WSR 10-13-163
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medicaid Purchasing Administration)
[Filed June 23, 2010, 8:48 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 388-501-0135, 388-501-0200, 388-502-0100, 388-502-0120, 388-502-0150, 388-502-0160, 388-502-0210, 388-502-0220, 388-531-0050, 388-531-0150, 388-531-0200, 388-531-0300, 388-531-0350, 388-531-0450, 388-531-0500, 388-531-0550, 388-531-0600, 388-531-0650, 388-531-0700, 388-531-0750, 388-531-0800, 388-531-0850, 388-531-0900, 388-531-0950, 388-531-1050, 388-531-1100, 388-531-1150, 388-531-1200, 388-531-1250, 388-531-1300, 388-531-1350, 388-531-1450, 388-531-1500, 388-531-1550, 388-531-1650, 388-531-1700, 388-531-1750, 388-531-1850, 388-531-1900, 388-532-730, 388-532-760, 388-534-0200, 388-539-0200, 388-539-0300, 388-539-0350, 388-551-1350, 388-533-100, 388-533-300, 388-533-400, and 388-556-0200.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at http://www.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6094), on August 24, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than August 25, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on August 24, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by August 10, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Correcting old terminology such as "medical assistance administration (MAA)" to "the department," "internal control number" to "a transaction control number," "medical identification card" to "services card," "foster care placement" to "in out-of-home placement," "EPSDT screens" to "EPSDT exams," fixing errant WAC cross references, adding updated web site links, and removing erroneous addresses.

Reasons Supporting Proposal: Conforms to the new ProviderOne claims processing system and will eliminate confusion for people who read these rules by using correct citations and using uniform terminology.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Wendy L. Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These are just "housekeeping" changes.

A cost-benefit analysis is not required under RCW 34.05.328. Because there are just "housekeeping" changes, it is exempt under RCW 34.05.328 (5)(b)(iv).

June 9, 2010
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-05-010, filed 2/7/08, effective 3/9/08)

WAC 388-501-0135 Patient review and coordination (PRC). (1) **Patient review and coordination (PRC)** program, formerly known as the patient review and restriction (PRR) program, coordinates care and ensures that clients selected for enrollment in PRC use services appropriately and in accordance with department rules and policies.

(a) PRC applies to medical assistance fee-for-service and managed care clients. PRC does not apply to clients eligible for the family planning only program.

(b) PRC is authorized under federal medicaid law by 42 USC 1396n (a)(2) and 42 CFR 431.54.

(2) **Definitions.** The following definitions apply to this section only:

"Appropriate use"—Use of healthcare services that are adapted to or appropriate for a client's healthcare needs.

"Assigned provider"—A department-enrolled healthcare provider or one participating with a department contracted managed care organization (MCO) who agrees to be assigned as a primary provider and coordinator of services for a fee-for-service or managed care client in the PRC program. Assigned providers can include a primary care provider (PCP), a pharmacy, a controlled substances prescriber, and a hospital for nonemergent hospital services.

"At-risk"—A term used to describe one or more of the following:

(a) A client with a medical history of:

• Indications of forging or altering prescriptions;

• Seeking and/or obtaining healthcare services at a frequency or amount that is not medically necessary;

• Potential life-threatening events or life-threatening conditions that required or may require medical intervention.

(b) Behaviors or practices that could jeopardize a client's medical treatment or health including, but not limited to:

• Referrals from social services personnel about inappropriate behaviors or practices that places the client at risk;

• Noncompliance with treatment;

• Paying cash for controlled substances;

• Positive urine drug screen for illicit street drugs or nonprescribed controlled substances; or

• Unauthorized use of a client's ((~~medical assistance identification~~)) services card or for an unauthorized purpose.

"Care management"—Services provided to clients with multiple health, behavioral, and social needs in order to

improve care coordination, client education, and client self-management skills.

"Client"—A person enrolled in a department healthcare program and receiving service from fee-for-service provider(s) or a managed care organization (MCO), contracted with the department.

"Conflicting"—Drugs and/or healthcare services that are incompatible and/or unsuitable for use together because of undesirable chemical or physiological effects.

"Contraindicated"—To indicate or show a medical treatment or procedure is inadvisable or not recommended or warranted.

"Controlled substances prescriber"—Any of the following healthcare professionals who, within their scope of professional practice, are licensed to prescribe and administer controlled substances (see chapter 69.50 RCW, uniform controlled substance act) for a legitimate medical purpose:

- A physician under chapter 18.71 RCW;
- A physician assistant under chapter 18.71A RCW;
- An osteopathic physician under chapter 18.57 RCW;
- An osteopathic physician assistant under chapter 18.57A RCW; and
- An advanced registered nurse practitioner under chapter 18.79 RCW.

"Duplicative"—Applies to the use of the same or similar drugs and healthcare services without due justification. Example: A client receives healthcare services from two or more providers for the same or similar condition(s) in an overlapping time frame, or the client receives two or more similarly acting drugs in an overlapping time frame, which could result in a harmful drug interaction or an adverse reaction.

