) After the superintendent, or his or her designee, has received and verified the application to be complete and consistent with the requirements of this chapter, staff from the office of superintendent of public instruction shall notify the school principal or designee and the school district assessment coordinator once the application is verified. The school principal or designee shall notify the student of the verification. OSPI staff shall document in the student's state assessment record that the student met the applicable high school standard.

(5) The superintendent of public instruction shall act upon the student's application within thirty days of receiving the application.

(6) School staff shall include a copy of the application, the student's score report, and the verification in the student's cumulative folder.

NEW SECTION

WAC 392-501-106 Notification requirements. The school principal or a designee shall notify students and their parents or guardians when students are in the eleventh and twelfth grade years of the availability of the PSAT, SAT, ACT and AP comparison option.

NEW SECTION

WAC 392-501-108 Appeal of the superintendent's decision. Decisions made by the superintendent of public instruction under WAC 392-501-105 may be appealed as provided for in RCW 34.05.514.

WASL/GRADES COMPARISON OPTION

NEW SECTION

WAC 392-501-200 General description. The WASL/grades comparison option is an objective alternative assessment authorized in RCW 28A.655.065 (3) and (4) that compares the applicant's grades in applicable courses with the grades of students who took the same courses and met or exceeded the standard. This option may be used for meeting the high school reading, writing, and/or mathematics standard.

NEW SECTION

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

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

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

(3) The student is in the twelfth grade.

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

NEW SECTION

WAC 392-501-202 Process for determining the comparison cohort and calculating the GPAs. (1) For the purpose of this section, "applicant" means an eligible student applying for the WASL/grades comparison option.

(2) A school district representative or designee shall determine the comparison cohort and complete the calculation in this subsection for all eligible students who apply to use this option.

(3) To complete the WASL/grades comparison option for eligible students, the school district representative or designee shall complete the following steps:

(a) Identify the group of students in the same school as the applicant who took the same mathematics or English high school courses, which ever is applicable, in the same school year as the applicant. This group includes all of the students in the school who took courses with the same course title and course number (e.g., Algebra 1, Sophomore English) as the applicant, in the same school year, regardless of the grade level of the student. When selecting courses to be used, the following guidelines shall be followed:

(i) The credits generated by the courses must equal two annual high school credits and must include the most recent courses taken in which a comparison cohort of six or more students can be identified.

(ii) In order for applicants using the cohort comparison to meet the mathematics standard, the courses must be eligible for a mathematics graduation credit.

(iii) In order for applicants using the cohort comparison to meet the reading or writing standard, the courses must be eligible for an English/Language Arts graduation credit.

(b) From the group of students identified in (a) of this subsection, the school district representative or designee shall identify the "comparison cohort," which includes all students who met or slightly exceeded the state standard on the WASL. For purposes of determining "who met or slightly exceeded the state standard," scores in Level 3 shall be used:

(i) Mathematics: 400 - 433;

(ii) Reading: 400 - 426; and

(iii) Writing: 17 - 20.

(c) If there are fewer than six students in the comparison cohort, the cohort may be expanded to also include students in Level 4. If there are still fewer than six students in the comparison cohort, the applicant is not eligible to use the WASL/grades comparison option.

(d) The school district representative or designee shall compute the grade point average for the selected courses for the applicant and for each student in the comparison cohort. The following grade - number conversions shall be used:

A	= 4.0
A-	= 3.7
B+	= 3.3
B	= 3.0
B-	= 2.7
C+	= 2.3
C	= 2.0
C-	= 1.7
D+	= 1.3
D	= 1.0
E or F	= 0.0
Credit/No Credit	May not be used
Pass/Fail	May not be used

(e) The school district representative or designee shall then calculate the mean comparison cohort grade point average of all the students in the comparison cohort.

(f) The school district representative or designee shall then compare the applicant's grade point average in the relevant high school courses to the mean comparison cohort grade point average of the students in the comparison cohort.

(g) If the applicant's grade point average is below the mean comparison cohort grade point average, the student is not eligible to file the application and no further action is required.

(h) If the applicant's grade point average is equal to or higher than the mean comparison cohort grade point average, the principal or a designee shall transmit the application with the results of the calculation to the office of the superintendent of public instruction for approval.

NEW SECTION

WAC 392-501-204 Application timeline and approval criteria. (1) The superintendent of public instruction shall approve the application if:

(a) The student eligibility requirements are met;

(b) The process for identifying the comparison cohort and for calculating the grade point averages and the mean grade point average was followed; and

(c) The applicant's grade point average is equal to or greater than the mean grade point average of the comparison cohort.

(2) If the application is approved, the applicant will be deemed to have met the applicable content standard for purposes of obtaining a certificate of academic achievement or individual achievement.

(3) The superintendent of public instruction must act upon the student's application and notify the applicant's school principal or designee and the school district assessment coordinator whether the application was approved or denied within thirty days of receiving the application. The school principal or designee shall notify the student.

(4) School staff shall include a copy of the application and approval notification in the student's cumulative folder.

NEW SECTION

WAC 392-501-206 Notification requirements. The school principal or a designee shall notify students and their parents or guardians when students are in the eleventh and twelfth grade years of the availability of the WASL/grades comparison option.

NEW SECTION

WAC 392-501-208 Appeal of the superintendent's decision. Decisions made by the superintendent of public instruction under WAC 392-501-204 may be appealed as provided for in RCW 34.05.514.

WAIVERS FOR STUDENTS WHO TRANSFER INTO A WASHINGTON PUBLIC SCHOOL

NEW SECTION

WAC 392-501-500 General description. RCW 28A.655.065 directs the superintendent of public instruction to develop guidelines and appeal processes for waiving specific requirements pertaining to the certificate of academic achievement and to the certificate of individual achievement for students who transfer to a Washington public school in their junior or senior year with the intent of obtaining a public high school diploma.

NEW SECTION

WAC 392-501-502 Waivers for transfer students from other states who enroll in eleventh or twelfth grade. (1) The requirement that a student obtain a certificate of academic achievement or a certificate of individual achievement to graduate shall be waived for students who transfer to a

Washington public school from another state in the eleventh or twelfth grade year if the student provides documentation that he or she has met standards in another state on a high school assessment or for students eligible to receive special education services, on an alternate assessment. The assessment in the other state must be used for purposes of the high school assessment required in the federal Elementary and Secondary Education Act or be used for purposes of a high school graduation exit examination. Waivers shall be granted as follows:

(a) If the student met standards on both the mathematics and reading or English language arts assessments in the other state, the applicable certificate shall be waived.

(b) If a student did not meet the standard on the mathematics assessment in the other state, then the student must meet the standard on the applicable Washington assessment for the certificate to be waived.

(c) If the student did not meet the standard on the reading assessment or English language arts assessment, then the student must meet the reading standard on the applicable Washington assessment for the certificate to be waived.

(d) If the student did not meet the standard on the writing or English language arts assessment, then the student must meet the writing standard on the applicable Washington assessment for the certificate to be waived.

(e) If the other state did not have a writing assessment, then the student must have met the standard on the English language arts assessment or other assessment used to meet the English/language arts assessment or other assessment used to meet the English/language arts requirement in the federal Elementary and Secondary Education Act for the certificate to be waived.

(2) The student must document passage of the assessment by one of the following options:

(a) The out-of-state school from which the student transferred must transmit directly to the student's school a score report from the school or school district where the student took the high school assessment or alternate assessment. The score report must contain the student's assessment results by content area and whether or not the student met the state required standards. If the score report does not include whether or not the student met the standards, then the former school or school district must provide information documenting that the standards were met. If the out-of-state school directly transmitted the score report when the student enrolled in the Washington school system, then the student need not provide the report again; or

(b) The out-of-state school from which the student transferred must transmit directly to the student's school, if it has not done so already, the student's transcript documenting the student's assessment results. The transcript must contain the student's assessment results by content area and whether or not the student met the state required standards. If the transcript does not include whether or not the student met the standards, then the former school or school district must provide information documenting that the standards were met.

NEW SECTION

WAC 392-501-504 Application and approval process. (1) To obtain a waiver, the student or the student's parent or guardian must complete and submit to the student's principal or designee a waiver application developed by the superintendent of public instruction. The principal of the school or designee shall review the information and transmit the application and a copy of the student's assessment score report or transcript to the superintendent of public instruction for approval.

(2) Applications must be received by the superintendent of public instruction by April 1 of the student's twelfth grade year to provide time for processing prior to graduation.

(3) The superintendent of public instruction must act upon the student's application and notify the applicant's school principal or designee, and the school district assessment coordinator whether the application was approved or denied within thirty days of receiving the application. The school principal or designee shall notify the student.

(4) If approved, the student's transcript shall indicate that the applicable certificate was waived.

(5) School staff shall include a copy of the application, the student's score report or transcript, and the approval notification in the student's cumulative folder.

NEW SECTION

WAC 392-501-506 Notification requirements. The principal or a designee shall inform students and parents or guardians who transferred from another state in their eleventh or twelfth grade year of the availability of obtaining a waiver of the certificate requirements.

NEW SECTION

WAC 392-501-508 Appeal of the superintendent's decision. Decisions made by the superintendent of public instruction under WAC 392-501-504 may be appealed as provided for in RCW 34.05.514.

NEW SECTION

WAC 392-501-510 Access to alternative assessment. Students who transfer into a public school from out-of-state or from out-of-country in the eleventh or twelfth grade year may utilize an objective alternative assessment for purposes of meeting the high school standards as provided in RCW 28A.655.061 and 28A.655.065 without taking the Washington assessment of student learning.

APPEAL PROCESS FOR STUDENTS WITH SPECIAL, UNAVOIDABLE CIRCUMSTANCES

NEW SECTION

WAC 392-501-600 General description. RCW 28A.655.065 directs the superintendent of public instruction to develop guidelines and appeal processes for waiving specific requirements in RCW 28A.655.061 pertaining to the certificate of academic achievement and to the certificate of

individual achievement for students who have special, unavoidable circumstances.

NEW SECTION

WAC 392-501-601 Eligibility and application requirements. (1) A student, or a student's parent or guardian may file an appeal to the superintendent of public instruction if the student has special, unavoidable circumstances that prevented the student, during the student's twelfth grade year, from successfully demonstrating his or her skills and knowledge on the Washington assessment of student learning (WASL), on an objective alternative assessment authorized in RCW 28A.655.061 or 28A.655.065, or on a Washington alternate assessment available to students eligible for special education services.

(2) Special, unavoidable circumstances shall include the following:

(a) Not being able to take or complete an assessment because of:

(i) The death of a parent, guardian, sibling or grandparent;

(ii) An unexpected and severe medical condition. The condition must be documented by a medical professional and included with the application; or

(iii) Another unavoidable event of a similarly compelling magnitude that reasonably prevented the student from sitting for or completing the assessment.

(b) A major irregularity in the administration of the assessment;

(c) Loss of the assessment material;

(d) Failure to receive an accommodation during administration of the assessment that was documented in the student's individualized education program that is required in the federal Individuals with Disabilities Education Act or in a plan required in Section 504 of the Rehabilitation Act of 1973;

(e) For students enrolled in the state transitional bilingual instructional program, failure to receive an accommodation during the administration of the assessment that was scheduled to be provided by the school district; or

(f) Students who transfer from an out-of-state or out-of-country school to a Washington public school in the twelfth grade year after March 1.

(3) To file an appeal, the student or the student's parent or guardian, with appropriate assistance from school staff, must complete and submit to the principal of the student's school an appeal application on a form developed by the superintendent of public instruction. The application shall require that the following be submitted: All available score reports from prior standardized assessments taken by the student, the medical condition report (if applicable), and the student's transcript. The principal of the school shall review the application and accompanying material and certify that, to the best of his or her knowledge, the information in the application is accurate and complete.

(4) Once the principal certifies that the application and accompanying material is accurate and complete, the principal shall transmit the application to the state superintendent of public instruction.

(5) Applications must be received by the superintendent of public instruction on or before May 1 or August 1. The May 1 deadline is intended primarily for students who were not able to participate in the spring assessment, while the August deadline is intended primarily for students who decide to file an appeal after receiving their scores in June.

NEW SECTION

WAC 392-501-602 High school graduation certificate appeals review board and approval criteria. (1) The high school graduation certificate appeals review board shall be created to review and make recommendations to the superintendent of public instruction on special, unavoidable circumstance appeal applications.

(2) The superintendent of public instruction shall appoint five members to the board. The board shall be chaired by a current or former high school principal and shall consist of current or former teachers, department heads, and/or school district assessment directors with experience and expertise in the Washington essential academic learning requirements. Each member shall be appointed for a three-year term, provided that the initial terms may be staggered as the superintendent deems appropriate.

(3) The high school graduation certificate appeals review board shall review special, unavoidable circumstance appeal applications submitted to it by the superintendent of public instruction. The board shall:

(a) Review the written information submitted to the superintendent to determine whether sufficient evidence was presented that the student has the required knowledge and skills; and

(b) Make a recommendation to the superintendent, based on the criteria in subsection (6) of this section, regarding whether or not the appeal should be granted.

(4) Staff from the office of the superintendent of public instruction (OSPI) shall coordinate and assist the work of the board. In this capacity, staff from the OSPI shall prepare a preliminary analysis of each application and accompanying information that evaluates the extent in which the criteria in subsection (6) of this section have been met.

(5) If the board determines that additional information on a particular student is needed in order to fulfill its duties, the chair of the board shall contact the OSPI staff to request the information.

(6) The board shall recommend to the superintendent of public instruction that the appeal be granted if it finds that:

(a) The student, due to special, unavoidable circumstances as defined in WAC 392-501-601(2), was not able to successfully demonstrate his or her skills on the WASL, on an objective alternative assessment, or on a Washington alternate assessment available to students eligible for special education services;

(b) No other recourse or remedy exists to address the special, unavoidable circumstance prior to the student's expected graduation date;

(c) The student has met, or is on track to meet, all other state and local graduation requirements; and

(d) After considering the criteria below, in the board's best judgment, the student more likely than not possesses the

skills and knowledge required to meet the state standard. The board shall consider the following criteria:

(i) Trends indicated by prior WASL or alternate assessment results;

(ii) How near the student has been in achieving the standard;

(iii) Scores on other assessments, as available;

(iv) Participation and successful completion of remediation courses and other academic assistance opportunities;

(v) Cumulative grade point average;

(vi) Whether the student has taken advanced placement, honors, or other higher-level courses; and

(vii) Other available information deemed relevant by the board.

(7) Based upon the recommendation of the high school graduation appeals board and any other information that the superintendent deems relevant, the superintendent of public instruction shall decide, based on the criteria established in subsection (6) of this section, whether to:

(a) Grant the appeal and waive the requirement that a student earn a certificate to graduate;

(b) Deny the appeal and not waive the certificate; or

(c) Remand the appeal back to the appeals board for further information or deliberation.

(8) The superintendent of public instruction shall act upon the student's application and notify the student, the student's school principal or designee, and the school district assessment coordinator whether the application was approved or denied within thirty days of the deadline for receiving the recommendation from the certificate appeals review board. This deadline for acting on the application may be extended if additional information is required from the student or the school district.

(9) If approved, the student's transcript shall indicate that the applicable certificate was waived.

(10) School staff shall include a copy of the application, supporting information, and the superintendent's decision in the student's cumulative folder.

NEW SECTION

WAC 392-501-604 Notification requirements. The school principal or a designee shall notify students in their eleventh and twelfth grade years of the availability of special, unavoidable circumstance appeals.

NEW SECTION

WAC 392-501-606 Appeal of the superintendent's decision. Decisions made by the superintendent of public instruction under WAC 392-501-602 may be appealed as provided for in RCW 34.05.514.

WSR 07-13-038
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed June 13, 2007, 4:10 p.m., effective July 14, 2007]

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

Purpose: To add clarity to rule language and to reflect a current course of the profession.

Citation of Existing Rules Affected by this Order: Amending WAC 308-15-020 Definitions and 308-15-075 When do I need to use my stamp/seal?; new sections WAC 308-15-105 Brief adjudicative proceeding, 308-15-107 Records required for the brief adjudicative proceeding and 308-15-160 Board member rules of conduct—Activities incompatible with public duties—Financial interests in transactions; and repealing WAC 308-15-100 What is a brief adjudicative proceeding (BAP)? and 308-15-101 When can a brief adjudicative proceeding (BAP) be requested?

Statutory Authority for Adoption: RCW 18.220.040.

Adopted under notice filed as WSR 07-08-099 on April 3, 2007.

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 3, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 3, Repealed 2.

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 12, 2007.

Ralph Osgood
Assistant Director
Business Profession Division

AMENDATORY SECTION (Amending WSR 05-01-174, filed 12/21/04, effective 1/21/05)

WAC 308-15-020 Definitions. (1) **"Board"** means the Washington state geologist licensing board.

(2) **"Department"** means the Washington state department of licensing.

(3) **"Geologic interpretation," as applied to the practice of geology and its specialties,** is the iterative process by which geologists, using generally accepted geologic principles, determine geologic history, origin and process from observation and testing of rock, soil and water characteristics, contents, distribution, orientation, lateral and vertical continuity; and resulting landforms.

(4) **"Geological work of a character satisfactory to the board"** means that the applicant's qualifying work history consists of professional experience in the practice of geology. Professional geological work is work performed at a professional level that requires the application of professional knowledge, principles and methods to geological problems through the exercise of individual initiative and judgment in investigating, measuring, interpreting and reporting on the physical phenomena of the earth. Implicit in this definition are the recognition of professional responsibility and integ-

rity and the acknowledgment of minimal supervision. Professional geological work specifically does not include routine activities by themselves such as drafting, sampling, sample preparation, routine laboratory work, or core logging, where the elements of initiative, scientific judgment and decision making are lacking, nor does it include activities which do not use scientific methods to process and interpret geologic data. It also does not include engineering or other physical sciences where geological investigation, analysis and interpretation are minimal or lacking. Professional specialty experience is considered to meet this definition.

(5) **"Geologist web site"** means the internet web site maintained by the department of licensing.

(6) **"National Association of State Boards of Geology"** or **"ASBOG"** means the organization responsible for developing, publishing and grading National Geologist Licensing Examinations.

(7) **"Professional specialty practice of a character satisfactory to the board"** means that the applicant has qualifying work history pertinent to the specialty that meets the standards for professional geologic work defined above. Elements, typical applications, types of projects, for the engineering geologist and hydrogeologist specialties are outlined in WAC 308-15-053.

(8) **"Reciprocity"** means the issuance of a license without examination as a geologist or specialty geologist to a person who holds a license or certificate of qualifications issued by proper authority of any state, territory, or possession of the United States, District of Columbia, or any foreign country, if the applicant meets the requirements outlined in WAC 308-15-040 for a geologist license, in WAC 308-15-055 for an engineering geologist license, and in WAC 308-15-057 for a hydrogeologist license.

(9) **"Year of professional practice"** means at least 1600 hours of work in the practice during a year. Examples of a "year of professional practice" include 200 eight-hour days or 160 ten-hour days during a year. Part-time work will be counted on a prorated basis.

(10) **"Year of professional specialty practice"** means at least 1600 hours of work in a specialty during a calendar year, per examples given in subsection (9) of this section.

(11) "Geologist in training" means an individual who has met all the educational requirements outlined in WAC 308-15-040(2), and has passed the ASBOG Fundamentals of Geology examination, but does not meet the experience requirements outline in WAC 308-15-040(3).

AMENDATORY SECTION (Amending WSR 05-01-174, filed 12/21/04, effective 1/21/05)

WAC 308-15-075 When do I need to use my stamp/seal? (1) You must stamp/seal, sign, and date every final geology or specialty geology report, letter report, or document that is prepared by you or prepared under your supervision or direction and submitted to other parties.

(a) All figures, maps, and plates bound within final reports or documents do not need to be individually stamped/sealed, signed and dated. Unbound final figures, maps, and plates must be individually stamped/sealed, signed and dated.

(b) ((~~Preliminary or~~)) Draft geology or specialty geology work does not have to be stamped/sealed, but the documents and all associated figures, maps, and plates must be clearly marked as ((~~preliminary or~~)) draft.

(2) You must stamp/seal, sign, and date every final geology or specialty geology design and specification that is prepared by you or prepared under your supervision or direction. ((~~Preliminary or~~)) Draft geology or specialty geology design and specification drawings do not have to be stamped/sealed, but each design and specification must be clearly marked as ((~~preliminary or~~)) draft.

(3) If you stamp/seal, sign and date work performed by someone other than yourself, you are responsible to the same extent as if you prepared the report, design or specification.

NEW SECTION

WAC 308-15-105 Brief adjudicative proceedings. (1) The board will conduct brief adjudicative proceedings as provided for in RCW 34.05.482 through 34.05.494 of the Administrative Procedure Act. Brief adjudicative proceedings may be used whenever a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleges violations of chapters 18.220 and 18.235 RCW, administrative rules in Title 308 WAC or any statutes or rules that specifically govern the defined practices of geologists. Brief adjudicative proceedings may also be used in place of formal adjudicative hearings whenever the board issues a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleging that an applicant or licensee's conduct, act(s), or condition(s) constitute unlicensed practice or unprofessional conduct as that term is defined under chapter 18.235 RCW, the Uniform Regulation of Business and Professions Act.

(2) Brief adjudicative proceedings may be used to determine the following issues, including, but not limited to:

(a) Whether an applicant has satisfied terms for reinstatement of a license after a period of license restriction, suspension, or revocation;

(b) Whether an applicant is eligible to sit for a professional licensing examination;

(c) Whether a sanction proposed by the board is appropriate based on the stipulated facts;

(d) Whether an applicant meets minimum requirements for an initial or renewal application;

(e) Whether an applicant has failed the professional licensing examination;

(f) Whether an applicant or licensee failed to cooperate in an investigation by the board;

(g) Whether an applicant or licensee was convicted of a crime that disqualifies the applicant or licensee from holding the specific license sought or held;

(h) Whether an applicant or licensee has defaulted on educational loans;

(i) Whether an applicant or licensee has violated the terms of a final order issued by the board or the board's designee;

(j) Whether a person has engaged in false, deceptive, or misleading advertising; or

(k) Whether a person has engaged in unlicensed practice.

(3) In addition to the situations enumerated in subsection (2) of this section, the board may conduct brief adjudicative proceedings instead of formal adjudicative hearings whenever the parties have stipulated to the facts and the only issues presented are issues of law, or whenever issues of fact exist but witness testimony is unnecessary to prove or disprove the relevant facts.

NEW SECTION

WAC 308-15-107 Records required for the brief adjudicative proceeding. The records for the brief adjudicative proceeding shall include:

(1) Renewal or reinstatement of a license:

(a) All correspondence between the applicant and the board about the renewal or reinstatement;

(b) Copies of renewal notice(s) sent by the department of licensing to the licensee;

(c) All documents received by the board from or on behalf of the licensee relating to information, payments or explanations that have been provided to the board.

(2) Applicants for certification/licensing:

(a) Original complete application with all attachments as submitted by applicant;

(b) Copies of all supplementary information related to application review by staff or board member;

(c) All documents relied upon in reaching the determination of ineligibility;

(d) All correspondence between the applicant and the board about the application or the appeal.

(3) Default of student loan payments:

(a) Copies of notices to the board showing the name and other identification information of the individual claimed to be in default on student loan payments;

(b) Copies of identification information corresponding to the person who is certified/licensed by the board that relate to the identity of the individual in default;

(c) All documents received by the board from or on behalf of the licensee relating to rebutting such identification;

(d) Certification and report by the lending agency that the identified person is in default or nonpayment on a federally or state-guaranteed student loan or service-conditional scholarship; or

(e) A written release, if any, issued by the lending agency stating that the identified person is making payment on the loan in accordance with a repayment agreement approved by the lending agency.

(4) Determination of compliance with previously issued board order:

(a) The previously issued final order or agreement;

(b) All reports or other documents submitted by, or at the direction of, the license holder, in full or partial fulfillment of the terms of the final order or agreement;

(c) All correspondence between the license holder and the program regarding compliance with the final order or agreement; and

(d) All documents relied upon by the program showing that the license holder has failed to comply with the previously issued final order or agreement.

NEW SECTION

WAC 308-15-160 Board member rules of conduct—Activities incompatible with public duties—Financial interests in transactions. (1) When a member of the board either owns a beneficial interest in or is an officer, agent, employee, or member of an entity, or individual that is engaged in a transaction involving the board, the member shall:

(a) Recuse him or herself from the board discussion regarding the specific transaction;

(b) Recuse him or herself from the board vote on the specific transaction; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific transaction.

(2) The prohibition against discussion and voting set forth in subsection (1)(a) and (c) of this section shall not prohibit the member of the board from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3)(a) "Transaction involving the board" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the member in question believes, or has reason to believe:

(i) Is, or will be, the subject of board action; or

(ii) Is one to which the board is or will be a party; or

(iii) Is one in which the board has a direct and substantial proprietary interest.

(b) "Transaction involving the board" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by a member; or a claim, case, lawsuit, or similar matter if the member did not participate in the underlying transaction involving the board that is the basis for the claim, case, or lawsuit. Rule making is not a "transaction involving the board."

(4) "Board action" means any action on the part of the board, including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

(5) The following are examples of possible scenarios related to board member rules of conduct. Activities incompatible with public duties; financial interests in transactions.

(a) **Example 1:**
The geologist licensing board disciplines licensed geologists in Washington. The board is conducting an investigation involving the services provided by a licensed geologist. One of the members of the board is currently serving as a subcontractor to that geologist on a large project. The board member must recuse himself from any board investigation, discussion, deliberation and vote with respect to disciplinary actions arising from licensed geologist services.

(b) **Example 2:**
The geologist licensing board makes licensing decisions on applications for licensure. An applicant for licensure owns a geotechnical consulting business which employs licensed geologists, including one of the board members. The board member employed by the business must recuse himself from any board investigation, discussion, deliberation and vote with respect to his employer's application for licensure.
(c) **Example 3:**
The geologist licensing board makes licensing decisions on applications from geologists registered in other states or territories of the United States, the District of Columbia, or other countries. The board can grant licensure if an individual's qualifications and experience are equivalent to the qualifications and experience required of a person licensed under Washington law. An out-of-state applicant is employed as a geologist by a multinational corporation that is planning to build its world headquarters in Washington and has hired a board member's firm as the geologist for the project. The board member must recuse himself from any board investigation, discussion, deliberation and vote with respect to the sufficiency of the out-of-state geologist's qualifications and experience.

(6) Recusal disclosure. If recusal occurs pursuant to subsection (1) of this section, the member of the board shall disclose to the public the reasons for his or her recusal from any board action whenever recusal occurs. The board staff shall record each recusal and the basis for the recusal.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-15-100	What is a brief adjudicative proceeding (BAP)?
WAC 308-15-101	When can a brief adjudicative proceeding (BAP) be requested?

WSR 07-13-040
PERMANENT RULES
COMMISSION ON JUDICIAL CONDUCT

[Filed June 13, 2007, 3:43 p.m., effective July 14, 2007]

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

Purpose: Terminology and Rule 11 - adds definition of "court personnel" and significantly reduces what could be construed as overly broad prohibitions on free speech upon those not involved with the court system while retaining the prohibitions on and protections of court employees, including lawyers, as officers.

The existing comment following the rule will be expanded to add the following: "The reason lawyers are covered by this rule is that they are officers of the court and are especially charged with maintaining the integrity and independence of the judiciary."

Citation of Existing Rules Affected by this Order: Amending CJCRP 11.

Statutory Authority for Adoption: WA Const. Art. IV. Sec. 31.

Other Authority: Chapter 2.64 RCW.

Adopted under notice filed as WSR 07-10-040 on April 25, 2007.

Changes Other than Editing from Proposed to Adopted Version: The comment explains the inclusion of lawyers within the temporary restrictions on disclosing the fact that a complaint investigation is pending with the commission. The people outside the commission who remain covered by confidentiality during the pendency of an investigation under this amended rule are those closely involved with the actual functioning of the court system, such as elected county clerks and their employees; regular court staff; and attorneys, as officers of the court. See *WA. State Bar Assn. v. WA State,* 125 Wn.2d 901, 907 (1995).

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: June 8, 2007.

Gregory R. Dallaire
Commission Chair

AMENDATORY SECTION (Amending 06-01 filed 4/9/07)

TERMINOLOGY

"Court Personnel" means employees of the court, including judges, administrators, independently contracted court staff, regular court staff; county clerks and clerk employees; and attorneys.

RULE 11. CONFIDENTIALITY

(a) Investigative and initial proceedings.

(1) Before the commission files a statement of charges alleging misconduct by or incapacity of a judge, all proceedings, including commission deliberations, investigative files, records, papers and matters submitted to the commission, shall be held confidential by the commission, disciplinary counsel, investigative officers, and staff except as follows:

(A) With the approval of the commission, the investigative officer may notify respondent that a complaint has been

received and may disclose the name of the person making the complaint to respondent pursuant to Rule 17(e).

(B) The commission may inform a complainant or potential witness of the date when respondent is first notified that a complaint alleging misconduct or incapacity has been filed with the commission. The name of the respondent, in the discretion of the commission, may not be used in written communications to the complainant.

(C) The commission may disclose information upon a waiver in writing by respondent when:

(i) Public statements that charges are pending before the commission are substantially unfair to respondent; or

(ii) Respondent is publicly accused or alleged to have engaged in misconduct or with having a disability, and the commission, after a preliminary investigation, has determined that no basis exists to warrant further proceedings or a recommendation of discipline or retirement.

(D) The commission has determined that there is a need to notify another person or agency in order to protect the public or the administration of justice.

(2) The commission and court personnel shall keep the fact that a complaint has been made, or that a statement has been given to the commission, ~~shall be~~ confidential during the investigation and initial proceeding except as provided under Rule 11.

(3) No person providing information to the commission shall disclose information they have obtained from the commission concerning the investigation, including the fact that an investigation is being conducted, until the commission files a statement of charges, dismisses the complaint, or otherwise concludes the investigation or initial proceeding.

(b) Hearings on statement of charges.

(1) After the filing of a statement of charges, all subsequent proceedings shall be public, except as may be provided by protective order.

(2) The statement of charges alleging misconduct or incapacity shall be available for public inspection. Investigative files and records shall not be disclosed unless they formed the basis for probable cause. Those records of the initial proceeding that were the basis of a finding of probable cause shall become public as of the date of the fact-finding hearing.

(3) Disciplinary counsel's work product shall be confidential.

(c) Commission deliberations. All deliberations of the commission in reaching a decision on the statement of charges shall be confidential.

~~**(d) General Exceptions.**~~

~~(1) A complainant may inform any third party, or the public generally, of the factual basis of his or her complaint.~~

~~(2) Any person, other than a complainant, who gives a statement to the commission, may inform any third party, or the public generally, of the factual basis of such statement.~~

~~(e)~~ (d) General Applicability.

(1) No person shall disclose information obtained from commission proceedings or papers filed with the commission, except that information obtained from documents disclosed to the public by the commission pursuant to Rule 11 and all information disclosed at public hearings conducted by the commission are not deemed confidential under Rule 11.

(2) Any person violating Rule 11 may be subject to a proceeding for contempt in superior court.

(3) A judge shall not intimidate, coerce, or otherwise attempt to induce any person to disclose, conceal or alter records, papers, or information in violation of Rule 11. Violation of Rule 11 ~~(e)~~(d)(3) may be charged as a separate violation of the Code of Judicial Conduct.

(4) If the commission or its staff initiates a complaint under Rule 17 (b)(1), then Rule 11 (a)(1) as it applies to the commission~~, rather than those applicable to complainants,~~ shall govern the commission and its staff.

(5) These confidentiality rules also apply to former commission members, disciplinary counsel, investigative counsel and staff with regard to information they had access to while serving the commission.

Comment on Rule 11:

The integrity of investigations would be harmed, the privacy interests of individuals, and the independence of the judiciary would be adversely affected without providing for limited restrictions of information learned or provided to the Commission during the investigation. Confidentiality is critical for the integrity of the Commission investigations, and often influences whether a person who works directly with a judge is willing to file a complaint or disclose misconduct in an investigation. Prohibiting disclosure that a complaint has been filed, or that a person has been interviewed, protects those persons from questioning by their supervising judge, or by others. The confidentiality required during the investigation of a complaint also protects the independence of the judiciary by preventing unfounded complaints from being used to threaten or distract judges. After considering alternate ways of providing this necessary protection, the Commission has concluded that the temporary restrictions on public disclosure in this rule are the narrowest restrictions that will provide the confidentiality needed for persons who disclose misconduct or file complaints and for the judges under investigation. The reason lawyers are covered by this rule is that they are officers of the court and are especially charged with maintaining the integrity and independence of the judiciary.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Commission on Judicial Conduct and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 07-13-051

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed June 14, 2007, 3:48 p.m., effective July 15, 2007]

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

Purpose: This rule-making order amends chapter 16-675 WAC, Calibration services, special inspection and testing fees, by increasing the fees charged by the metrology laboratory for inspection, tolerance testing and calibration services and the fees charged for request inspections and tests of weighing or measuring devices within the OFM fiscal growth factor for fiscal year 2008 (5.53%).

Citation of Existing Rules Affected by this Order: Amending WAC 16-675-045 and 16-675-055.

Statutory Authority for Adoption: Chapters 19.94 and 34.05 RCW.

Adopted under notice filed as WSR 07-10-110 on May 2, 2007.

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

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

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

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

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

Date Adopted: June 14, 2007.

Valoria H. Loveland
Director

AMENDATORY SECTION (Amending WSR 04-23-043, filed 11/10/04, effective 12/11/04)

WAC 16-675-045 What fees does the laboratory charge for the services it performs? The metrology laboratory charges the following fees for services performed:

Service Performed	Fee
Inspection, tolerance testing and calibration services performed at the metrology laboratory	$((~~100.00~~)) 105.50 per hour
Inspection, tolerance testing and calibration services performed at other than the metrology laboratory	$((~~100.00~~)) 105.50 per hour **plus** mileage and per diem at the rates established by the office of financial management (OFM) when the service is performed
Any service provided by the laboratory	**Minimum** one-half hour charge

AMENDATORY SECTION (Amending WSR 04-23-043, filed 11/10/04, effective 12/11/04)

WAC 16-675-055 What fees are charged when the inspecting and testing of a weighing or measuring device is specifically requested by the device's owner? The fees in the following table apply to inspecting and testing weighing or measuring devices when the inspection or test is:

(1) Specifically requested by the device's owner or his/her representative; or

(2) Performed on devices used by an agency or institution that receives money from the legislature or the federal government.