"Just cause"—A legitimate reason to justify the action taken, including but not limited to, protecting the health and safety of the client.

"Managed care organization" or **"MCO"**—An organization having a certificate of authority or certificate of registration from the office of insurance commissioner, that contracts with the department under a comprehensive risk contract to provide prepaid healthcare services to eligible medical assistance clients under the department's managed care programs.

"Managed care client"—A medical assistance client enrolled in, and receiving healthcare services from, a department-contracted managed care organization (MCO).

"Primary care provider" or **"PCP"**—A person licensed or certified under Title 18 RCW including, but not limited to, a physician, an advanced registered nurse practitioner (ARNP), or a physician assistant who supervises, coordinates, and provides healthcare services to a client, initiates referrals for specialty and ancillary care, and maintains the client's continuity of care.

(3) **Clients selected for PRC review.** The department or MCO selects a client for PRC review when either or both of the following occur:

(a) A utilization review report indicates the client has not utilized healthcare services appropriately; or

(b) Medical providers, social service agencies, or other concerned parties have provided direct referrals to the department or MCO.

(4) **When a fee-for-service client is selected for PRC review** the prior authorization process as defined in chapter 388-530 WAC may be required:

(a) Prior to or during a PRC review; or

(b) When currently in the PRC program.

(5) **Review for placement in the PRC program.** When the department or MCO selects a client for PRC review, the department or MCO staff, with clinical oversight, reviews a client's medical and/or billing history to determine if the client has utilized healthcare services at a frequency or amount that is not medically necessary (42 CFR 431.54(e)).

(6) **Utilization guidelines for PRC placement.** Department or MCO staff use the following utilization guidelines to determine PRC placement. A client may be placed in the PRC program when medical and/or billing histories document any of the following:

(a) Any two or more of the following conditions occurred in a period of ninety consecutive calendar days in the previous twelve months. The client:

(i) Received services from four or more different providers, including physicians, advanced registered nurse practitioners (ARNPs), and physician assistants (PAs);

(ii) Had prescriptions filled by four or more different pharmacies;

(iii) Received ten or more prescriptions;

(iv) Had prescriptions written by four or more different prescribers;

(v) Received similar services from two or more providers in the same day; or

(vi) Had ten or more office visits.

(b) Any one of the following occurred within a period of ninety consecutive calendar days in the previous twelve months. The client:

(i) Made two or more emergency department visits;

(ii) Has a medical history that indicates "at-risk" utilization patterns;

(iii) Made repeated and documented efforts to seek healthcare services that are not medically necessary; or

(iv) Has been counseled at least once by a health care provider, or a department or MCO staff member, with clinical oversight, about the appropriate use of healthcare services.

(c) The client received prescriptions for controlled substances from two or more different prescribers in any one month in a period of ninety consecutive days in the previous twelve months.

(d) The client's medical and/or billing history demonstrates a pattern of the following at any time in the previous twelve months:

(i) The client has a history of using healthcare services in a manner that is duplicative, excessive, or contraindicated; or

(ii) The client has a history of receiving conflicting healthcare services, drugs, or supplies that are not within acceptable medical practice.

(7) **PRC review results.** As a result of the PRC review, the department or MCO staff may take any of the following steps:

(a) Determine that no action is needed and close the client's file;

(b) Send the client and, if applicable, the client's authorized representative, a letter of concern with information on specific findings and notice of potential placement in the PRC program; or

(c) Determine that the utilization guidelines for PRC placement establish that the client has utilized healthcare services at an amount or frequency that is not medically necessary, in which case the department or MCO will take one or more of the following actions:

(i) Refer the client for education on appropriate use of healthcare services;

(ii) Refer the client to other support services or agencies; or

(iii) Place the client into the PRC program for an initial placement period of twenty-four months.

(8) **Initial placement in the PRC program.** When a client is initially placed in the PRC program:

(a) The department or MCO places the client for twenty-four months with one or more of the following types of healthcare providers:

(i) Primary care provider (PCP) (as defined in subsection (2) of this section);

(ii) Pharmacy;

(iii) Controlled substances prescriber;

(iv) Hospital (for nonemergent hospital services); or

(v) Another qualified provider type, as determined by department or MCO program staff on a case-by-case basis.

(b) The managed care client will remain in the same MCO for no less than twelve months unless:

(i) The client moves to a residence outside the MCO's service area and the MCO is not available in the new location; or

(ii) The client's assigned provider no longer participates with the MCO and is available in another MCO, and the client wishes to remain with the current provider.

(c) A managed care client placed in the PRC program must remain in the PRC program for the initial twenty-four month period regardless of whether the client changes MCOs or becomes a fee-for-service client.

(d) A care management program may be offered to a client.

(9) **Notifying the client about placement in the PRC program.** When the client is initially placed in the PRC program, the department or the MCO sends the client and, if applicable, the client's authorized representative, a written notice containing at least the following components:

(a) Informs the client of the reason for the PRC program placement;

(b) Directs the client to respond to the department or MCO within ten business days of the date of the written notice about taking the following actions:

(i) Select providers, subject to department or MCO approval;

(ii) Submit additional healthcare information, justifying the client's use of healthcare services; or

(iii) Request assistance, if needed, from the department or MCO program staff.