Weighing and Measuring Device	Inspection and/or Testing Fee
Small scales "zero to four hundred pounds capacity"	$((~~15.95~~)) 16.80 per scale
Intermediate scales "four hundred pounds to five thousand pounds capacity"	$((~~53.20~~)) 56.10 per scale
Large scales "over five thousand pounds capacity"	$((~~133.02~~)) 140.30 per scale
Large scales with supplemental devices	$((~~159.62~~)) 168.40 per scale
Railroad track scales	$((~~1,064.19~~)) 1,123.00 per scale
Liquid fuel meters with flows of less than twenty gallons per minute	$((~~15.95~~)) 16.80 per meter
Liquid fuel meters with flows of at least twenty but not more than one hundred fifty gallons per minute	$((~~53.20~~)) 56.10 per meter
Fuel meters with flows over one hundred fifty gallons per minute	$((~~159.62~~)) 168.40 per meter
Liquid petroleum gas meters with one-inch diameter or smaller dispensers	$((~~53.20~~)) 56.10 per meter
Liquid petroleum gas meters with greater than one-inch diameter dispensers	$((~~159.62~~)) 168.40 per meter
Inspection services not covered by the above special inspection fees	$((~~35.91~~)) 37.80 per hour for labor and travel time (minimum one hour charge)

WSR 07-13-052
PERMANENT RULES
HORSE RACING COMMISSION

[Filed June 15, 2007, 8:35 a.m., effective July 16, 2007]

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

Purpose: To amend chapter 260-16 WAC, ((~~Special types of races~~)) Washington-bred horses, to simplify the process to certify Washington-bred horses, amend the process for distribution of Washington-bred owner's bonuses and breeder's awards, including a new provision for paying breeder's awards to horses finishing first, second and third, repeal sections that are no longer applicable, and to amend rules using clear and understandable language.

Citation of Existing Rules Affected by this Order: Repealing WAC 260-16-010, 260-16-020, 260-16-030, 260-16-060, 260-16-070, 260-16-080 and 260-16-090; and amending WAC 260-16-040, 260-16-050, and 260-16-065.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 07-09-077 on April 17, 2007.

Changes Other than Editing from Proposed to Adopted Version: WAC 260-16-040 was amended further to be more compliant with RCW 67.16.070. WAC 260-16-050 (1)(b), added "or issued a certificate of foal registration" to requirements for certification as a Washington-bred horse for the purposes of the distribution of owner's bonus and breeder's awards.

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 3, Repealed 7.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 3, Repealed 7.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 3, Repealed 7; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 14, 2007.

R. J. Lopez
Deputy Secretary

Chapter 260-16 WAC

((SPECIAL TYPES OF RACES)) WASHINGTON-BRED HORSES

AMENDATORY SECTION (Amending Resolution No. 86-04, filed 10/16/86)

WAC 260-16-040 Washington-bred horses. ((~~For the purpose of encouraging the breeding within this state, of valuable thoroughbred race horses, at least one race of each day's meeting shall consist exclusively of Washington bred horses. If sufficient competition cannot be had among such class of horses, said race may be eliminated for said day and a substitute race, also for Washington-bred horses, provided instead. (Section 8, chapter 55, Laws of 1933.)~~

~~Proof that horses entered in such races were bred in Washington rests with the owner. Certificate of registration or the evidence of a breeder or other responsible person will be accepted. Affidavits may be demanded at the discretion of the stewards.~~

~~Eligibility for the owners bonus and the breeder awards under RCW 67.16.075, 67.16.102, and 67.16.175 are provided for in WAC 260-16-060.~~)) (1) To encourage the breeding of horses in the state of Washington, at least one race per race day at Class A, B, and C race meets, whether advertised or not, shall consist exclusively of Washington-bred horses. (RCW 67.16.070)

(2) Only horses certified as Washington-bred, are eligible to run in a Washington-bred only race.

AMENDATORY SECTION (Amending Resolution No. 86-04, filed 10/16/86)

WAC 260-16-050 Certification of Washington-bred horses. (1) For purposes of the distribution of the owner's bonus and breeder's awards, a Washington-bred horse is one that meets the following requirements:

(a) The horse was foaled within the boundaries of the state of Washington; and

(b) ((~~It~~)) The horse is ((~~officially certified by the associations designated by the racing commission~~)) certified as Washington-bred for its breed or issued a certificate of foal registration by the respective organization listed in subsection (2) of this section.

(2) The following associations ((~~presently comprised of a majority of owners and/or breeders of their respective breeds in the state of Washington~~)) are recognized by the ((~~racing~~)) commission for the purpose of certification of their respective breed as Washington-bred horses ((~~for the distribution of the owners bonus and breeder awards provided for in RCW 67.16.075 and 67.16.102~~)):

(a) The ((~~Washington Thoroughbred Breeders Association,~~)) Jockey Club for thoroughbreds;

(b) ((~~The Washington State Standardbred Association, for standardbred harness horses;~~

~~(c)~~)) The ((~~Northern Racing~~)) American Quarter Horse Association, for quarter horses;

(((~~(d)~~))) (c) The ((~~Washington State~~)) Appaloosa ((~~Racing Association~~)) Horse Club, for appaloosas;

(((~~(e)~~))) (d) The ((~~Washington State~~)) Arabian Horse ((~~Racing~~)) Association, for Arabian horses; and

(((~~(f)~~))) (e) The ((~~Washington State~~)) American Paint Horse Association, for paint horses.

(((~~(3) The racing commission may determine that other organizations should participate in the certification process if the organization is one that represents a majority of the owners and/or the breeders and, it is deemed to be in the best interests of racing. For other breeds specified in the racing act, organizations may present to the racing commission documentation that they represent a majority of the owners and/or the breeders.~~)))

AMENDATORY SECTION (Amending WSR 04-05-091, filed 2/18/04, effective 3/20/04)

WAC 260-16-065 Washington-bred owner's bonus and breeder's award distribution formula. ((~~The one percent Washington bred owners bonus funds shall be collected and distributed as required in RCW 67.16.102.~~)) (1) The one percent Washington-bred owner's bonus funds collected from each ((~~licensee shall~~)) racing association must be paid in accordance with RCW 67.16.102 by the commission at the end of the race meet to the licensed owners of Washington-bred horses finishing first, second, third and fourth in the ((~~licensee's~~)) racing association's race meet. The formula for the equitable distribution of the one percent Washington-bred owner's bonus funds ((~~shall~~)) will be as follows:

(((~~(1)~~))) (a) Calculate the payment factor by dividing the total ((~~one percent~~)) Washington-bred owner's bonus funds collected at the race meet by the total amount of winnings

(earnings) of the Washington-bred horses finishing first, second, third, and fourth in the race meet.

(((~~(2)~~))) (b) Multiply the winnings (earnings) of each Washington-bred owner by the payment factor to determine the amount of the ((~~one percent~~)) Washington-bred owner's bonus to be paid to the owner.

(2) The Washington-bred breeder's award funds must be collected by the Class A or B racing association as required in RCW 67.16.175, and will be distributed by the commission. The award funds must be paid to the breeder of record of Washington-bred horses finishing first, second, and third in the racing association's race meet. The formula for the distribution of the breeder's awards at each Class A or B racing association will be as follows:

(a) Seventy-five percent of the breeder's award funds will be allocated to those Washington-bred horses finishing first. To calculate the payment factor for first place Washington-bred horses, divide the total Washington-bred breeder award fund allocated to first place finishers at the race meet by the total amount of winnings (earnings) of the Washington-bred horses finishing first at the race meet. Multiply the winnings (earnings) of each Washington-bred breeder by the payment factor to determine the amount of the Washington-bred breeder's award to be paid to the breeder of record.

(b) Fifteen percent of the breeder's award funds will be allocated to those Washington-bred horses finishing second. To calculate the payment factor for second place Washington-bred horses, divide the total Washington-bred breeder award fund allocated to second place finishers at the race meet by the total amount of winnings (earnings) of the Washington-bred horses finishing second at the race meet. Multiply the winnings (earnings) of each Washington-bred breeder by the payment factor to determine the amount of the Washington-bred breeder's award to be paid to the breeder of record.

(c) Ten percent of the breeder's award funds will be allocated to those Washington-bred horses finishing third. To calculate the payment factor for third place Washington-bred horses, divide the total Washington-bred breeder award fund allocated to third place finishers at the race meet by the total amount of winnings (earnings) of the Washington-bred horses finishing third at the race meet. Multiply the winnings (earnings) of each Washington-bred breeder by the payment factor to determine the amount of the Washington-bred breeder's award to be paid to the breeder of record.

(d) The racing association is not required to include any interest or other financial benefit earned during the collection of the breeder's award.

(3) Owner's bonus and breeder's awards must be distributed within ninety days after the end of the race meet at which they were generated. Any owner's bonus or breeder's award that cannot be delivered to the rightful recipient within the time frames in chapter 63.29 RCW will be forwarded to the department of revenue as unclaimed property as required in chapter 63.29 RCW.

NEW SECTION

WAC 260-16-075 Nonprofit race meets exempt from the requirement to collect and distribute owner's bonus and breeder's awards. Nonprofit race meets, as defined in RCW 67.16.105(1) and 67.16.130(1) are exempt from the requirements to collect and distribute owner's bonus and breeder's awards as outlined in this chapter.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 260-16-010	Harness racing.
WAC 260-16-020	Quarter horse racing.
WAC 260-16-030	Produce races.
WAC 260-16-060	Certification of Washington-bred horses—Thoroughbreds.
WAC 260-16-070	Racing commission funds.
WAC 260-16-080	Certification of Washington-bred horses—Standardbreds.
WAC 260-16-090	Arabian horses—Certification.

WSR 07-13-058
PERMANENT RULES
ATTORNEY GENERAL'S OFFICE

[Filed June 15, 2007, 4:02 p.m., effective July 16, 2007]

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

Purpose: The purpose of the electronic records provisions of the model rules is to provide information to records requestors and state and local agencies about "best practices" for providing electronic records in accordance with the Public Records Act, chapter 42.56 RCW. The anticipated effect of the model rules is to streamline compliance, standardize best practices throughout the state, and reduce litigation by establishing a culture of compliance among agencies and cooperation among requestors.

Citation of Existing Rules Affected by this Order: Amending WAC 44-14-04003, 44-14-04004, 44-14-050, 44-14-070, and 44-14-07003.

Statutory Authority for Adoption: Section 4, chapter 483, Laws of 2005, amending RCW 42.56.570.

Adopted under notice filed as WSR 07-09-074 on April 17, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 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 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: June 15, 2007.

Rob McKenna
Attorney General

AMENDATORY SECTION (Amending WSR 06-04-079, filed 1/31/06, effective 3/3/06)

WAC 44-14-04003 Responsibilities of agencies in processing requests. (1) **Similar treatment and purpose of the request.** The act provides: "Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request" (except to determine if the request is for a commercial use or would violate another statute prohibiting disclosure). RCW 42.17.270/42.56.080.[1] The act also requires an agency to take the "most timely possible action on requests" and make records "promptly available." RCW 42.17.290/42.56.100 and 42.17.270/42.56.080. However, treating requestors similarly does not mean that agencies must process requests strictly in the order received because this might not be providing the "most timely possible action" for all requests. A relatively simple request need not wait for a long period of time while a much larger request is being fulfilled. Agencies are encouraged to be flexible and process as many requests as possible even if they are out of order.[3]

An agency cannot require a requestor to state the purpose of the request (with limited exceptions). RCW 42.17.270/42.56.080. However, in an effort to better understand the request and provide all responsive records, the agency can inquire about the purpose of the request. The requestor is not required to answer the agency's inquiry (with limited exceptions as previously noted).

(2) **Provide "fullest assistance" and "most timely possible action."** The act requires agencies to adopt and enforce reasonable rules to provide for the "fullest assistance" to a requestor. RCW 42.17.290/42.56.100. The "fullest assistance" principle should guide agencies when processing requests. In general, an agency should devote sufficient staff time to processing records requests, consistent with the act's requirement that fulfilling requests should not be an "excessive interference" with the agency's "other essential functions." RCW 42.17.290/42.56.100. The agency should recognize that fulfilling public records requests is one of the agency's duties, along with its others.

The act also requires agencies to adopt and enforce rules to provide for the "most timely possible action on requests." RCW 42.17.290/42.56.100. This principle should guide agencies when processing requests. It should be noted that this provision requires the most timely "possible" action on requests. This recognizes that an agency is not always capable of fulfilling a request as quickly as the requestor would like.

(3) **Communicate with requestor.** Communication is usually the key to a smooth public records process for both requestors and agencies. Clear requests for a small number of records usually do not require predelivery communication with the requestor. However, when an agency receives a large or unclear request, the agency should communicate with the requestor to clarify the request. If the request is modified orally, the public records officer or designee should memorialize the communication in writing.

For large requests, the agency may ask the requestor to prioritize the request so that he or she receives the most important records first. If feasible, the agency should provide periodic updates to the requestor of the progress of the request. Similarly, the requestor should periodically communicate with the agency and promptly answer any clarification questions. Sometimes a requestor finds the records he or she is seeking at the beginning of a request. If so, the requestor should communicate with the agency that the requested records have been provided and that he or she is canceling the remainder of the request. If the requestor's cancellation communication is not in writing, the agency should confirm it in writing.

(4) **Failure to provide initial response within five business days.** Within five business days of receiving a request, an agency must provide an initial response to requestor. The initial response must do one of four things:

(a) Provide the record;

(b) Acknowledge that the agency has received the request and provide a reasonable estimate of the time it will require to fully respond;

(c) Seek a clarification of the request; or

(d) Deny the request. RCW 42.17.320/42.56.520. An agency's failure to provide an initial response is arguably a violation of the act.[2]

(5) **No duty to create records.** An agency is not obligated to create a new record to satisfy a records request.[4] However, sometimes it is easier for an agency to create a record responsive to the request rather than collecting and making available voluminous records that contain small pieces of the information sought by the requestor or find itself in a controversy about whether the request requires the creation of a new record. The decision to create a new record is left to the discretion of the agency. If the agency is considering creating a new record instead of disclosing the underlying records, it should obtain the consent of the requestor to ensure that the requestor is not actually seeking the underlying records. Making an electronic copy of an electronic record is not "creating" a new record; instead, it is similar to copying a paper copy. Similarly, eliminating a field of an electronic record can be a method of redaction; it is similar to redacting portions of a paper record using a black pen or white-out tape to make it available for inspection or copying.

(6) **Provide a reasonable estimate of the time to fully respond.** Unless it is providing the records or claiming an exemption from disclosure within the five-business day period, an agency must provide a reasonable estimate of the time it will take to fully respond to the request. RCW 42.17.320/42.56.520. Fully responding can mean processing the request (assembling records, redacting, preparing a withholding index, or notifying third parties named in the records who might seek an injunction against disclosure) or determining if the records are exempt from disclosure.

An estimate must be "reasonable." The act provides a requestor a quick and simple method of challenging the rea-

sonableness of an agency's estimate. RCW 42.17.340(2)/42.56.550(2). See WAC 44-14-08004 (5)(b). The burden of proof is on the agency to prove its estimate is "reasonable." RCW 42.17.340(2)/42.56.550(2).

To provide a "reasonable" estimate, an agency should not use the same estimate for every request. An agency should roughly calculate the time it will take to respond to the request and send estimates of varying lengths, as appropriate. Some very large requests can legitimately take months or longer to fully provide. There is no standard amount of time for fulfilling a request so reasonable estimates should vary.

Some agencies send form letters with thirty-day estimates to all requestors, no matter the size or complexity of the request. Form letter thirty-day estimates are rarely "reasonable" because an agency, which has the burden of proof, could find it difficult to prove that every single request it receives would take the same thirty-day period.

In order to avoid unnecessary litigation over the reasonableness of an estimate, an agency should briefly explain to the requestor the basis for the estimate in the initial response. The explanation need not be elaborate but should allow the requestor to make a threshold determination of whether he or she should question that estimate further or has a basis to seek judicial review of the reasonableness of the estimate.

An agency should either fulfill the request within the estimated time or, if warranted, communicate with the requestor about clarifications or the need for a revised estimate. An agency should not ignore a request and then continuously send extended estimates. Routine extensions with little or no action to fulfill the request would show that the previous estimates probably were not "reasonable." Extended estimates are appropriate when the circumstances have changed (such as an increase in other requests or discovering that the request will require extensive redaction). An estimate can be revised when appropriate, but unwarranted serial extensions have the effect of denying a requestor access to public records.

(7) **Seek clarification of a request or additional time.** An agency may seek a clarification of an "unclear" request. RCW 42.17.320/42.56.520. An agency can only seek a clarification when the request is objectively "unclear." Seeking a "clarification" of an objectively clear request delays access to public records.

If the requestor fails to clarify an unclear request, the agency need not respond to it further. RCW 42.17.320/42.56.520. If the requestor does not respond to the agency's request for a clarification within thirty days of the agency's request, the agency may consider the request abandoned. If the agency considers the request abandoned, it should send a closing letter to the requestor.

An agency may take additional time to provide the records or deny the request if it is awaiting a clarification. RCW 42.17.320/42.56.520. After providing the initial response and perhaps even beginning to assemble the records, an agency might discover it needs to clarify a request and is allowed to do so. A clarification could also affect a reasonable estimate.

(8) **Preserving requested records.** If a requested record is scheduled shortly for destruction, and the agency receives a public records request for it, the record cannot be destroyed until the request is resolved. RCW 42.17.290/42.56.100.[5] Once a request has been closed, the agency can destroy the requested records in accordance with its retention schedule.