(c) Informs the client of hearing or appeal rights (see subsection (14) of this section).

(d) Informs the client that if a response is not received within ten days of the date of the notice, the client will be assigned a provider(s) by the department or MCO.

(10) **Selection and role of assigned provider.** A client may be afforded a limited choice of providers.

(a) The following providers are not available:

(i) A provider who is being reviewed by the department or licensing authority regarding quality of care;

(ii) A provider who has been suspended or disqualified from participating as a department-enrolled or MCO-contracted provider; or

(iii) A provider whose business license is suspended or revoked by the licensing authority.

(b) For a client placed in the PRC program, the assigned:

(i) Provider(s) must be located in the client's local geographic area, in the client's selected MCO, and/or be reasonably accessible to the client.

(ii) Primary care provider (PCP) supervises and coordinates healthcare services for the client, including continuity of care and referrals to specialists when necessary. The PCP must be one of the following:

(A) A physician who meets the criteria as defined in chapter 388-502 WAC;

(B) An advanced registered nurse practitioner (ARNP) who meets the criteria as defined in chapter 388-502 WAC; or

(C) A licensed physician assistant (PA), practicing with a supervising physician.

(iii) Controlled substances prescriber prescribes all controlled substances for the client.

(iv) Pharmacy fills all prescriptions for the client.

(v) Hospital provides all nonemergent hospital services.

(c) A client placed in the PRC program cannot change assigned providers for twelve months after the assignments are made, unless:

(i) The client moves to a residence outside the provider's geographic area;

(ii) The provider moves out of the client's local geographic area and is no longer reasonably accessible to the client;

(iii) The provider refuses to continue to serve the client;

(iv) The client did not select the provider. The client may request to change an assigned provider once within thirty calendar days of the initial assignment;

(v) The client's assigned provider no longer participates with the MCO. In this case, the client may select a new provider from the list of available providers in the MCO or follow the assigned provider to the new MCO.

(d) When an assigned prescribing provider no longer contracts with the department:

(i) All prescriptions from the provider are invalid thirty calendar days following the date the contract ends; and

(ii) All prescriptions from the provider are subject to applicable prescription drugs (outpatient) rules in chapter 388-530 WAC or appropriate MCO rules.

(iii) The client must choose or be assigned another provider according to the requirements in this section.

(11) **PRC placement periods.** The length of time for a client's PRC placement includes:

(a) The initial period of PRC placement, which is a minimum of twenty-four consecutive months.

(b) The second period of PRC placement, which is an additional thirty-six consecutive months.

(c) The third period and each subsequent period of PRC placement, which is an additional seventy-two months.

(12) **Department review of a PRC placement period.** The department or MCO reviews a client's use of healthcare services prior to the end of each PRC placement period described in subsection (11) of this section using the utilization guidelines in subsection (6) of this section.

(a) The department or MCO assigns the next PRC placement period if the utilization guidelines for PRC placement in subsection (6) apply to the client.

(b) When the department or MCO assigns a subsequent PRC placement period, the department or MCO sends the client and, if applicable, the client's authorized representative, a written notice informing the client:

(i) The reason for the subsequent PRC program placement;

(ii) The length of the subsequent PRC placement;

(iii) That the current providers assigned to the client continue to be assigned to the client during the subsequent PRC placement period;

(iv) That all PRC program rules continue to apply; and

(v) Of hearing or appeal rights (see subsection (14) of this section);

(vi) Of the rules that support the decision.

(c) The department may remove a client from PRC placement if the client:

(i) Successfully completes a treatment program that is provided by a chemical dependency service provider certified by the department under chapter 388-805 WAC;

(ii) Submits documentation of completion of the approved treatment program to the department; and

(iii) Maintains appropriate use of healthcare services within the utilization guidelines described in subsection (6) for six months after the date the treatment ends.

(d) The department or MCO determines the appropriate placement period for a client who has been placed back into the program.

(e) A client will remain placed in the PRC program regardless of change in eligibility program type or change in address.

(13) **Client financial responsibility.** A client placed in the PRC program may be billed by a provider and held financially responsible for healthcare services when the client obtains nonemergent services and the provider who renders the services is not assigned or referred under the PRC program.

(14) **Right to hearing or appeal.**

(a) A fee-for-service client who believes the department has taken an invalid action pursuant to this section may request a hearing.

(b) A managed care client who believes the MCO has taken an invalid action pursuant to this section or chapter 388-538 WAC must exhaust the MCO's internal appeal process set forth in WAC 388-538-110 prior to requesting a hearing. Managed care clients can not change MCOs until the appeal or hearing is resolved and there is a final ruling.

(c) A client must request the hearing or appeal within ninety calendar days after the client receives the written notice of placement in the PRC program.

(d) The department conducts a hearing according to chapter 388-02 WAC. Definitions for the terms "hearing," "initial order," and "final order" used in this subsection are found in WAC 388-02-0010.