(9) **Searching for records.** An agency must conduct an objectively reasonable search for responsive records. A requestor is not required to "ferret out" records on his or her own.[6] A reasonable agency search usually begins with the public records officer for the agency or a records coordinator for a department of the agency deciding where the records are likely to be and who is likely to know where they are. One of the most important parts of an adequate search is to decide how wide the search will be. If the agency is small, it might be appropriate to initially ask all agency employees if they have responsive records. If the agency is larger, the agency may choose to initially ask only the staff of the department or departments of an agency most likely to have the records. For example, a request for records showing or discussing payments on a public works project might initially be directed to all staff in the finance and public works departments if those departments are deemed most likely to have the responsive documents, even though other departments may have copies or alternative versions of the same documents. Meanwhile, other departments that may have documents should be instructed to preserve their records in case they are later deemed to be necessary to respond to the request. The agency could notify the requestor which departments are being surveyed for the documents so the requestor may suggest other departments. It is better to be over inclusive rather than under inclusive when deciding which staff should be contacted, but not everyone in an agency needs to be asked if there is no reason to believe he or she has responsive records. An e-mail to staff selected as most likely to have responsive records is usually sufficient. Such an e-mail also allows an agency to document whom it asked for records.

Agency policies should require staff to promptly respond to inquiries about responsive records from the public records officer.

After records which are deemed responsive are located, an agency should take reasonable steps to narrow down the number of records to those which are responsive. In some cases, an agency might find it helpful to consult with the requestor on the scope of the documents to be assembled. An agency cannot "bury" a requestor with nonresponsive documents. However, an agency is allowed to provide arguably, but not clearly, responsive records to allow the requestor to select the ones he or she wants, particularly if the requestor is unable or unwilling to help narrow the scope of the documents.

(10) **Expiration of reasonable estimate.** An agency should provide a record within the time provided in its reasonable estimate or communicate with the requestor that additional time is required to fulfill the request based on specified criteria. Unjustified failure to provide the record by the expiration of the estimate is a denial of access to the record.

(11) **Notice to affected third parties.** Sometimes an agency decides it must release all or a part of a public record affecting a third party. The third party can file an action to obtain an injunction to prevent an agency from disclosing it, but the third party must prove the record or portion of it is exempt from disclosure.[7] RCW 42.17.330/42.56.540. Before

sending a notice, an agency should have a reasonable belief that the record is arguably exempt. Notices to affected third parties when the records could not reasonably be considered exempt might have the effect of unreasonably delaying the requestor's access to a disclosable record.

The act provides that before releasing a record an agency may, at its "option," provide notice to a person named in a public record or to whom the record specifically pertains (unless notice is required by law). RCW 42.17.330/ 42.56.-540. This would include all of those whose identity could reasonably be ascertained in the record and who might have a reason to seek to prevent the release of the record. An agency has wide discretion to decide whom to notify or not notify. First, an agency has the "option" to notify or not (unless notice is required by law). RCW 42.17.330/42.56.-540. Second, if it acted in good faith, an agency cannot be held liable for its failure to notify enough people under the act. RCW 42.17.258/42.56.060. However, if an agency had a contractual obligation to provide notice of a request but failed to do so, the agency might lose the immunity provided by RCW 42.17.258/42.56.060 because breaching the agreement probably is not a "good faith" attempt to comply with the act.

The practice of many agencies is to give ten days' notice. Many agencies expressly indicate the deadline date to avoid any confusion. More notice might be appropriate in some cases, such as when numerous notices are required, but every additional day of notice is another day the potentially disclosable record is being withheld. When it provides a notice, the agency should include the notice period in the "reasonable estimate" it provides to a requestor.

The notice informs the third party that release will occur on the stated date unless he or she obtains an order from a court enjoining release. The requestor has an interest in any legal action to prevent the disclosure of the records he or she requested. Therefore, the agency's notice should inform the third party that he or she should name the requestor as a party to any action to enjoin disclosure. If an injunctive action is filed, the third party or agency should name the requestor as a party or, at a minimum, must inform the requestor of the action to allow the requestor to intervene.

(12) **Later discovered records.** If the agency becomes aware of the existence of records responsive to a request which were not provided, the agency should notify the requestor in writing and provide a brief explanation of the circumstances.

Notes: [1]*See also* Op. Att'y Gen. 2 (1998).

[2]*See Smith v. Okanogan County*, 100 Wn. App. 7, 13, 994 P.2d 857 (2000) ("When an agency fails to respond as provided in RCW 42.17.320 (42.56.520), it violates the act and the individual requesting the public record is entitled to a statutory penalty.").

[3]While an agency can fulfill requests out of order, an agency is not allowed to ignore a large request while it is exclusively fulfilling smaller requests. The agency should strike a balance between fulfilling small and large requests.

[4]*Smith*, 100 Wn. App. at 14.

[5]An exception is some state-agency employee personnel records. RCW 42.17.295/42.56.110.

[6]*Daines v. Spokane County*, 111 Wn. App. 342, 349, 44 P.3d 909 (2002) ("an applicant need not exhaust his or her own ingenuity to 'ferret out' records through some combination of 'intuition and diligent research'").

[7]The agency holding the record can also file a RCW 42.17.330/42.56.540 injunctive action to establish that it is not required to release the record or portion of it.

AMENDATORY SECTION (Amending WSR 06-04-079, filed 1/31/06, effective 3/3/06)

WAC 44-14-04004 Responsibilities of agency in providing records. (1) **General.** An agency may simply provide the records or make them available within the five-business day period of the initial response. When it does so, an agency should also provide the requestor a written cover letter or e-mail briefly describing the records provided and informing the requestor that the request has been closed. This assists the agency in later proving that it provided the specified records on a certain date and told the requestor that the request had been closed. However, a cover letter or e-mail might not be practical in some circumstances, such as when the agency provides a small number of records or fulfills routine requests.

An agency can, of course, provide the records sooner than five business days. Providing the "fullest assistance" to a requestor would mean providing a readily available record as soon as possible. For example, an agency might routinely prepare a premeeting packet of documents three days in advance of a city council meeting. The packet is readily available so the agency should provide it to a requestor on the same day of the request so he or she can have it for the council meeting.

(2) **Means of providing access.** An agency must make nonexempt public records "available" for inspection or provide a copy. RCW 42.17.270/42.56.080. An agency is only required to make records "available" and has no duty to explain the meaning of public records.[1] Making records available is often called "access."

Access to a public record can be provided by allowing inspection of the record, providing a copy, or posting the record on the agency's web site and assisting the requestor in finding it (if necessary). An agency must mail a copy of records if requested and if the requestor pays the actual cost of postage and the mailing container.[2] The requestor can specify which method of access (or combination, such as inspection and then copying) he or she prefers. Different processes apply to requests for inspection versus copying (such as copy charges) so an agency should clarify with a requestor whether he or she seeks to inspect or copy a public record.

An agency can provide access to a public record by posting it on its web site. If requested, an agency should provide reasonable assistance to a requestor in finding a public record posted on its web site. If the requestor does not have internet access, the agency may provide access to the record by allowing the requestor to view the record on a specific computer terminal at the agency open to the public. An agency is not required to do so. Despite the availability of the record on the agency's web site, a requestor can still make a public records request and inspect the record or obtain a copy of it by paying the appropriate per-page copying charge.

(3) **Providing records in installments.** The act now provides that an agency must provide records "if applicable, on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready

for inspection or disclosure." RCW 42.17.270/42.56.080. The purpose of this provision is to allow requestors to obtain records in installments as they are assembled and to allow agencies to provide records in logical batches. The provision is also designed to allow an agency to only assemble the first installment and then see if the requestor claims or reviews it before assembling the next installments.

Not all requests should be provided in installments. For example, a request for a small number of documents which are located at nearly the same time should be provided all at once. Installments are useful for large requests when, for example, an agency can provide the first box of records as an installment. An agency has wide discretion to determine when providing records in installments is "applicable." However, an agency cannot use installments to delay access by, for example, calling a small number of documents an "installment" and sending out separate notifications for each one. The agency must provide the "fullest assistance" and the "most timely possible action on requests" when processing requests. RCW 42.17.290/42.56.100.

(4) **Failure to provide records.** A "denial" of a request can occur when an agency:

Does not have the record;

Fails to respond to a request;

Claims an exemption of the entire record or a portion of it; or

Without justification, fails to provide the record after the reasonable estimate expires.

(a) **When the agency does not have the record.** An agency is only required to provide access to public records it has or has used.[3] An agency is not required to create a public record in response to a request.

An agency must only provide access to public records in existence at the time of the request. An agency is not obligated to supplement responses. Therefore, if a public record is created or comes into the possession of the agency after the request is received by the agency, it is not responsive to the request and need not be provided. A requestor must make a new request to obtain subsequently created public records.

Sometimes more than one agency holds the same record. When more than one agency holds a record, and a requestor makes a request to the first agency, the first agency cannot respond to the request by telling the requestor to obtain the record from the second agency. Instead, an agency must provide access to a record it holds regardless of its availability from another agency.[4]

An agency is not required to provide access to records that were not requested. An agency does not "deny" a request when it does not provide records that are outside the scope of the request because they were never asked for.

(b) **Claiming exemptions.**

(i) **Redactions.** If a portion of a record is exempt from disclosure, but the remainder is not, an agency generally is required to redact (black out) the exempt portion and then provide the remainder. RCW 42.17.310(2)/42.56.210(((~~(2)~~)) (1). There are a few exceptions.[5] Withholding an entire record where only a portion of it is exempt violates the act.[6] Some records are almost entirely exempt but small portions remain nonexempt. For example, information revealing the identity of a crime victim is exempt from disclosure. RCW 42.17.310 (1)(e)/((~~42.56.210 (1)(e)~~)) 42.56.240(2). If a requestor requested a police report in a case in which charges have been filed, the agency must redact the victim's identifying information but provide the rest of the report.

Statistical information "not descriptive of any readily identifiable person or persons" is generally not subject to redaction or withholding. RCW 42.17.310(2)/42.56.210 (((~~(2)~~))(1). For example, if a statute exempted the identity of a person who had been assessed a particular kind of penalty, and an agency record showed the amount of penalties assessed against various persons, the agency must provide the record with the names of the persons redacted but with the penalty amounts remaining.

Originals should not be redacted. For paper records, an agency should redact materials by first copying the record and then either using a black marker on the copy or covering the exempt portions with copying tape, and then making a copy. It is often a good practice to keep the initial copies which were redacted in case there is a need to make additional copies for disclosure or to show what was redacted. For electronic records such as data bases, an agency can sometimes redact a field of exempt information by excluding it from the set of fields to be copied. However, in some instances electronic redaction might not be feasible and a paper copy of the record with traditional redaction might be the only way to provide the redacted record. If a record is redacted electronically, by deleting a field of data or in any other way, the agency must identify the redaction and state the basis for the claimed exemption as required by RCW 42.56.210(3). See (b)(ii) of this subsection.

(ii) **Brief explanation of withholding.** When an agency claims an exemption for an entire record or portion of one, it must inform the requestor of the statutory exemption and provide a brief explanation of how the exemption applies to the record or portion withheld. RCW 42.17.310(4)/42.56.210 (((~~(4)~~))(3). The brief explanation should cite the statute the agency claims grants an exemption from disclosure. The brief explanation should provide enough information for a requestor to make a threshold determination of whether the claimed exemption is proper. Nonspecific claims of exemption such as "proprietary" or "privacy" are insufficient.

One way to properly provide a brief explanation of the withheld record or redaction is for the agency to provide a withholding index. It identifies the type of record, its date and number of pages, and the author or recipient of the record (unless their identity is exempt).[7] The withholding index need not be elaborate but should allow a requestor to make a threshold determination of whether the agency has properly invoked the exemption.

(5) **Notifying requestor that records are available.** If the requestor sought to inspect the records, the agency should notify him or her that the entire request or an installment is available for inspection and ask the requestor to contact the agency to arrange for a mutually agreeable time for inspection.[8] The notification should recite that if the requestor fails to inspect or copy the records or make other arrangements within thirty days of the date of the notification that the agency will close the request and refile the records. An agency might consider on a case-by-case basis sending the

notification by certified mail to document that the requestor received it.

If the requestor sought copies, the agency should notify him or her of the projected costs and whether a copying deposit is required before the copies will be made. The notification can be oral to provide the most timely possible response.

(6) **Documenting compliance.** An agency should have a process to identify which records were provided to a requestor and the date of production. In some cases, an agency may wish to number-stamp or number-label paper records provided to a requestor to document which records were provided. The agency could also keep a copy of the numbered records so either the agency or requestor can later determine which records were or were not provided. However, the agency should balance the benefits of stamping or labeling the documents and making extra copies against the costs and burdens of doing so.

If memorializing which specific documents were offered for inspection is impractical, an agency might consider documenting which records were provided for inspection by making an index or list of the files or records made available for inspection.

Notes:

[1]*Bonamy v. City of Seattle*, 92 Wn. App. 403, 409, 960 P.2d 447 (1998), *review denied*, 137 Wn.2d 1012, 978 P.2d 1099 (1999).

[2]*Am. Civil Liberties Union v. Blaine Sch. Dist. No. 503*, 86 Wn. App. 688, 695, 937 P.2d 1176 (1997).

[3]*Sperr v. City of Spokane*, 123 Wn. App. 132, 136-37, 96 P.3d 1012 (2004).

[4]*Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 132, 580 P.2d 246 (1978).

[5]The two main exceptions to the redaction requirement are state "tax information" (RCW 82.32.330 (1)(c)) and law enforcement case files in active cases (*Newman v. King County*, 133 Wn.2d 565, 574, 947 P.2d 712 (1997). Neither of these two kinds of records must be redacted but rather may be withheld in their entirety.

[6]*Seattle Fire Fighters Union Local No. 27 v. Hollister*, 48 Wn. App. 129, 132, 737 P.2d 1302 (1987).

[7]*Progressive Animal Welfare Soc'y. v. Univ. of Wash.*, 125 Wn.2d 243, 271, n.18, 884 P.2d 592 (1994) ("*PAWS II*").

[8]For smaller requests, the agency might simply provide them with the initial response or earlier so no notification is necessary.

PROCESSING OF PUBLIC RECORDS REQUESTS—ELECTRONIC RECORDS

AMENDATORY SECTION (Amending WSR 06-04-079, filed 1/31/06, effective 3/3/06)

WAC 44-14-050 ((~~Reserved.~~)) Processing of public records requests—Electronic records. (1) **Requesting electronic records.** The process for requesting electronic public records is the same as for requesting paper public records.

(2) **Providing electronic records.** When a requestor requests records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record. Costs for providing electronic records are governed by WAC 44-14-07003.

(3) **Customized access to data bases.** With the consent of the requestor, the agency may provide customized access under RCW 43.105.280 if the record is not reasonably locatable or not reasonably translatable into the format requested. The (agency) may charge a fee consistent with RCW 43.105.-280 for such customized access.

Comments to WAC 44-14-050

NEW SECTION

WAC 44-14-05001 Access to electronic records. The Public Records Act does not distinguish between paper and electronic records. Instead, the act explicitly includes electronic records within its coverage. The definition of "public record" includes a "writing," which in turn includes "existing data compilations from which information may be obtained or translated." RCW 42.17.020(48) (incorporated by reference into the act by RCW 42.56.010). Many agency records are now in an electronic format. Many of these electronic formats such as Windows® products are generally available and are designed to operate with other computers to quickly and efficiently locate and transfer information. Providing electronic records can be cheaper and easier for an agency than paper records. Furthermore, RCW 43.105.250 provides: "It is the intent of the legislature to encourage state and local governments to develop, store, and manage their public records and information in electronic formats to meet their missions and objectives. Further, it is the intent of the legislature for state and local governments to set priorities for making public records widely available electronically to the public." In general, an agency should provide electronic records in an electronic format if requested in that format. Technical feasibility is the touchstone for providing electronic records. An agency should provide reasonably locatable electronic public records in either their original generally commercially available format (such as an Acrobat PDF® file) or, if the records are not in a generally commercially available format, the agency should provide them in a reasonably translatable electronic format if possible. In the rare cases when the requested electronic records are not reasonably locatable, or are not in a generally commercially available format or are not reasonably translatable into one, the agency might consider customized access. See WAC 44-14-05004. An agency may recover its actual costs for providing electronic records, which in many cases is de minimis. See WAC 44-14-050(3). What is technically feasible in one situation may not be in another. Not all agencies, especially smaller units of local government, have the electronic resources of larger agencies and some of the generalizations in these model rules may not apply every time. If an agency initially believes it cannot provide electronic records in an electronic format, it should confer with the requestor and the two parties should attempt to cooperatively resolve any technical difficulties. See WAC 44-14-05003. It is usually a purely technical question whether an agency can provide electronic records in a particular format in a specific case.

NEW SECTION

WAC 44-14-05002 "Reasonably locatable" and "reasonably translatable" electronic records. (1) **"Reasonably locatable" electronic records.** The act obligates an agency to provide nonexempt "identifiable…records." RCW 42.56.080. An "identifiable record" is essentially one that agency staff can "reasonably locate." WAC 44-14-04002(2). Therefore, a general summary of the "identifiable record" standard as it relates to electronically locating public records is that the act requires an agency to provide a nonexempt "reasonably locatable" record. This does not mean that an agency can decide if a request is "reasonable" and only fulfill those requests. Rather, "reasonably locatable" is a concept, grounded in the act, for analyzing electronic records issues.