(e) A client who requests a hearing or appeal within ten calendar days from the date of the written notice of an initial PRC placement period under subsection (11)(a) of this section will not be placed in the PRC program until the date an initial order is issued that supports the client's placement in the PRC program or otherwise ordered by an administrative law judge (ALJ).

(f) A client who requests a hearing or appeal more than ten calendar days from the date of the written notice under subsection (9) of this section will remain placed in the PRC program unless a final administrative order is entered that orders the client's removal from the program.

(g) A client who requests a hearing or appeal within ninety days from the date of receiving the written notice under subsection (9) of this section and who has already been assigned providers will remain placed in the PRC program unless a final administrative order is entered that orders the client's removal from the program.

(h) An administrative law judge (ALJ) may rule that the client be placed in the PRC program prior to the date the record is closed and prior to the date the initial order is issued based on a showing of just cause.

(i) The client who requests a hearing challenging placement into the PRC program has the burden of proving the department's or MCO's action was invalid. For standard of proof, see WAC 388-02-0485.

AMENDATORY SECTION (Amending WSR 00-11-141, filed 5/23/00, effective 6/23/00)

WAC 388-501-0200 Third-party resources. (1) ((~~MAA~~)) The department requires a provider to seek timely reimbursement from a third party when a client has available third-party resources, except as described under subsections (2) and (3) of this section.

(2) ((~~MAA~~)) The department pays for medical services and seeks reimbursement from the liable third party when the claim is for any of the following:

(a) Prenatal care;

(b) Labor, delivery, and postpartum care (except inpatient hospital costs) for a pregnant woman; or

(c) Preventive pediatric services as covered under the EPSDT program.

(3) ((~~MAA~~)) The department pays for medical services and seeks reimbursement from any liable third party when both of the following apply:

(a) The provider submits to ((~~MAA~~)) the department documentation of billing the third party and the provider has not received payment after thirty days from the date of services; and

(b) The claim is for a covered service provided to a client on whose behalf the office of support enforcement is enforc-

ing an absent parent to pay support. For the purpose of this section, "is enforcing" means the absent parent either:

(i) Is not complying with an existing court order; or

(ii) Received payment directly from the third party and did not pay for the medical services.

(4) The provider may not bill ((~~MAA~~)) the department or the client for a covered service when a third party pays a provider the same amount as or more than the ((~~MAA~~)) department rate.

(5) When the provider receives payment from the third party after receiving reimbursement from ((~~MAA~~)) the department, the provider must refund to ((~~MAA~~)) the department the amount of the:

(a) Third-party payment when the payment is less than ((~~MAA's~~)) the department's maximum allowable rate; or

(b) ((~~MAA~~)) The department payment when the third-party payment is equal to or greater than ((~~MAA's~~)) the department's maximum allowable rate.

(6) ((~~MAA~~)) The department is not responsible to pay for medical services when the third-party benefits are available to pay for the client's medical services at the time the provider bills ((~~MAA~~)) the department, except as described under subsections (2) and (3) of this section.

(7) The client is liable for charges for covered medical services that would be paid by the third party payment when the client either:

(a) Receives direct third-party reimbursement for such services; or

(b) Fails to execute legal signatures on insurance forms, billing documents, or other forms necessary to receive insurance payments for services rendered. See WAC 388-505-0540 for assignment of rights.

(8) ((~~MAA~~)) The department considers an adoptive family to be a third-party resource for the medical expenses of the birth mother and child only when there is a written contract between the adopting family and either the birth mother, the attorney, the provider, or the adoption service. The contract must specify that the adopting family will pay for the medical care associated with the pregnancy.

(9) A provider cannot refuse to furnish covered services to a client because of a third party's potential liability for the services.

(10) For third-party liability on personal injury litigation claims, ((~~MAA~~)) the department is responsible for providing medical services as described under WAC 388-501-0100.

AMENDATORY SECTION (Amending WSR 06-13-042, filed 6/15/06, effective 7/16/06)

WAC 388-502-0100 General conditions of payment. (1) The department reimburses for medical services furnished to an eligible client when all of the following apply:

(a) The service is within the scope of care of the client's medical assistance program;

(b) The service is medically or dentally necessary;

(c) The service is properly authorized;

(d) The provider bills within the time frame set in WAC 388-502-0150;

(e) The provider bills according to department rules and billing instructions; and

(f) The provider follows third-party payment procedures.

(2) The department is the payer of last resort, unless the other payer is:

(a) An Indian health service;

(b) A crime victims program through the department of labor and industries; or

(c) A school district for health services provided under the Individuals with Disabilities Education Act.

(3) The department does not reimburse providers for medical services identified by the department as client financial obligations, and deducts from the payment the costs of those services identified as client financial obligations. Client financial obligations include, but are not limited to, the following:

(a) Copayments (co-pays) (unless the criteria in chapter 388-517 WAC or WAC 388-501-0200 are met);

(b) Deductibles (unless the criteria in chapter 388-517 WAC or WAC 388-501-0200 are met);

(c) Emergency medical expense requirements (EMER); and

(d) Spenddown (see WAC 388-519-0110).

(4) The provider must accept medicare assignment for claims involving clients eligible for both medicare and medical assistance before ((~~MAA~~)) the department makes any payment.

(5) The provider is responsible for verifying whether a client has medical assistance coverage for the dates of service.

(6) The department may reimburse a provider for services provided to a person if it is later determined that the person was ineligible for the service at the time it was provided if:

(a) The department considered the person eligible at the time of service;

(b) The service was not otherwise paid for; and

(c) The provider submits a request for payment to the department.

(7) The department does not pay on a fee-for-service basis for a service for a client who is enrolled in a managed care plan when the service is included in the plan's contract with the department.

(8) Information about medical care for jail inmates is found in RCW 70.48.130.

(9) The department pays for medically necessary services on the basis of usual and customary charges or the maximum allowable fee established by the department, whichever is lower.

AMENDATORY SECTION (Amending WSR 08-08-064, filed 3/31/08, effective 5/1/08)

WAC 388-502-0120 Payment for healthcare services provided outside the state of Washington. (1) The department pays for healthcare services provided outside the state of Washington only when the service meets the provisions set forth in WAC 388-501-0180, 388-501-0182, 388-501-0184, and specific program WAC.

(2) With the exception of hospital services and nursing facilities, the department pays the provider of service in des-

ignated bordering cities as if the care was provided within the state of Washington (see WAC 388-501-0175).

(3) With the exception of designated bordering cities, the department does not pay for healthcare services provided to clients in medical care services (MCS) programs outside the state of Washington (see WAC 388-556-0500).

(4) With the exception of hospital services (see subsection (5) of this section), the department pays for healthcare services provided outside the state of Washington at the lower of:

(a) The billed amount; or

(b) The rate established by the Washington state medical assistance programs.

(5) The department pays for hospital services provided in designated bordering cities and outside the state of Washington in accordance with the provisions of WAC 388-550-3900, 388-550-4000, 388-550-4800 and 388-550-6700.

(6) The department pays nursing facilities located outside the state of Washington when approved by the aging and disability services administration (ADSA) at the lower of the billed amount or the adjusted statewide average reimbursement rate for in-state nursing facility care, only in the following limited circumstances:

(a) Emergency situations; or

(b) When the client intends to return to Washington state and the out-of-state stay is for:

(i) Thirty days or less; or

(ii) More than thirty days if approved by ADSA.

(7) To receive payment from the department, an out-of-state provider must:

(a) Have a signed agreement with the department;

(b) Meet the functionally equivalent licensing requirements of the state or province in which care is rendered;

(c) Meet the conditions in WAC 388-502-0100 and 388-502-0150;

(d) Satisfy all medicaid conditions of participation;

(e) Accept the department's payment as payment in full according to 42 CFR 447.15; and

(f) If a Canadian provider, bill at the U.S. exchange rate in effect at the time the service was provided.

(8) For covered services for eligible clients, ((~~MAA~~)) the department reimburses other approved out-of-state providers at the lower of:

(a) The billed amount; or

(b) The rate paid by the Washington state Title XIX medicaid program.

AMENDATORY SECTION (Amending WSR 09-12-063, filed 5/28/09, effective 7/1/09)

WAC 388-502-0150 Time limits for providers to bill the department. Providers must bill the department for covered services provided to eligible clients as follows:

(1) The department requires providers to submit initial claims and adjust prior claims in a timely manner. The department has three timeliness standards:

(a) For initial claims, see subsections (3), (4), (5), and (6) of this section;

(b) For resubmitted claims other than prescription drug claims and claims for major trauma services, see subsections (7) and (8) of this section;

(c) For resubmitted prescription drug claims, see subsections (9) and (10) of this section; and

(d) For resubmitting claims for major trauma services, see subsection (11) of this section.

(2) The provider must submit claims to the department as described in the department's current published billing instructions.

(3) Providers must submit the initial claim to the department and have ((~~an internal~~)) a transaction control number (((~~ICN~~))) (TCN) assigned by the department within three hundred sixty-five calendar days from any of the following:

(a) The date the provider furnishes the service to the eligible client;

(b) The date a final fair hearing decision is entered that impacts the particular claim;

(c) The date a court orders the department to cover the service; or

(d) The date the department certifies a client eligible under delayed certification criteria.

(4) The department may grant exceptions to the time limit of three hundred sixty-five calendar days for initial claims when billing delays are caused by either of the following:

(a) The department's certification of a client for a retroactive period; or

(b) The provider proves to the department's satisfaction that there are other extenuating circumstances.

(5) The department requires providers to bill known third parties for services. See WAC 388-501-0200 for exceptions. Providers must meet the timely billing standards of the liable third parties in addition to the department's billing limits.

(6) When a client is covered by both medicare and medicaid, the provider must bill medicare for the service before billing the initial claim to the department. If medicare:

(a) Pays the claim the provider must bill the department within six months of the date medicare processes the claim; or

(b) Denies payment of the claim, the department requires the provider to meet the three hundred sixty-five-day requirement for timely initial claims as described in subsection (3) of this section.