In general, a "reasonably locatable" electronic record is one which can be located with typical search features and organizing methods contained in the agency's current software. For example, a retained e-mail containing the term "XYZ" is usually reasonably locatable by using the e-mail program search feature. However, an e-mail search feature has limitations, such as not searching attachments, but is a good starting point for the search. Information might be "reasonably locatable" by methods other than a search feature. For example, a request for a copy of all retained e-mails sent by a specific agency employee for a particular date is "reasonably locatable" because it can be found utilizing a common organizing feature of the agency's e-mail program, a chronological "sent" folder. Another indicator of what is "reasonably locatable" is whether the agency keeps the information in a particular way for its business purposes. For example, an agency might keep a data base of permit holders including the name of the business. The agency does not separate the businesses by whether they are publicly traded corporations or not because it has no reason to do so. A request for the names of the businesses which are publicly traded is not "reasonably locatable" because the agency has no business purpose for keeping the information that way. In such a case, the agency should provide the names of the businesses (assuming they are not exempt from disclosure) and the requestor can analyze the data base to determine which businesses are publicly traded corporations.

(2) **"Reasonably translatable" electronic records.** The act requires an agency to provide a "copy" of nonexempt records (subject to certain copying charges). RCW 42.56.070 (1) and 42.56.080. To provide a photocopy of a paper record, an agency must take some reasonable steps to mechanically translate the agency's original document into a useable copy for the requestor such as copying it in a copying machine. Similarly, an agency must take some reasonable steps to prepare an electronic copy of an electronic record or a paper record. Providing an electronic copy is analogous to providing a paper record: An agency must take reasonable steps to translate the agency's original into a useable copy for the requestor.

The "reasonably translatable" concept typically operates in three kinds of situations:

(a) An agency has only a paper record;

(b) An agency has an electronic record in a generally commercially available format (such as a Windows® product); or

(c) An agency has an electronic record in an electronic format but the requestor seeks a copy in a different electronic format.

The following examples assume no redactions are necessary.

(i) **Agency has paper-only records.** When an agency only has a paper copy of a record, an example of a "reasonably translatable" copy would be scanning the record into an Adobe Acrobat PDF® file and providing it to the requestor. The agency could recover its actual cost for scanning. See WAC 44-14-07003. Providing a PDF copy of the record is analogous to making a paper copy. However, if the agency lacked a scanner (such as a small unit of local government), the record would not be "reasonably translatable" with the agency's own resources. In such a case, the agency could provide a paper copy to the requestor.

(ii) **Agency has electronic records in a generally commercially available format.** When an agency has an electronic record in a generally commercially available format, such as an Excel® spreadsheet, and the requestor requests an electronic copy in that format, no translation into another format is necessary; the agency should provide the spreadsheet electronically. Another example is where an agency has an electronic record in a generally commercially available format (such as Word®) and the requestor requests an electronic copy in Word®. An agency cannot instead provide a WordPerfect® copy because there is no need to translate the electronic record into a different format. In the paper-record context, this would be analogous to the agency intentionally making an unreadable photocopy when it could make a legible one. Similarly, the WordPerfect® "translation" by the agency is an attempt to hinder access to the record. In this example, the agency should provide the document in Word® format. Electronic records in generally commercially available formats such as Word® could be easily altered by the requestor. Requestors should note that altering public records and then intentionally passing them off as exact copies of public records might violate various criminal and civil laws.

(iii) **Agency has electronic records in an electronic format other than the format requested**. When an agency has an electronic record in an electronic format (such as a Word® document) but the requestor seeks a copy in another format (such as WordPerfect®), the question is whether the agency's document is "reasonably translatable" into the requested format. If the format of the agency document allows it to "save as" another format without changing the substantive accuracy of the document, this would be "reasonably translatable." The agency's record might not translate perfectly, but it was the requestor who requested the record in a format other than the one used by the agency. Another example is where an agency has a data base in a unique format that is not generally commercially available. A requestor requests an electronic copy. The agency can convert the data in its unique system into a near-universal format such as a comma-delimited or tab-delimited format. The requestor can then convert the comma-delimited or tab-delimited data into a data base program (such as Access®) and use it. The data in this example is "reasonably translatable" into a comma-delimited or tab-delimited format so the agency should do so.

A final example is where an agency has an electronic record in a generally commercially available format (such as Word®) but the requestor requests a copy in an obscure word processing format. The agency offers to provide the record in Word® format but the requestor refuses. The agency can easily convert the Word® document into a standard text file which, in turn, can be converted into most programs. The Word® document is "reasonably translatable" into a text file so the agency should do so. It is up to the requestor to convert the text file into his or her preferred format, but the agency has provided access to the electronic record in the most technically feasible way and not attempted to hinder the requestor's access to it.

(3) **Agency should keep an electronic copy of the electronic records it provides.** An electronic record is usually more susceptible to manipulation and alteration than a paper record. Therefore, an agency should keep, when feasible, an electronic copy of the electronic records it provides to a requestor to show the exact records it provided. Additionally, an electronic copy might also be helpful when responding to subsequent electronic records requests for the same records.

NEW SECTION

WAC 44-14-05003 Parties should confer on technical issues. Technical feasibility can vary from request to request. When a request for electronic records involves technical issues, the best approach is for both parties to confer and cooperatively resolve them. Often a telephone conference will be sufficient. This approach is consistent with the requirement that agencies provide the "fullest assistance" to a requestor. RCW 42.56.100 and WAC 44-14-04003(2). Furthermore, if a requestor files an enforcement action under the act to obtain the records, the burden of proof is on the agency to justify its refusal to provide the records. RCW 42.56.550 (1). If the requestor articulates a reasonable technical alternative to the agency's refusal to provide the records electronically or in the requested format, and the agency never offered to confer with the requestor, the agency will have difficulty proving that its refusal was justified.

NEW SECTION

WAC 44-14-05004 Customized access. When locating the requested records or translating them into the requested format cannot be done without specialized programming, RCW 43.105.280 allows agencies to charge some fees for "customized access." The statute provides: "Agencies should not offer customized electronic access services as the primary way of responding to requests or as a primary source of revenue." Most public records requests for electronic records can be fulfilled based on the "reasonably locatable" and "reasonably translatable" standards. Resorting to customized access should not be the norm. An example of where "customized access" would be appropriate is if a state agency's old computer system stored data in a manner in which it was impossible to extract the data into comma-delimited or tab-delimited formats, but rather required a programmer to spend more than a nominal amount of time to write computer code specifically to extract it. Before resorting to customized access, the agency should confer with the requestor to determine if a technical solution exists not requiring the specialized programming.

NEW SECTION

WAC 44-14-05005 Relationship of Public Records Act to court rules on discovery of "electronically stored information." The December 2006 amendments to the Federal Rules of Civil Procedure provide guidance to parties in litigation on their respective obligations to provide access to, or produce, "electronically stored information." See Federal Rules of Civil Procedure 26 and 34. The obligations of state and local agencies under those federal rules (and under any state-imposed rules or procedures that adopt the federal rules) to search for and provide electronic records may be different, and in some instances more demanding, than those required under the Public Records Act. The federal discovery rules and the Public Records Act are two separate laws imposing different standards. However, sometimes requestors make public records requests to obtain evidence that later may be used in non-Public Records Act litigation against the agency providing the records. Therefore, it may be prudent for agencies to consult with their attorneys regarding best practices of retaining copies of the records provided under the act so there can be no question later of what was and what was not produced in response to the request in the event that electronic records, or records derived from them, become issues in court.

AMENDATORY SECTION (Amending WSR 06-04-079, filed 1/31/06, effective 3/3/06)

WAC 44-14-070 Costs of providing copies of public records. (1) **Costs for paper copies.** There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for (amount) cents per page and color copies for (amount) cents per page.

(If agency decides to charge more than fifteen cents per page, use the following language:) The (name of agency) charges (amount) per page for a standard black and white photocopy of a record selected by a requestor. A statement of the factors and the manner used to determine this charge is available from the public records officer.

Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The (name of agency) will not charge sales tax when it makes copies of public records.

(2) **Costs for electronic records.** The cost of electronic copies of records shall be (amount) for information on a ((~~floppy disk and (amount) for information on a~~)) CD-ROM. (If the agency has scanning equipment at its offices: The cost of scanning existing (agency) paper or other nonelectronic records is (amount) per page.) There will be no charge for e-mailing electronic records to a requestor, unless another cost applies such as a scanning fee.

(3) **Costs of mailing.** The (name of agency) may also charge actual costs of mailing, including the cost of the shipping container.

(4) **Payment.** Payment may be made by cash, check, or money order to the (name of agency).

AMENDATORY SECTION (Amending WSR 06-04-079, filed 1/31/06, effective 3/3/06)

WAC 44-14-07003 Charges for electronic records. ((~~Reserved.~~)) Providing copies of electronic records usually costs the agency and requestor less than making paper copies. Agencies are strongly encouraged to provide copies of electronic records in an electronic format. See RCW 43.105.250 (encouraging state and local agencies to make "public records widely available electronically to the public."). As with charges for paper copies, "actual cost" is the primary factor for charging for electronic records. In many cases, the "actual cost" of providing an existing electronic record is de minimis. For example, a requestor requests an agency to e-mail an existing Excel® spreadsheet. The agency should not charge for the de minimis cost of electronically copying and e-mailing the existing spreadsheet. The agency cannot attempt to charge a per-page amount for a paper copy when it has an electronic copy that can be easily provided at nearly no cost. However, if the agency has a paper-only copy of a record and the requestor requests an Adobe Acrobat PDF® copy, the agency incurs an actual cost in scanning the record (if the agency has a scanner at its offices). Therefore, an agency can establish a scanning fee for records it scans. Agencies are encouraged to compare their scanning and other copying charges to the rates of outside vendors. See WAC 44-14-07001.

WSR 07-13-062
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed June 18, 2007, 8:48 a.m., effective July 19, 2007]

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

Purpose: To ensure the security of real estate examinations.

Citation of Existing Rules Affected by this Order: Amending WAC 308-124A-450.

Statutory Authority for Adoption: RCW 18.85.040(1) Director general powers and duties.

Adopted under notice filed as WSR 07-10-035 on April 24, 2007.

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

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

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

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

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

Date Adopted: June 18, 2007.

Ralph Osgood
Assistant Director
Business and Professions Division

AMENDATORY SECTION (Amending WSR 93-24-096, filed 11/30/93, effective 1/1/94)

WAC 308-124A-450 Examination procedures. (1) Each applicant will be required to present one piece of positive identification which bears a photograph of the applicant. ((~~In the event the applicant has no photo identification, the applicant will be required to make prior arrangements with the department not later than ten working days prior to the examination.~~)) Failure to produce the required identification will result in the applicant being refused admission to the examination.

(2) Applicants will be required to refrain from:

(a) Talking to other examinees during the examination unless specifically directed or permitted to do so by a test monitor. ((~~Any applicant observed talking or attempting to give or receive information; using unauthorized materials during any portion of the examination; or removing test materials and/or notes from the testing room will be subject to denial of a license.~~))

(b) Attempting to communicate or record any information.

(c) Using unauthorized materials during any portion of the examination.

(d) Removing test materials and/or notes from the testing room.

(e) Disruptive behavior.

(3) Applicants who participate in ((~~disruptive behavior during the examination~~)) any activity listed in subsection (2) of this section will be required to turn in their test materials to the test monitor and leave the examination site. Their opportunity to sit for the examination will be forfeited. Their answer sheet will be voided. A voided answer sheet will not be scored and the examination fee will not be refunded. A candidate must then reapply to take the examination.

(4) Any applicant who was removed from the testing site for any of the reasons listed in subsection (2) of this section will be required to submit a letter to the department requesting permission to retest and stating the circumstances of the event. After receipt of the applicant's letter, the department will review the proctor's report and the applicant's letter and may deny testing for up to one year.

WSR 07-13-067
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed June 18, 2007, 11:46 a.m., effective July 19, 2007]

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

Purpose: Clarification needs to be added to chapter 392-144 WAC informing school districts they are required to obtain an original, current, and complete school bus driving record from the department of licensing.

Citation of Existing Rules Affected by this Order: Amending WAC 392-144-110, 392-144-120, and 392-144-160.

Statutory Authority for Adoption: RCW 28A.160.210.

Adopted under notice filed as WSR 07-10-027 on April 23, 2007.

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 3, 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 6, 2007.

Dr. Terry Bergeson
State Superintendent

AMENDATORY SECTION (Amending WSR 06-15-010, filed 7/6/06, effective 8/6/06)

WAC 392-144-110 Temporary authorizations—Requirements and issuing procedures. (1) A temporary school bus driver authorization may be issued by the superintendent of public instruction upon application by an authorized representative of the employing school district when the following has been provided:

(a) Verification of successful completion of the school bus driver training course.

(b) Verification that it has on file a copy of a current and valid medical examiner's certificate.

(c) Verification that it has on file ((~~a~~)) an original, current ((~~five year~~)) and complete school bus driver's abstract, including departmental actions, of the applicant's employment and nonemployment driving record ((~~issued by~~)) obtained from the department of licensing verifying compliance with all provisions of this chapter. The issue date of this abstract must be within sixty calendar days prior to the date the application is being submitted for temporary authorization.

(d) Verification that it has on file a disclosure statement in compliance with preemployment inquiry regulations in WAC 162-12-140, signed by the applicant, specifying all convictions which relate to fitness to perform the job of a school bus driver under WAC 392-144-103 and all crimes against children or other persons, that meets the requirements of RCW 43.43.834(2).

(e) Verification that it has requested a criminal record check as required under chapter 28A.400 RCW and the date of such request.

(f) Verification that it has on file an applicant's disclosure of all serious behavioral problems which explains the nature of all such problems and/or conditions, a listing of the names, addresses, and telephone numbers of all doctors, psychologists, psychiatrists, counselors, therapists, or other health care practitioners of any kind or hospitals, clinics, or other facilities who have examined and/or treated the applicant for such problems and/or conditions and dates of examinations, therapy, or treatment and the school district has determined that any reported serious behavioral problem does not endanger the education welfare or personal safety of students, teachers, bus drivers, or other colleagues.

(g) Verification that the applicant complies with all of the requirements for authorized school bus drivers set forth in this chapter except for a first-aid card and/or the results of a criminal record check.

(2) Upon approval of the temporary authorization, notice will be provided to the employing school district.

(3) The temporary authorization shall be valid for a period of sixty calendar days. The temporary authorization may be renewed by approval of the regional transportation coordinator when the results of the criminal background check have not been received.

AMENDATORY SECTION (Amending WSR 06-15-010, filed 7/6/06, effective 8/6/06)

WAC 392-144-120 School bus driver authorization—Requirements and issuing procedures. A school bus driver authorization may be issued by the superintendent of public instruction upon application by an authorized representative of the employing school district subject to compliance with the following provisions:

(1) The employing school district shall forward to the superintendent of public instruction the following verifications relating to the applicant:

(a) Verification of successful completion of the school bus driver training course taught by an authorized school bus driver instructor.

(b) Verification that it has on file a copy of a current and valid medical examiner's certificate.

(c) Verification that it has on file ((~~a~~)) an original, current ((~~five-year~~)) and complete school bus driver's abstract, including departmental actions, of the applicant's employment and nonemployment driving record ((~~issued by~~)) obtained from the department of licensing verifying compliance with all provisions of this chapter. The issue date of this abstract must be within sixty calendar days prior to the date an application was submitted for temporary authorization. If no request for a temporary school bus authorization was submitted, the issue date must be within sixty calendar days prior

to the date of application of the school bus driver authorization.

(d) Verification that the applicant has a current and valid first-aid card.

(e) Verification that it has on file a disclosure statement in compliance with preemployment inquiry regulations in WAC 162-12-140, signed by the applicant, specifying all convictions which relate to fitness to perform the job of a school bus driver under WAC 392-144-103 and all crimes against children or other persons, that meets the requirements of RCW 43.43.834(2).

(f) Verification that it has on file the results of a criminal record check as required under chapter 28A.400 RCW and that such results establish that the applicant has not committed any offense which constitutes grounds for denying, suspending, or revoking an authorization under this chapter and the date of such request.

(g) Verification that it has on file an applicant's disclosure of all serious behavioral problems which explains the nature of all such problems and/or conditions, a listing of the names, addresses, and telephone numbers of all doctors, psychologists, psychiatrists, counselors, therapists, or other health care practitioners of any kind or hospitals, clinics, or other facilities who have examined and/or treated the applicant for such problems and/or conditions and dates of examinations, therapy, or treatment and the school district has determined that any reported serious behavioral problem does not endanger the educational welfare or personal safety of students, teachers, school bus drivers, or other colleagues.

(h) Verification that the applicant complies with all of the requirements for authorized school bus drivers set forth in this chapter.

(2) Upon approval of an application, the superintendent of public instruction shall issue a notice of school bus driver authorization to the employing school district.

(3) Subsequent authorizations for an individual driver with new or additional employing school districts must be issued from the superintendent of public instruction to such districts prior to the operation of any motor vehicle for the transportation of children.

(4) The superintendent of public instruction will provide each school district with a list of their authorized school bus drivers and each authorized school bus driver's status.

AMENDATORY SECTION (Amending WSR 06-15-010, filed 7/6/06, effective 8/6/06)

WAC 392-144-160 School district—Verification of driver's continuing compliance. (1) Every school district shall evaluate each authorized school bus driver for continuing compliance with the provisions of this chapter annually. The results of this evaluation of all drivers shall be forwarded to the superintendent of public instruction on SPI Form 1799, Verification Statement and Confirmation of Updated Records, no later than November 15th of each year.