(7) The following applies to claims with a date of service or admission before July 1, 2009:

(a) Within thirty-six months of the date the service was provided to the client, a provider may resubmit, modify, or adjust any claim, other than a prescription drug claim or a claim for major trauma services, with a timely ((~~ICN~~)) TCN. This applies to any claim, other than a prescription drug claim or a claim for major trauma services, that met the time limits for an initial claim, whether paid or denied. The department does not accept any claim for resubmission, modification, or adjustment after the thirty-six-month period ends.

(b) After thirty-six months from the date the service was provided to the client, a provider cannot refund overpayments by claim adjustment; a provider must refund overpayments by a negotiable financial instrument, such as a bank check.

(8) The following applies to claims with a date of service or admission on or after July 1, 2009:

(a) Within twenty-four months of the date the service was provided to the client, a provider may resubmit, modify, or adjust an initial claim, other than a prescription drug claim or a claim for major trauma services.

(b) After twenty-four months from the date the service was provided to the client, the department does not accept any claim for resubmission, modification, or adjustment. This twenty-four-month period does not apply to overpayments that a provider must refund to the department by a negotiable financial instrument, such as a bank check.

(9) The department allows providers to resubmit, modify, or adjust any prescription drug claim with a timely ((~~ICN~~)) TCN within fifteen months of the date the service was provided to the client. After fifteen months, the department does not accept any prescription drug claim for resubmission, modification or adjustment.

(10) The fifteen-month period described in subsection (9) of this section does not apply to overpayments that a prescription drug provider must refund to the department. After fifteen months a provider must refund overpayments by a negotiable financial instrument, such as a bank check.

(11) The department allows a provider of trauma care services to resubmit, modify, or adjust, within three hundred and sixty-five calendar days of the date of service, any trauma claim that meets the criteria specified in WAC 388-531-2000 (for physician claims) or WAC 388-550-5450 (for hospital claims) for the purpose of receiving payment from the trauma care fund (TCF).

(a) No increased payment from the TCF is allowed for an otherwise qualifying trauma claim that is resubmitted after three hundred sixty-five calendar days from the date of service.

(b) Resubmission of or any adjustments to a trauma claim for purposes other than receiving TCF payments are subject to the provisions of this section.

(12) The three hundred sixty-five-day period described in subsection (11) of this section does not apply to overpayments from the TCF that a trauma care provider must refund to the department. A provider must refund an overpayment for a trauma claim that received payment from TCF using a method specified by the department.

(13) If a provider fails to bill a claim according to the requirements of this section and the department denies payment of the claim, the provider or any provider's agent cannot bill the client or the client's estate. The client is not responsible for the payment.

AMENDATORY SECTION (Amending WSR 10-10-022, filed 4/26/10, effective 5/27/10)

WAC 388-502-0160 Billing a client. (1) The purpose of this section is to specify the limited circumstances in which:

(a) Fee-for-service or managed care clients can choose to self-pay for medical assistance services; and

(b) Providers (as defined in WAC 388-500-0005) have the authority to bill fee-for-service or managed care clients for medical assistance services furnished to those clients.

(2) The provider is responsible for:

(a) Verifying whether the client is eligible to receive medical assistance services on the date the services are provided;

(b) Verifying whether the client is enrolled with a department-contracted managed care organization (MCO);

(c) Knowing the limitations of the services within the scope of the eligible client's medical program (see WAC 388-501-0050 (4)(a) and 388-501-0065);

(d) Informing the client of those limitations;

(e) Exhausting all applicable department or department-contracted MCO processes necessary to obtain authorization for requested service(s);

(f) Ensuring that translation or interpretation is provided to clients with limited English proficiency (LEP) who agree to be billed for services in accordance with this section; and

(g) Retaining all documentation which demonstrates compliance with this section.

(3) Unless otherwise specified in this section, providers must accept as payment in full the amount paid by the department or department-contracted MCO for medical assistance services furnished to clients. See 42 CFR § 447.15.

(4) A provider must not bill a client, or anyone on the client's behalf, for any services until the provider has completed all requirements of this section, including the conditions of payment described in department's rules, the department's fee-for-service billing instructions, and the requirements for billing the department-contracted MCO in which the client is enrolled, and until the provider has then fully informed the client of his or her covered options. A provider must not bill a client for:

(a) Any services for which the provider failed to satisfy the conditions of payment described in department's rules, the department's fee-for-service billing instructions, and the requirements for billing the department-contracted MCO in which the client is enrolled.

(b) A covered service even if the provider has not received payment from the department or the client's MCO.

(c) A covered service when the department denies an authorization request for the service because the required information was not received from the provider or the prescriber under WAC 388-501-0165 (7)(c)(i).