(2) This report shall verify that each authorized school bus driver's medical examination certificate expiration date, first-aid expiration date, driver's license expiration date and most recent school bus driver in-service training date has been updated in compliance with OSPI procedures.

(3) This report shall verify that each authorized school bus driver has made an updated disclosure in writing and signed and sworn under penalty of perjury which updates the disclosure required in WAC 392-144-102(4).

(4) This report shall verify that a current and original school bus driver's abstract has been obtained from the department of licensing on each authorized school bus driver((~~'s five-year~~)) and the driving record is in compliance with WAC 392-144-103.

(5) This report shall verify that each authorized school bus driver remains in compliance with the physical requirements of WAC 392-144-102(5).

(6) This report shall be a written verification that the evaluation has been conducted in accordance with the requirements of this chapter and that all drivers are in compliance, or if all drivers are not in compliance, a list of drivers who are out of compliance and the reason for noncompliance shall be provided.

WSR 07-13-071
PERMANENT RULES
DEPARTMENT OF HEALTH
(Podiatric Medical Board)

[Filed June 18, 2007, 2:21 p.m., effective July 19, 2007]

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

Purpose: WAC 246-922-001 Scope of practice, the amended rule identifies which practitioners may provide anesthesia services for surgical patients of podiatric physicians.

Citation of Existing Rules Affected by this Order: Amending WAC 246-922-001.

Statutory Authority for Adoption: RCW 18.22.015.

Adopted under notice filed as WSR 06-24-134 on December 6, 2006.

A final cost-benefit analysis is available by contacting Arlene Robertson, P.O. Box 47866, Olympia, WA 98504-7866, phone (360) 236-4945, fax (360) 236-2406, e-mail arlene.robertson@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 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: June 18, 2007.

Blake T. Maresh
Executive Director

AMENDATORY SECTION (Amending Order 158B, filed 4/25/91, effective 5/26/91)

WAC 246-922-001 Scope of practice. (1) An "ailment of the human foot" as set forth in RCW 18.22.010 is defined as any condition, symptom, disease, complaint, or disability involving the functional foot. The functional foot includes the anatomical foot and any muscle, tendon, ligament, or other soft tissue structure directly attached to the anatomical foot and which impacts upon or affects the foot or foot function and osseous structure up to and including the articulating surfaces of the ankle joint.

(2) In diagnosing or treating the ailments of the functional foot, a podiatric physician and surgeon is entitled to utilize medical, surgical, mechanical, manipulative, radiological, and electrical treatment methods and the diagnostic procedure or treatment method may be utilized upon an anatomical location other than the functional foot. The diagnosis and treatment of the foot includes diagnosis and treatment necessary for preventive care of the well foot.

(3) A podiatric physician and surgeon may examine, diagnose, and commence treatment of ailments for which differential diagnoses include an ailment of the human foot. Upon determination that the condition presented is not an ailment of the human foot, the podiatric physician and surgeon shall obtain an appropriate consultation or make an appropriate referral to a licensed health care practitioner authorized by law to treat systemic conditions. The podiatric physician and surgeon may take emergency actions as are reasonably necessary to protect the patient's health until the intervention of a licensed health care practitioner authorized by law to treat systemic conditions.

(4) A podiatric physician and surgeon may diagnose or treat an ailment of the human foot caused by a systemic condition provided an appropriate consultation or referral for the systemic condition is made to a licensed health care practitioner authorized by law to treat systemic conditions.

(5) A podiatric physician and surgeon shall not administer a general or spinal anesthetic, however, a podiatric physician and surgeon may treat ailments of the human foot when the treatment requires use of a general or spinal anesthetic provided that the administration of the general or spinal anesthetic is by ((~~or under the supervision of~~)) a physician authorized under chapter 18.71 or 18.57 RCW; or a certified registered nurse anesthetist authorized under chapter 18.79 RCW.

WSR 07-13-076
PERMANENT RULES
DEPARTMENT OF HEALTH
(Board of Psychology)

[Filed June 18, 2007, 2:22 p.m., effective July 19, 2007]

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

Purpose: WAC 246-924-485 Delegation of authority to initiate investigations. This new rule pertains to delegation of authority to department of health (DOH) staff and a board member licensed under chapter 18.83 RCW after complaints have been assessed.

Statutory Authority for Adoption: RCW 18.83.050 and 18.130.050.

Adopted under notice filed as WSR 07-06-084 on March 7, 2007.

Changes Other than Editing from Proposed to Adopted Version: The following language was added to the beginning of the rule: "In addition to its existing authority to initiate an investigation." The board believes it's important to add this language to help maintain current processes. The case management team was clarified to read, "three member case management team," to indicate the number of individuals required to make a decision about an investigation.

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

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

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

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

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

Date Adopted: June 18, 2007.

Betty Moe
Program Manager

NEW SECTION

WAC 246-924-485 Delegation of authority to initiate investigations. In addition to its existing authority to initiate an investigation, the board delegates to a case management team the authority to initiate an investigation when the board or the department receives information, by means of a complaint or otherwise, that a licensee may have engaged in unprofessional conduct or may be unable to practice with reasonable skill and safety by reason of a mental or physical condition. The three member case management team must include a board member licensed under chapter 18.83 RCW, the executive director or his or her designee, and a staff attorney. A majority of the team must agree to initiate an investigation. The majority must include the board member representative.

WSR 07-13-079
PERMANENT RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS

[Filed June 18, 2007, 4:47 p.m., effective July 19, 2007]

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

Purpose: The proposed rules will give applicants access to the brief adjudicative proceeding process if their loan orig-

inator license application under the Mortgage Broker Practices Act (chapter 19.146 RCW) is denied.

Citation of Existing Rules Affected by this Order: Amending WAC 208-660-350.

Statutory Authority for Adoption: RCW 43.320.040, 19.146.223, chapter 19, Laws of 2006.

Adopted under notice filed as WSR 07-09-027 on May 2 [April 9], 2007.

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: June 18, 2007.

Deborah Bortner, Director
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-350 Loan originators—Licensing. (1) **How do I apply for a loan originator license?**

(a) **Pass a licensing test.** You must take and pass a test that assesses your knowledge of the mortgage business and related regulations. See WAC 208-660-360, Loan originators—Testing.

(b) **Submit an application.** The application form will be prescribed by the director.

(c) **Prove your identity.** You must provide information to prove your identity.

(d) **Pay the application fee.** You must pay an application fee to cover the department's cost of processing and reviewing applications. See WAC 208-660-550, Department fees and costs.

(2) **In addition to reviewing my application, what else will the department consider to determine if I qualify for a loan originator license?**

(a) **General fitness and prior compliance actions.** The department will investigate your background to see that you demonstrate the experience, character, and general fitness that commands the confidence of the community and creates a belief that you will conduct business honestly and fairly within the purposes of the act. This investigation may include a review of the number and severity of complaints filed against you, or any person you were responsible for, and a review of any investigation or enforcement activity taken against you, or any person you were responsible for, in this state, or any jurisdiction.

(b) **License suspensions or revocations.** You are not eligible for a loan originator license if you have been found to be in violation of the act or the rules, or have had a license issued under the act or any similar state statute suspended or revoked within five years of the filing of the present application.

(c) **Criminal history.** You are not eligible for a loan originator license if you have been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony, within seven years of the filing of the present application.

(3) **May I originate residential mortgage loans in Washington without a loan originator license?** Persons conducting the business of a loan originator without an active loan originator license must fall under one of the following categories of exemption from loan originator licensing:

(a) Persons conducting residential mortgage loan business exclusively for any exempt person under RCW 19.146.020 (1)(a)(i); or

(b) The exclusive agents conducting residential mortgage loan business for any exempt person under RCW 19.146.020 (1)(a)(ii); or

(c) The bona fide employees conducting residential mortgage loan business exclusively for any exempt person under RCW 19.146.020 (1)(b), (e), (g) or (h); or

(d) Those persons exempt under RCW 19.146.020 (1)(c) or (d).

(4) **What will happen if my loan originator license application is incomplete?** The department will reject and return the entire application package to you with a notice identifying the incomplete, missing, or inaccurate information. You must follow the department's directions to correct the problems. You may then resubmit the application package.

(5) **How do I withdraw my application for a loan originator license?** Provide the department with a written request to withdraw your application in a form prescribed by the director.

(6) **When will the department consider my loan originator license application to be abandoned?** If you do not respond within ten business days to the department's second request for information, your loan originator license application is considered abandoned. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply by submitting a new application package.

(7) **What happens if the department denies my application for a loan originator license, and what are my rights if the license is denied?** (a) The department will notify you if your application is denied. You will receive a refund of any unused portion of the application fee.

(b) If your license application lists any mortgage brokers, the department will also notify the mortgage brokers of the license denial.

(c) Under the Administrative Procedure Act, chapter 34.05 RCW, you have the right to request ~~an administrative hearing on the denial~~ brief adjudicative proceeding. To request a hearing, notify the department, in writing, within twenty days from the date of the director's notice to you notifying you your license application has been denied.

(i) Brief Adjudicative Proceeding Adopted. The director adopts RCW 34.05.482 through 34.05.494 to administer brief adjudicative proceedings under WAC 208-660-350.

(ii) Presiding Officer. Brief adjudicative proceedings are conducted by a presiding officer designated by the director. The presiding officer must have department expertise in the subject matter, but must not have personally participated in the department's licensing application denial, or work in the department's division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

(iii) Preliminary Records. The preliminary record for the brief adjudicative proceeding consists of the application and all associated documents including all documents relied upon by the department to deny the application and all correspondence between the applicant and the department regarding the application.

(iv) Notice of Hearing. The department will set the date, time, and place of the hearing, giving at least seven business days notice to the applicant.

(v) Written Documents. The applicant or their representatives may present written documentation. The presiding officer must designate the date for submission of written documents.

(vi) Oral Argument. The presiding officer may exercise discretion in allowing oral argument.

(vii) Witnesses. Witnesses will not be allowed to testify.

(viii) Agency Expertise Considered. The presiding officer may rely upon agency expertise in addition to the written record as a basis for a decision.

(ix) Initial Order. The presiding officer must make a written initial order within ten business days of the final date for submission of materials, or oral argument, if any. The initial order will become final twenty-one days after service on the applicant unless the applicant requests an administrative review or the department decides to review the matter.

(8) **How will the department provide me with my loan originator license?** The department may use any of the following methods to provide you with your loan originator license:

(a) A printed paper license sent to you by regular mail.

(b) A license sent to you electronically that you may print.

(c) A license verification available on the department's web site and accessible for viewing by the public.

(9) **May I transfer, sell, trade, assign, loan, share, or give my loan originator license to someone else?** No. A loan originator license authorizes only the individual named on the license to conduct the business at the location listed on the license.

(10) **How do I change information on my loan originator license?** You must file a license amendment application with the department, in a form prescribed by the department within thirty days of the change occurring.

(11) **If I am employed by a bank or other exempt entity may I apply for and receive a loan originator license?** Yes, you may apply for a license at any time. However, if you are not working for a licensed mortgage broker, your license will be considered inactive.

(12) **What is an inactive loan originator's license?** If an individual holds a loan originator license but is not working with a licensed mortgage broker, they hold an inactive license. A person holding an inactive license may not hold themselves out as a licensed loan originator.

(13) **When my loan originator's license is inactive, am I subject to the director's enforcement authority?** Yes. Your license is granted under specific authority of the director and under certain situations you may be subject to the director's authority even if you are not doing any activity covered by the act.

(14) **When my loan originator license is inactive, must I continue to pay annual fees, and complete continuing education for that year?** Yes. You must comply with all the annual licensing requirements or you will be unable to renew your inactive loan originator license.

(15) **May I originate loans from a web site when my license is inactive?** You may not originate loans, or engage in any activity that requires a license under the act, while your license is inactive, except as allowed in subsection (3) of this section.

(16) **How do I activate my loan originator license?** When the department receives a notice, in a form prescribed by the department, from a licensed mortgage broker establishing a working relationship with you, your loan originator license will become active. The department will notify you and all mortgage brokers you are working with of the new working relationship established by the licensed mortgage broker.

(17) **When may the department issue interim loan originator licenses?** To prevent an undue delay, the director may issue interim loan originator licenses with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license.

For purposes of this section, undue delay includes the adjustment of license expiration or renewal dates to coincide with the implementation of systems designed to assist in uniformity and provide data repositories of licensing information.

One example of having substantially met the initial licensing requirements is: Submitting a complete application, paying all application fees, and the department having received and reviewed the results of the applicant's background check.

(18) **When does my loan originator license expire?** The loan originator license expires annually. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

(19) **How do I renew my loan originator license?**

(a) Before the license expiration date you must:

(i) Pay the annual assessment fee; and

(ii) Meet the continuing education requirement.

(b) The renewed license is valid until it expires, or is surrendered, suspended or revoked.

(20) **If I let my loan originator license expire, must I apply to get a new license?** If you complete all the requirements for renewal within forty-five days of the expiration date you may renew an existing license. However, if you renew your license during this forty-five day period, in addi-

tion to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (19) of this section for the license renewal requirements.

During this forty-five day period, your license is expired and you must not conduct any business under the act that requires a license.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or department "date received" stamp within the forty-five days. If you fail to comply with the renewal request requirements within forty-five days, you must apply for a new license.

(21) **May I still originate loans if my loan originator license has expired?** No. Once your license has expired you may no longer conduct the business of a loan originator as defined in the act and these rules.

(22) **What happens to the loan applications I originated before my loan originator license expired?** Existing loan applications must be processed by the licensed mortgage broker or another licensed loan originator working for the mortgage broker.

(23) **May I surrender my loan originator's license?** Yes. You may surrender your license before the license expires by notifying the department, in a form prescribed by the department.

Surrender of your loan originator license does not change your civil or criminal liability, or your liability for any administrative actions arising from acts or omission occurring before the license surrender.

(24) **Must I display my loan originator license where I work as a loan originator?** No. Neither you nor the mortgage broker company is required to display your loan originator license. However, evidence that you are licensed as a loan originator must be made available to anyone who requests it.

(25) **If I operate as a loan originator on the internet, must I display my license number on my web site?** Yes. You must display your license number, and the license number and name as it appears on the license of the licensed mortgage broker you represent, on the web site.

(26) **Must I include my loan originator license number on any documents?** You must include your license number immediately following your name on solicitations, including business cards, advertisements, and residential mortgage loan applications.

(27) **When must I disclose my loan originator license number?** In the following situations you must disclose your loan originator license number and the name and license number of the mortgage broker you are associated with:

(a) When asked by any party to a loan transaction, including third party providers;

(b) When asked by any person you have solicited for business, even if the solicitation is not directly related to a mortgage transaction;

(c) When asked by any person who contacts you about a residential mortgage loan;

(d) When taking a residential mortgage loan application.

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

WSR 07-13-082
PERMANENT RULES
DEPARTMENT OF LICENSING
[Filed June 19, 2007, 8:16 a.m., effective July 20, 2007]

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

Purpose: Rule making is required to clarify language of the rule.

Citation of Existing Rules Affected by this Order: Amending WAC 308-56A-210 and 308-93-440.

Statutory Authority for Adoption: RCW 46.01.110.

Adopted under notice filed as WSR 07-09-061 on April 16, 2007.

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

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

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

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

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

Date Adopted: June 19, 2007.

Julie Knittle
Assistant Director
Vehicle Services

AMENDATORY SECTION (Amending WSR 06-22-025, filed 10/25/06, effective 11/25/06)

WAC 308-56A-210 Ownership in doubt—Bonded title or three-year registration without title. (1) ((~~**What does an applicant do when an acceptable release of interest or documentation as defined in WAC 308-56A-265 is not available?** When an applicant is unable to provide an acceptable release of interest or documentation, the applicant may:~~

~~Apply for registration only or bonded title as described in this rule. The applicant must:~~

~~(a) Provide evidence of ownership of the vehicle such as, but not limited to, a bill of sale;~~

~~(b) Obtain a Washington state patrol vehicle identification number (VIN) inspection;~~

~~(c) Make a reasonable effort to determine ownership of the vehicle by writing to the agency that issued the last known certificate of ownership or registration. For purposes of this section, an individual purchaser or transferee of a vehicle may request the name and address of the owner(s) of record for that vehicle from the department by satisfying (b)(i) of this subsection and completing a form (Vehicle/Vessel disclosure request) approved by the department. When the department is satisfied the request is for obtaining proper release of interest, the department may disclose the name(s) and address of the last owner(s) of record for that vehicle.~~

~~(i) If a record is found, the applicant must send a certified or registered letter, return receipt requested, to each owner and secured party of record at the address shown on the last record. The letter must contain information regarding the sender's claim to ownership and a request for the released certificate of ownership or a notarized or certified release of interest.~~

~~(ii) If the previous owner does not respond within fifteen days after acknowledged receipt or the letter was returned unclaimed, the applicant must provide the form titled Application for Ownership in Doubt, explaining how the vehicle was acquired;~~

~~If no record is found, the applicant must provide the completed form titled, Application for Ownership in Doubt.~~

~~(d) Determine whether to apply for a bonded title or apply for registration only. A bonded title is required if the applicant is a Washington state vehicle dealer. A bond must be for a period of three years from the date of application and be in the amount of one and one-half times the value of the vehicle as determined by one of the following:~~

~~(i) Information provided by any guide book or other publication of recognized standing in the vehicle industry; or~~

~~(ii) A value that is agreeable to the applicant and verifiable by the authorized department agent or employee.~~

~~(2) **Are there exceptions to the VIN inspection requirement?** Yes, the following vehicles are exempt from a VIN inspection if there is a Washington vehicle record and the customer presents a certificate of ownership or registration certificate issued by Washington, or another state, or country, or if there is no Washington vehicle record (for proof of VIN) and the customer presents a title or registration certificate issued by Washington state or other state or country unless from a state or country that neither registers nor titles as described in WAC 308-56A-115:~~

~~(a) Moped;~~

~~(b) Trailer with scale weight less than 2,000 pounds;~~

~~(c) Off-road and nonhighway vehicles not originally manufactured for road use if model year is ten years old or older;~~

~~(d) Travel trailer if model year is ten years old or older;~~

~~(e) Camper model year is ten years old or older;~~

~~(f) Manufactured homes of any age.~~

~~(3) **How can I provide proof of my vehicle's identification number?** An Application for Ownership in Doubt form approved by the department must be completed:~~

~~(a) For a vehicle that has an embossed VIN:~~

~~(i) A VIN pencil or pen scraping for those vehicles listed above is required; or~~

~~(ii) An approved photograph of the VIN is provided; and~~

~~(b) For a vehicle that does not have an embossed VIN, the Application for Ownership in Doubt form stating the VIN and how the VIN is attached to the vehicle.~~

~~(c) In the absence of either (a) or (b) of this subsection, a VIN inspection is required.~~

~~(4) **If I have a bonded title, how can I get a certificate of ownership (title) without the bonded notation?** In order to get a certificate of ownership without the bonded notation:~~

~~(a) Submit the properly endorsed certificate of ownership or a satisfactory release of interest and make application to the department anytime during the three-year period; or~~

~~(b) After the three-year period, make application to the department.~~

~~(5) **If I have a three-year registration only, how can I obtain a certificate of ownership?** To receive a certificate of ownership:~~

~~(a) Submit the properly endorsed certificate of ownership or a satisfactory release of interest and make application to the department anytime during the three-year period; or~~

~~(b) After the three-year period, make application to the department.~~

~~(6) **May I sell a vehicle with a bonded title or a three-year registration only?** Yes. A bonded title may be released and provided to the buyer the same as any other certificate of ownership. There is a possibility that a Washington bonded title may not be accepted by another state. If the other state has a similar program, they may issue their own type of bonded certificate of ownership. If there is a registration only, provide the buyer with a notarized or certified release of interest. The new owner may either provide a judgment from a district or superior court of Washington or wait until the expiration of the time remaining on the previous ownership in doubt period and then make application for the certificate of ownership. If a notarized/certified release of interest cannot be obtained from the current registered owner, the new owner must start over with a new three-year bonded or registration only process.~~

~~Licensed vehicle dealers cannot lawfully sell vehicles that are registration only.~~)) **What is ownership in doubt?** Ownership in doubt is when a vehicle owner(s) is unable to obtain satisfactory evidence of ownership or releases of interest as described in WAC 308-56A-265.

(2) **What options are available in an ownership in doubt situation?** When in an ownership in doubt situation, the owner may:

(a) Apply for three-year registration without title; or

(b) Apply for a bonded title described in RCW 46.12.151; or

(c) Petition any district or superior court of any county of this state to receive a judgment awarding ownership of the vehicle. This is required if ownership of the vehicle is contested after the applicant makes application for ownership in doubt and before the three-year ownership in doubt period has lapsed.

(3) **What documents are required when applying for a bonded title or three-year registration without title?** Required documents when applying for a bonded title or three-year registration include:

(a) The originals or copies of letters sent by registered or certified mail to the registered and legal owners of record, including the return receipt. The letters must include information regarding the applicant's claim to ownership and a request for the released certificate of ownership (title) or a notarized or certified release of interest.

(i) Registered and legal owner information will be released under WAC 308-56A-090 for applications needing that information.

(ii) If there is no Washington record, (a) of this subsection does not apply.

(iii) If the owners of record do not respond before submitting their application, the applicant must wait fifteen days from acknowledged receipt of the letter.

(iv) If the letter is returned unclaimed, the applicant must submit the letter, unopened, with the application.

(b) A bonded title or a three-year registration without title affidavit completed by the applicant and signed by all persons to be shown as a registered owner.

(c) Washington state patrol inspection, unless the vehicle is specifically exempt under subsection (4) of this section. For vehicles exempt from the Washington state patrol inspection under subsection (4) of this section, the following documents are also required:

(i) A bonded title or three-year registration without title affidavit for vehicles exempt from the Washington state patrol inspection completed and signed by a person to be shown as a registered owner; and

(ii) A legible etching or photograph of the VIN as proof of the VIN.

(d) Application for certificate of ownership (title).

(e) A bond as described in RCW 46.12.151, if the applicant is applying for a bonded title.

(f) Other documents that may be required by law or rule.

(4) **Are there exemptions from the Washington state patrol inspection?** Yes.

(a) Certain vehicles are exempt from the Washington state patrol inspection if:

(i) There is a Washington record; or

(ii) There is no Washington record, but the vehicle owner has a title or registration certificate issued by Washington or another jurisdiction.

(b) Vehicles exempt from the Washington state patrol inspection include:

(i) Mopeds;

(ii) Trailers with a scale weight less than two thousand pounds;

(iii) Not eligible for road use (NEFRU) vehicles as defined in WAC 308-56A-500 when the model year is ten years old or older;

(iv) Travel trailers and park model trailers when the model year is ten years old and older;

(v) Campers when the model year is ten years old and older;

(vi) Manufactured and mobile homes are exempt at all times.

(5) **When is a bond required?** A bond is required in ownership in doubt situations when:

(a) The applicant is a Washington state licensed vehicle dealer; or

(b) The Washington record shows there is an existing lien.

(6) **How is a vehicle value determined for filing a bond?** Vehicle value may be determined from one of the following sources:

(a) The department's automated valuing system; or

(b) A published appraisal guide; or

(c) Appraisal from a licensed vehicle dealer or appraisal company. The appraisal must be on company letterhead and have the business card attached; or

(d) Insured amount; or

(e) Consideration or payment plus estimated repairs by a bona fide mechanic; or

(f) Other valuing sources approved by the department.

(7) **May I transfer ownership on a vehicle with a bonded title or three-year registration without title?** Yes.

(a) Owners releasing interest in a vehicle with a bonded title or three-year registration without title must provide a release of interest described in WAC 308-56A-265;

(b) The new owners must submit an application for title as described in this chapter and complete the time remaining on the current ownership in doubt period.

AMENDATORY SECTION (Amending WSR 03-07-076, filed 3/18/03, effective 4/18/03)

WAC 308-93-440 Ownership in doubt—Bonded title or three-year registration without title. (1) ((~~**What does an applicant do if an acceptable release of interest as defined in WAC 308-93-460 is not available?** When an applicant is unable to provide an acceptable release of interest for a vessel, the applicant may:~~

~~(a) Petition any district or superior court of any county of this state to receive a judgment awarding ownership of the vessel; such judgment is required if ownership of the vessel is contested after the applicant makes application for ownership in doubt and before the three-year ownership in doubt period has lapsed; or~~

~~(b) Apply for "registration only" or bonded certificate of ownership as described in this rule if a judgment is unavailable as described in (a) of this subsection. The applicant must:~~

~~(i) Provide evidence of ownership of the vessel including, but not limited to, a bill of sale;~~

~~(ii) Make a reasonable effort to determine ownership of the vessel by writing to the agency that issued the last known certificate of ownership or registration. For purposes of this section, an individual purchaser or transferee of a vessel may request the name and address of the owner(s) of record for that vessel from the department by satisfying (b)(i) of this subsection and completing a form approved by the department. When the department is satisfied the request is for obtaining proper release of interest, the department may disclose the name(s) and address of the last owner(s) of record for that vessel.~~

~~(A) If a record is found, the applicant must send a certified or registered letter, return receipt requested, to each owner and secured party of record at the address shown on the last record. The letter must contain information regarding the sender's claim to ownership and a request for the released certificate of ownership or a notarized or certified release of interest.~~

~~(B) If the previous owner does not respond within fifteen days after acknowledged receipt or the letter was returned unclaimed, the applicant must provide a completed affidavit of request for bonded title or registration, explaining how the vessel was acquired;~~

~~If no record is found, the applicant must provide the completed form titled, Affidavit of Request for Bonded Title or Registration Without Title.~~

~~(iii) Determine whether to bond the vessel and apply for a certificate of ownership or apply for registration only. A bond is required if the seller of the vessel is a Washington state vessel dealer or in lieu of the judgment described in (a) of this subsection if there is evidence of a security agreement on the last record found. A bond will be for a period of three years from the date of application and be in the amount of one and one-half times the value of the vessel as determined by one of the following:~~

~~(A) Information provided by a value guide book or other publication of recognized standing in the vessel industry; or~~

~~(B) A value that is agreeable to the applicant and verifiable by the authorized department agent or employee.~~

~~(2) **If I have a bonded certificate of ownership for my vessel, how can I get a certificate of ownership without the bonded notation?** In order to get a certificate of ownership without the bonded notation, you may:~~

~~(a) Submit a properly endorsed certificate of ownership or a satisfactory release of interest and make application to the department anytime during the three-year period; or~~

~~(b) After the three-year period, make application to the department.~~

~~(3) **If I have a three-year vessel registration only, how can I obtain a certificate of ownership?** In order to receive a certificate of ownership, you may:~~

~~(a) Submit the properly endorsed certificate of ownership or a satisfactory release of interest and make application to the department anytime during the three-year period; or~~

~~(b) After the three-year period, make application to the department.~~

~~(4)~~)) **What is ownership in doubt?** Ownership in doubt is when a vessel owner(s) is unable to obtain satisfactory evidence of ownership or release of interest described in WAC 308-93-460.

(2) **What options are available in an ownership in doubt situation?** When in an ownership in doubt situation, the owner may:

(a) Apply for three-year registration without title; or

(b) Apply for a bonded title as described in vehicle law RCW 46.12.151; or

(c) Petition any district or superior court of any county of this state to receive a judgment. This is required if ownership of the vessel is contested after the applicant makes application for ownership in doubt and before the three-year ownership in doubt period has lapsed.

(3) **What documents are required when applying for a bonded title or three-year registration without title?** Required documents when applying for a bonded title or three-year registration include:

(a) The originals or copies of letters sent by registered or certified mail to the registered and legal owners of record, including the return receipt. The letters must include information regarding the applicant's claim to the ownership and request for the released certificate of ownership (title) or a notarized or certified release of interest.

(i) Registered and legal owner information will be released under WAC 308-93-087 for applicants needing that information.

(ii) If there is no Washington record, (a) of this subsection does not apply.

(iii) If the owners of record do not respond before submitting the application, the applicant must wait fifteen days from acknowledged receipt of the letter.

(iv) If the letter is returned unclaimed, the applicant must submit the letter, unopened, with the application.

(b) A bonded title or three-year registration without title affidavit completed by the applicant and signed by all persons to be shown as registered owner(s).

(c) Application for certificate of ownership (title).

(d) A bond as described in vehicle law RCW 46.12.151, if the applicant is applying for a bonded title.

(e) Other documents that may be required by law or rule.

(4) **How is a vessel value determined for filing a bond?** Vessel value may be determined from one of the following sources:

(a) The department's automated valuing system; or

(b) A published appraisal guide; or

(c) Appraisal from a licensed vessel dealer or appraisal company. The appraisal must be on company letterhead and have the business card attached; or

(d) An appraisal from the department of revenue; or

(e) Insured amount; or

(f) Consideration or payment plus estimated repairs by a bona fide repair facility; or

(g) Other valuing sources approved by the department.

(5) **May I sell or release my interest in the vessel during the three-year ownership ((~~in doubt~~)) without title period?** Yes. A bonded certificate of ownership may be released and provided to the buyer in the same way as any other certificate of ownership. The Washington bonded ((~~certificate of ownership~~)) title may not be accepted by another state. If the other state has a similar program, they may issue their own type of bonded certificate of ownership. For three-year registration ((~~only~~)) without title, provide the buyer with a notarized or certified release of interest. The new owner may either provide a judgment ((~~as described in subsection (1)(a) of this section~~)) from a district or superior court of Washington or wait until the expiration of the time remaining on the previous ownership in doubt period and then make application for the certificate of ownership. If a notarized((~~/~~)) or certified release of interest cannot be obtained from the current registered owner, the new owner must start over with a new three-year bonded or three-year registration ((~~only~~)) without title process.

WSR 07-13-090
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed June 19, 2007, 1:02 p.m., effective July 20, 2007]

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

Purpose: Where a school district resides in a county which was declared a state of emergency proclamation by the governor and a district-wide closure exists, the superintendent may consider school district application to have met the "reasonable effort" test by providing at least the district-wide annual average total instruction hour offerings (1000 hours).

Statutory Authority for Adoption: RCW 28A.41.170(2).

Adopted under notice filed as WSR 07-09-040 on April 11, 2007.

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 19, 2007.

Dr. Terry Bergeson
State Superintendent

AMENDATORY SECTION (Amending Order 22, filed 12/20/89, effective 1/20/90)

WAC 392-129-105 Definition—Reasonable effort. As used in this chapter, "reasonable effort" means the:

(1) Extension of the school year to and through June 14th; and

(2) Use of scheduled vacation days and foreseeable school closure days, to attain the minimum number of school days and ((~~program hour offerings, teacher contact hours, and course mix and percentages~~)) district-wide annual average total instruction hour offerings required by law. In no case, except as provided in subsection (3) of this section, shall a school district be considered to have made a reasonable effort unless at least three school days, per incident, and ((~~program hour offerings, teacher contact hours, and course mix percentage~~)) district-wide annual average total instruction hour offerings which have been lost have in fact been made up.

(3) Where a school district resides in a county which was declared a state of emergency proclamation by the governor due to fire, flood, explosion, storm, earthquake, epidemic, or volcanic eruption, and the emergency impacted district-wide facilities or operations, the superintendent may consider school district applications to have met the "reasonable effort" test by providing at least the district-wide annual average total instruction hour offerings.

WSR 07-13-097
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed June 20, 2007, 8:50 a.m., effective July 21, 2007]

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

Purpose: This rule-making order amends chapter 16-623 WAC, Commission Merchant Act—Licensing fees, proof of payment, cargo manifests and registration of acreage commitments, by increasing the license fees for commission merchants, dealers, limited dealers, brokers, cash buyers, and agents within the OFM fiscal growth factor for fiscal year 2008 (5.53%) and by correcting a web site address.

Citation of Existing Rules Affected by this Order: Amending WAC 16-623-010.

Statutory Authority for Adoption: Chapters 20.01 and 34.05 RCW.

Adopted under notice filed as WSR 07-10-109 on May 2, 2007.

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: June 20, 2007.

Valoria H. Loveland
Director

AMENDATORY SECTION (Amending WSR 05-09-094, filed 4/20/05, effective 5/21/05)

WAC 16-623-010 What requirements apply to licenses for commission merchants, dealers, brokers, cash buyers and agents? (1) The following table summarizes the license fee requirements for commission merchants, dealers, brokers, cash buyers, or agents:

License Class	License Fee	Annual Expiration Date	Annual Renewal Date	Penalty Amount for Not Renewing Before January 1
Commission merchant	$((~~450.00~~)) 474.00	December 31	Before January 1	A late renewal penalty of twenty-five percent of the total fees
Dealer	$((~~450.00~~)) 474.00	December 31	Before January 1	A late renewal penalty of twenty-five percent of the total fees
Limited dealer	$((~~250.00~~)) 263.00	December 31	Before January 1	A late renewal penalty of twenty-five percent of the total fees

License Class	License Fee	Annual Expiration Date	Annual Renewal Date	Penalty Amount for Not Renewing Before January 1
Broker	$((~~300.00~~)) 316.00	December 31	Before January 1	A late renewal penalty of twenty-five percent of the total fees
Cash buyer	$((~~100.00~~)) 105.00	December 31	Before January 1	A late renewal penalty of twenty-five percent of the total fees
Agent	$((~~50.00~~)) 52.00	December 31	Before January 1	A late renewal penalty of twenty-five percent of the total fees
Additional license per class	$25.00	December 31	Before January 1	A late renewal penalty of twenty-five percent of the total fees

(2) A licensee can be licensed in more than one class for an additional fee of twenty-five dollars per class. The principal license must be in the class requiring the greatest fee and all requirements must be met for each class in which a license is being requested.

(3) All fees and penalties must be paid before the department issues a license.

(4) Applications for licenses are considered incomplete unless an effective bond or other acceptable form of security is also filed with the director.

(5) Licenses may be obtained by contacting the department's commission merchants program at 360-902-1854 or e-mail at: commerch@agr.wa.gov. Application forms, bond forms, and forms for securities in lieu of a surety bond are available on the department's web site at: ((~~http://www.agr.wa.gov/Inspection/CommissionMerchants/default.htm~~)) http://www.agr.wa.gov/Inspection/CommissionMerchants/default.asp.

WSR 07-13-100
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed June 20, 2007, 10:04 a.m., effective August 1, 2007]

Effective Date of Rule: August 1, 2007.