(5) If the requirements of this section are satisfied, then a provider may bill a fee-for-service or a managed care client for a covered service, defined in WAC 388-501-0050(9), or a noncovered service, defined in WAC 388-501-0050(10) and 388-501-0070. The client and provider must sign and date the DSHS form 13-879, Agreement to Pay for Healthcare Services, before the service is furnished. DSHS form 13-879, including translated versions, is available to download at http://www1.dshs.wa.gov/msa/forms/eforms.html. The requirements for this subsection are as follows:

(a) The agreement must:

(i) Indicate the anticipated date the service will be provided, which must be no later than ninety calendar days from the date of the signed agreement;

(ii) List each of the services that will be furnished;

(iii) List treatment alternatives that may have been covered by the department or department-contracted MCO;

(iv) Specify the total amount the client must pay for the service;

(v) Specify what items or services are included in this amount (such as pre-operative care and postoperative care). See WAC 388-501-0070(3) for payment of ancillary services for a noncovered service;

(vi) Indicate that the client has been fully informed of all available medically appropriate treatment, including services that may be paid for by the department or department-contracted MCO, and that he or she chooses to get the specified service(s);

(vii) Specify that the client may request an exception to rule (ETR) in accordance with WAC ((~~388-526-2610~~)) 388-501-0160 when the department denies a request for a noncovered service and that the client may choose not to do so;

(viii) Specify that the client may request an administrative hearing in accordance with WAC 388-526-2610 to appeal the department's denial of a request for prior authorization of a covered service and that the client may choose not to do so;

(ix) Be completed only after the provider and the client have exhausted all applicable department or department-contracted MCO processes necessary to obtain authorization of the requested service, except that the client may choose not to request an ETR or an administrative hearing regarding department denials of authorization for requested service(s); and

((~~(ix)~~)) (x) Specify which reason in subsection (b) below applies.

(b) The provider must select on the agreement form one of the following reasons (as applicable) why the client is agreeing to be billed for the service(s). The service(s) is:

(i) Not covered by the department or the client's department-contracted MCO and the ETR process as described in WAC 388-501-0160 has been exhausted and the service(s) is denied;

(ii) Not covered by the department or the client's department-contracted MCO and the client has been informed of his or her right to an ETR and has chosen not to pursue an ETR as described in WAC 388-501-0160;

(iii) Covered by the department or the client's department-contracted MCO, requires authorization, and the provider completes all the necessary requirements; however the department denied the service as not medically necessary (this includes services denied as a limitation extension under WAC 388-501-0169); or

(iv) Covered by the department or the client's department-contracted MCO and does not require authorization, but the client has requested a specific type of treatment, supply, or equipment based on personal preference which the department or MCO does not pay for and the specific type is not medically necessary for the client.

(c) For clients with limited English proficiency, the agreement must be the version translated in the client's primary language and interpreted if necessary. If the agreement is translated, the interpreter must also sign it;

(d) The provider must give the client a copy of the agreement and maintain the original and all documentation which supports compliance with this section in the client's file for six years from the date of service. The agreement must be made available to the department for review upon request; and

(e) If the service is not provided within ninety calendar days of the signed agreement, a new agreement must be completed by the provider and signed by both the provider and the client.

(6) There are limited circumstances in which a provider may bill a client without executing DSHS form 13-879, Agreement to Pay for Healthcare Services, as specified in subsection (5) of this section. The following are those circumstances:

(a) The client, the client's legal guardian, or the client's legal representative:

(i) Was reimbursed for the service directly by a third party (see WAC 388-501-0200); or

(ii) Refused to complete and sign insurance forms, billing documents, or other forms necessary for the provider to bill the third party insurance carrier for the service.

(b) The client represented himself/herself as a private pay client and not receiving medical assistance when the client was already eligible for and receiving benefits under a medical assistance program. In this circumstance, the provider must:

(i) Keep documentation of the client's declaration of medical coverage. The client's declaration must be signed and dated by the client, the client's legal guardian, or the client's legal representative; and

(ii) Give a copy of the document to the client and maintain the original for six years from the date of service, for department review upon request.

(c) The bill counts toward the financial obligation of the client or applicant (such as spenddown liability, client participation as described in WAC 388-513-1380, emergency medical expense requirement, deductible, or copayment required by the department). See subsection (7) of this section for billing a medically needy client for spenddown liability;

(d) The client is under the department's or a department-contracted MCO's patient review and coordination (PRC) program (WAC 388-501-0135) and receives nonemergency services from providers or healthcare facilities other than those to whom the client is assigned or referred under the PRC program;

(e) The client is a dual-eligible client with medicare Part D coverage or similar creditable prescription drug coverage and the conditions of WAC 388-530-7700 (2)(a)(iii) are met;

(f) The services provided to a TAKE CHARGE or family planning only client are not within the scope of the client's benefit package;

(g) The services were noncovered ambulance services (see WAC 388-546-0250(2));

(h) A fee-for-service client chooses to receive nonemergency services from a provider who is not contracted with the department after being informed by the provider that he or she is not contracted with the department and that the services offered will not be paid by the client's healthcare program; and

(i) A department-contracted MCO enrollee chooses to receive nonemergency services from providers outside of the MCO's network without authorization from the MCO, i.e., a nonparticipating provider.

(7) Under chapter 388-519 WAC, an individual who has applied for medical assistance is required to spend down excess income on healthcare expenses to become eligible for coverage under the medically needy program. An individual must incur healthcare expenses greater than or equal to the amount that he or she must spend down. The provider is prohibited from billing the individual for any amount in excess of the spenddown liability assigned to the bill.