Purpose: Medical assistance of the health and recovery services administration (HRSA) is clarifying and updating existing sections in chapter 388-550 WAC relating to the outpatient prospective payment system (OPPS), the outpatient sleep apnea/sleep study programs, blood and blood components, and conditions of payment, payment methods, and payment calculations for outpatient hospital services. These amendments change verbiage from "medical assistance administration (MAA)" to "the department," replace "ambulatory payment classification (APC) conversion factor" with "OPPS conversion factor," add the definition for "national payment rate," and ensure the department policies are applied correctly and equitably. Outpatient hospitals providing services to medical assistance clients will be able to use the rule to understand the policy, services provided, and payment limitations.

Citation of Existing Rules Affected by this Order: Amending WAC 388-550-6000, 388-550-6350, 388-550-6500, 388-550-7000, 388-550-7050, 388-550-7100, 388-550-7200, 388-550-7300, 388-550-7400, 388-550-7500, and 388-550-7600.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500.

Adopted under notice filed as WSR 07-10-092 on May 1, 2007.

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 11, 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 11, Repealed 0.

Date Adopted: June 16, 2007.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-20-060, filed 10/1/04, effective 11/1/04)

WAC 388-550-6000 Outpatient hospital services—Conditions of payment and ((~~reimbursement~~)) payment methods. (1) The ((~~medical assistance administration (MAA)~~)) department pays hospitals for covered outpatient hospital services provided to eligible clients when the services meet the provisions in WAC 388-550-1700. All professional medical services must be billed according to chapter 388-531 WAC.

(2) To be paid for covered outpatient hospital services, a hospital provider must:

(a) Have a current core provider agreement with ((~~MAA~~)) the department;

(b) Bill ((~~MAA~~)) the department according to the conditions of payment under WAC 388-502-0100;

(c) Bill ((~~MAA~~)) the department according to the time limits under WAC 388-502-0150; and

(d) Meet program requirements in other applicable WAC and ((~~MAA~~)) the department's published issuances.

(3) ((~~MAA~~)) The department does not pay separately for any services:

(a) Included in a hospital's room charges;

(b) Included as covered under ((~~MAA's~~)) the department's definition of room and board (e.g., nursing services). See WAC 388-550-1050; or

(c) Related to an inpatient hospital admission and provided within one calendar day of a client's inpatient admission.

(4) ((~~MAA~~)) The department does not pay:

(a) A hospital for outpatient hospital services when a managed care plan is contracted with ((~~MAA~~)) the department to cover these services;

(b) More than the "acquisition cost" ("A.C.") for HCPCS (Healthcare Common Procedure Coding System) codes noted in the outpatient fee schedule ((~~as paid "A.C."~~)); or

(c) For cast room, emergency room, labor room, observation room, treatment room, and other room charges in combination when billing periods for these charges overlap.

(5) ((~~MAA~~)) The department uses the outpatient departmental weighted costs-to-charges (ODWCC) rate to pay for covered outpatient services provided in a critical access hospital (CAH). See WAC 388-550-2598.

(6) ((~~MAA~~)) The department uses the maximum allowable fee schedule to pay non-OPPS hospitals and non-CAH hospitals for the following types of covered outpatient hospital services listed in ((~~MAA's~~)) the department's current published outpatient hospital fee schedule and billing instructions:

(a) ((~~Laboratory services~~)) EKG/ECG/EEG and other diagnostics;

(b) Imaging services;

(c) ((~~EKG/ECG/EEG and other diagnostics~~)) Immunizations;

(d) ((~~Physical therapy~~)) Laboratory services;

(e) ((~~Speech/language~~)) Occupational therapy;

(f) ((~~Synagis~~)) Physical therapy;

(g) Sleep studies; ((~~and~~))

(h) Speech/language therapy;

(i) Synagis; and

(j) Other hospital services identified and published by the department.

(7) ((~~MAA~~)) The department uses the hospital outpatient rate as described in WAC 388-550-4500 to pay for covered outpatient hospital services when:

(a) A hospital provider is a non-OPPS or a non-CAH provider; and

(b) The services are not included in subsection (6) of this section.

(8) Hospitals must provide documentation as required and/or requested by ((~~MAA~~)) the department.

(9) All hospital providers must present final charges to the department within three hundred sixty-five days of the "statement covers period from date" shown on the claim. The state of Washington is not liable for payment based on billed charges received beyond three hundred sixty-five days from the "statement covers period from date" shown on the claim.

AMENDATORY SECTION (Amending WSR 98-01-124, filed 12/18/97, effective 1/18/98)

WAC 388-550-6350 Outpatient sleep apnea/sleep study programs. (1) The department ((~~shall~~)) pays for polysomnograms or multiple sleep latency tests only for clients one year of age or older with obstructive sleep apnea or narcolepsy.

(2) The department ((~~shall~~)) pays for polysomnograms or multiple sleep latency tests only when performed in outpatient hospitals approved by the ((~~medical assistance administration (MAA)~~)) the department as centers of excellence for sleep apnea/sleep study programs.

(3) The department ((~~shall~~)) does not require prior authorization for sleep studies as outlined in WAC 388-550-1800.

(4) Hospitals ((~~shall~~)) must bill the department for sleep studies using current procedural terminology codes. The department ((~~shall~~)) does not ((~~reimburse~~)) pay hospitals for these services when billed under revenue codes alone.

AMENDATORY SECTION (Amending WSR 98-01-124, filed 12/18/97, effective 1/18/98)

WAC 388-550-6500 Blood and blood ((~~products~~)) components. (1) The department ((~~shall limit Medicaid reimbursement to a hospital for blood derivatives to~~)) pays a hospital only for:

(a) Blood bank service charges for processing ((~~the~~)) and storage of blood and blood ((~~products~~)) components; and

(b) Blood administration charges.

(2) ((~~Other than payment of blood bank service charges,~~)) The department ((~~shall~~)) does not pay for blood and blood ((~~derivatives~~)) components.

(3) The department ((~~shall~~)) does not pay a hospital separately ((~~reimburse blood bank service charges for handling and processing blood and blood derivatives provided to an individual who is hospitalized when the hospital is reimbursed under~~)) for the services identified in subsection (1) when these services are included and paid using the diagnosis-related group (DRG) ((~~system~~)), per diem, or per case rate payment rates. ((~~The department shall bundle these service charges into the total DRG payment.~~))

(4) The department ((~~shall reimburse a hospital, which is~~)) pays a hospital no more than the hospital's cost, as determined by the department, for the services identified in subsection (1) when the hospital is paid ((~~under~~)) using the ratio of costs-to-charges (RCC) or departmental weighted costs-to-charges (DWCC) payment method((~~, separately for processing blood and blood products~~)).

AMENDATORY SECTION (Amending WSR 04-20-061, filed 10/1/04, effective 11/1/04)

WAC 388-550-7000 Outpatient prospective payment system (OPPS)—General. (1) The ((~~medical assistance administration's (MAA's)~~)) department's outpatient prospective payment system (OPPS) uses an ambulatory payment classification (APC) based reimbursement methodology as its primary reimbursement method. ((~~MAA~~)) The department is basing its OPPS on the centers for medicare and medicaid

services (CMS) prospective payment system for hospital outpatient department services.

(2) For a complete description of the CMS outpatient hospital prospective payment system, including the assignment of status indicators (SIs), see 42 CFR, Chapter IV, Part 419. The Code of Federal Regulations (CFR) is available from the CFR web site and the Government Printing Office, Seattle office. The document is also available for public inspection at the Washington state library (a copy of the document may be obtained upon request, subject to any pertinent charge).

AMENDATORY SECTION (Amending WSR 04-20-061, filed 10/1/04, effective 11/1/04)

WAC 388-550-7050 OPPS—Definitions. The following definitions and abbreviations and those found in WAC 388-550-1050 apply to the ((~~medical assistance administration's (MAA's)~~)) department's outpatient prospective payment system (OPPS):

((~~**"Alternative outpatient payment"** means a payment calculated using a method other than the ambulatory payment classification (APC) method, such as the outpatient hospital rate or the fee schedule.~~))

"Ambulatory payment classification (APC)" means a grouping that categorizes outpatient visits according to the clinical characteristics, the typical resource use, and the costs associated with the diagnoses and the procedures performed.

((~~**"Ambulatory payment classification (APC) weight"** means the relative value assigned to each APC.~~

~~**"Ambulatory payment classification (APC) conversion factor"** means a dollar amount that is one of the components of the APC payment calculation.~~))

"Budget target" means the amount of money appropriated by the legislature or through ((~~MAA's~~)) the department's budget process to pay for a specific group of services, including anticipated caseload changes or vendor rate increases.

"Budget target adjustor" means the ((~~MAA~~)) department specific multiplier applied to all payable ambulatory payment classifications (APCs) to allow ((~~MAA~~)) the department to reach and not exceed the established budget target.

"Discount factor" means the percentage applied to additional significant procedures when a claim has multiple significant procedures or when the same procedure is performed multiple times on the same day. Not all significant procedures are subject to a discount factor.

"Medical visit" means diagnostic, therapeutic, or consultative services provided to a client by a healthcare professional in an outpatient setting.

"Modifier" means a two-digit alphabetic and/or numeric identifier that is added to the procedure code to indicate the type of service performed. The modifier provides the means by which the reporting hospital can describe or indicate that a performed service or procedure has been altered by some specific circumstance but not changed in its definition or code. The modifier can affect payment or be used for information only. Modifiers are listed in fee schedules.

"National payment rate" means a rate for a given procedure code, published by the centers for medicare and medicaid (CMS), that does not include a state or location specific adjustment.

"Observation services" means services furnished by a hospital on the hospital's premises, including use of a bed and periodic monitoring by hospital staff, which are reasonable and necessary to evaluate an outpatient's condition or determine the need for possible admission to the hospital as an inpatient.

"Outpatient code editor (OCE)" means a software program published by 3M Health Information Systems that ((~~MAA~~)) the department uses for classifying and editing claims in ambulatory payment classification (APC) based OPPS.

"Outpatient prospective payment system (OPPS)" means the payment system used by ((~~MAA~~)) the department to calculate reimbursement to hospitals for the facility component of outpatient services. This system uses ambulatory payment classifications (APCs) as the primary basis of payment.

"Outpatient prospective payment system conversion factor" means a hospital-specific multiplier assigned by the department that is one of the components of the APC payment calculation.

"Pass-throughs" means certain drugs, devices, and biologicals, as identified by centers for medicare and medicaid services (CMS), for which providers are entitled to additional separate payment until the drugs, devices, or biologicals are assigned their own ambulatory payment classification (APC).

"Significant procedure" means a procedure, therapy, or service provided to a client that constitutes the primary reason for the visit to the healthcare professional.

"Status indicator (SI)" means a one-digit identifier assigned to each service by the outpatient code editor (OCE) software.

"SI" see **"status indicator."**

AMENDATORY SECTION (Amending WSR 04-20-061, filed 10/1/04, effective 11/1/04)

WAC 388-550-7100 OPPS—Exempt hospitals. The ((~~medical assistance administration (MAA)~~)) department exempts the following hospitals from the initial implementation of ((~~MAA's~~)) department's outpatient prospective payment system (OPPS). (Refer to other sections in chapter 388-550 WAC for outpatient payment methods ((~~MAA~~)) the department uses to pay hospital providers that are exempt from ((~~MAA's~~)) the department's OPPS.)

(1) Cancer hospitals;

(2) Critical access hospitals;

(3) Free-standing psychiatric hospitals;

(4) ((~~Out-of-state hospitals (Bordering-city hospitals are considered in-state hospitals. See WAC 388-550-1050.);~~

~~(5)~~)) Pediatric hospitals;

((~~(6)~~)) (5) Peer group A hospitals;

((~~(7)~~)) (6) Rehabilitation hospitals; and

((~~(8)~~)) (7) Veterans' and military hospitals.

AMENDATORY SECTION (Amending WSR 04-20-061, filed 10/1/04, effective 11/1/04)

WAC 388-550-7200 OPPS—Payment method. (1) This section describes the payment methods the ((~~medical assistance administration (MAA)~~)) department uses to pay for covered outpatient hospital services provided by hospitals not exempted from the outpatient prospective payment system (OPPS).

AMBULATORY PAYMENT CLASSIFICATION (APC) METHOD

(2) ((~~MAA~~)) The department uses the APC method when the centers for medicare and medicaid services (CMS) has established ((~~either an APC weight or~~)) a national payment rate to pay for covered services. The APC method is the primary payment methodology for OPPS. Examples of services paid by the APC methodology include, but are not limited to:

(a) Ancillary services;

(b) Medical visits;

(((~~b~~))) (c) Nonpass-through drugs or devices;

(d) Observation services;

(e) Packaged services subject to separate payment when criteria are met;

(f) Pass-through drugs;

(g) Significant procedures that are not subject to multiple procedure discounting (except for dental-related services);

(((~~c~~))) (h) Significant procedures that are subject to multiple procedure discounting; and

(((~~(d) Nonpass-through drugs or devices;~~

~~(e) Observation services; and~~

~~(f) Ancillary services~~)) (i) Other services as identified by the department.

OPPS MAXIMUM ALLOWABLE FEE SCHEDULE

(3) ((~~MAA~~)) The department uses the ((~~OPPS~~)) outpatient fee schedule published in the ((~~OPPS section of MAA's~~)) the department's billing instructions to pay for covered:

(a) Services that are exempted from the APC payment methodology or services for which there are no established weight(s);

(b) Procedures that are on the CMS inpatient only list;

(c) Items, codes, and services that are not covered by medicare;

(d) Corneal tissue acquisition;

(e) ((~~Drugs or biologicals that are pass-throughs; and~~

~~(f)~~)) Devices that are pass-throughs (see WAC 388-550-7050 for definition of pass-throughs); and

(f) Dental clinic services.

HOSPITAL OUTPATIENT RATE

(4) ((~~MAA~~)) The department uses the hospital outpatient rate described in WAC 388-550-3900 and 388-550-4500 to pay for the services listed in subsection (3) of this section for which ((~~MAA~~)) the department has not established a maximum allowable fee.

AMENDATORY SECTION (Amending WSR 04-20-061, filed 10/1/04, effective 11/1/04)

WAC 388-550-7300 OPPS—Payment limitations. (1) The ((~~medical assistance administration (MAA)~~)) department limits payment for covered outpatient hospital services to the current published maximum allowable units of services listed in the outpatient ((~~prospective payment system (OPPS)~~)) fee schedule and published in the ((~~OPPS section of MAA's~~)) department's hospital billing instructions, subject to the following:

(a) When a unit limit for services is not stated in the ((~~OPPS~~)) outpatient fee schedule, ((~~MAA~~)) department pays for services according to the program's unit limits stated in applicable WAC and published issuances.

(b) Because multiple units for services may be factored into the ambulatory payment classification (APC) weight, ((~~MAA~~)) department pays for services according to the unit limit stated in the ((~~OPPS~~)) outpatient fee schedule when the limit is not the same as the program's unit limit stated in applicable WAC and published issuances.

(2) ((~~MAA~~)) The department does not pay separately for covered services that are packaged into the APC rates. These services are paid through the APC rates.

(3) The department:

(a) Limits surgical dental services payment to the ambulatory surgical services fee schedule and pays:

(i) The first surgical procedure at the applicable ambulatory surgery center group rate; and

(ii) The second surgical procedure at fifty percent of the ambulatory surgery center group rate.

(b) Considers all surgical procedures not identified in subsection (a) to be bundled.

(4) The department limits outpatient services billing to one claim per episode of care. If there are late charges, or if any line of the claim is denied, the department requires the entire claim to be adjusted.

AMENDATORY SECTION (Amending WSR 04-20-061, filed 10/1/04, effective 11/1/04)

WAC 388-550-7400 OPPS APC relative weights. The ((~~medical assistance administration (MAA)~~)) department uses the ambulatory payment classification (APC) relative weights established by the centers for medicare and medicaid services (CMS) at the time the budget target adjustor is established. ((~~MAA updates the APC relative weights at least quarterly in conjunction with the outpatient code editor (OCE) updates~~)) See WAC 388-550-7050 for the definition of budget target adjustor.

AMENDATORY SECTION (Amending WSR 04-20-061, filed 10/1/04, effective 11/1/04)

WAC 388-550-7500 OPPS ((~~APC~~)) conversion factor. The ((~~medical assistance administration (MAA) uses the ambulatory payment classification (APC) conversion factors established by the Centers for Medicare and Medicaid Services (CMS) and in effect on November 1, 2004, as MAA's initial APC conversion factors. MAA updates its APC conversion factors at least biannually~~)) department calculates the outpatient prospective payment system (OPPS) conversion factors by modeling, using the centers for medicare and medicaid services (CMS) addendum B and wage index information available and published at the time the OPPS conversion factors are set for the upcoming year.

AMENDATORY SECTION (Amending WSR 04-20-061, filed 10/1/04, effective 11/1/04)

WAC 388-550-7600 OPPS payment calculation. (1) The ((~~medical assistance administration (MAA)~~)) department follows the discounting and modifier policies of the centers for medicare and medicaid services (CMS). ((~~MAA~~)) The department calculates the ambulatory payment classification (APC) payment as follows:

APC payment =
((~~APC relative weight x APC conversion factor x~~)) National payment rate x Hospital OPPS conversion factor x
Discount factor (if applicable) x Units of service (if applicable) x
Budget target adjustor

(2) The total OPPS claim payment is the sum of the APC payments plus the sum of the lesser of the billed charge or allowed charge for each non-APC service.

(3) The department pays hospitals for claims that involve clients who have third-party liability (TPL) insurance, the lesser of either the:

(a) Billed amount minus the third-party payment amount; or

(b) Allowed amount minus the third-party payment amount.