(8) There are situations in which a provider must refund the full amount of a payment previously received from or on behalf of an individual and then bill the department for the covered service that had been furnished. In these situations, the individual becomes eligible for a covered service that had already been furnished. Providers must then accept as payment in full the amount paid by the department or managed care organization for medical assistance services furnished to clients. These situations are as follows:

(a) The individual was not receiving medical assistance on the day the service was furnished. The individual applies for medical assistance later in the same month in which the service was provided and the department makes the individual eligible for medical assistance from the first day of that month;

(b) The client receives a delayed certification for medical assistance as defined in WAC 388-500-0005; or

(c) The client receives a certification for medical assistance for a retroactive period according to 42 CFR § 435.914(a) and defined in WAC 388-500-0005.

(9) Regardless of any written, signed agreement to pay, a provider may not bill, demand, collect, or accept payment or a deposit from a client, anyone on the client's behalf, or the department for:

(a) Copying, printing, or otherwise transferring healthcare information, as the term healthcare information is defined in chapter 70.02 RCW, to another healthcare provider. This includes, but is not limited to:

(i) Medical/dental charts;

(ii) Radiological or imaging films; and

(iii) Laboratory or other diagnostic test results.

(b) Missed, cancelled, or late appointments;

(c) Shipping and/or postage charges;

(d) "Boutique," "concierge," or enhanced service packages (e.g., newsletters, 24/7 access to provider, health seminars) as a condition for access to care; or

(e) The price differential between an authorized service or item and an "upgraded" service or item (e.g., a wheelchair with more features; brand name versus generic drugs).

AMENDATORY SECTION (Amending WSR 00-15-049, filed 7/17/00, effective 8/17/00)

WAC 388-502-0210 Statistical data-provider reports. (1) At the request of the ((~~medical assistance administration (MAA)~~)) department, all providers enrolled with ((~~MAA~~)) department programs must submit full reports, as specified by ((~~MAA~~)) the department, of goods and services furnished to eligible medical assistance clients. ((~~MAA~~)) The department furnishes the provider with a standardized format to report these data.

(2) ((~~MAA~~)) The department analyzes the data collected from the providers' reports to secure statistics on costs of goods and services furnished and makes a report of the analysis available to ((~~MAA's~~)) the department's advisory committee, the state welfare medical care committee, representative organizations of provider groups enrolled with ((~~MAA~~)) the department, and any other interested organizations or individuals.

AMENDATORY SECTION (Amending WSR 99-16-070, filed 8/2/99, effective 9/2/99)

WAC 388-502-0220 Administrative appeal contractor/provider rate reimbursement. (1) Any enrolled contractor/provider of medical services has a right to an administrative appeal when the contractor/provider disagrees with the ((~~medical assistance administration's (MAA)~~)) department reimbursement rate. The exception to this is nursing facilities governed by WAC 388-96-904.

(2) The first level of appeal. A contractor/provider who wants to contest a reimbursement rate must file a written appeal with ((~~MAA~~)) the department.

(a) The appeal must include all of the following:

(i) A statement of the specific issue being appealed;

(ii) Supporting documentation; and

(iii) A request for ((~~MAA~~)) the department to recalculate the rate.

(b) When a contractor/provider appeals a portion of a rate, ((~~MAA~~)) the department may review all components of the reimbursement rate.

(c) In order to complete a review of the appeal, ((~~MAA~~)) the department may do one or both of the following:

(i) Request additional information; and/or

(ii) Conduct an audit of the documentation provided.

(d) ((~~MAA~~)) The department issues a decision or requests additional information within sixty calendar days of receiving the rate appeal request.

(i) When ((~~MAA~~)) the department requests additional information, the contractor/provider has forty-five calendar days from the date of ((~~MAA's~~)) the department's request to submit the additional information.

(ii) ((~~MAA~~)) The department issues a decision within thirty calendar days of receipt of the completed information.

(e) ((~~MAA~~)) The department may adjust rates retroactively to the effective date of a new rate or a rate change. In order for a rate increase to be retroactive, the contractor/provider must file the appeal within sixty calendar days of the date of the rate notification letter from ((~~MAA~~)) the department. ((~~MAA~~)) the department does not consider any appeal filed after the sixty day period to be eligible for retroactive adjustment.

(f) ((~~MAA~~)) The department may grant a time extension for the appeal period if the contractor/provider makes such a request within the sixty-day period referenced under (e) of this subsection.

(g) Any rate increase resulting from an appeal filed within the sixty-day period described in subsection (2)(e) of this section is effective retroactively to the rate effective date in the notification letter.

(h) Any rate increase resulting from an appeal filed after the sixty-day period described in subsection (2)(e) of this section is effective on the date the rate appeal is received by the department.

(i) Any rate decrease resulting from an appeal is effective on the date specified in the appeal decision letter.

(j) Any rate change that ((~~MAA~~)) the department grants that is the result of fraudulent practices on the part of the contractor/provider as described under RCW 74.09.210 is exempt from the appeal provisions in this chapter.

(3) The second level of appeal. When the contractor/provider disagrees with a rate review decision, it may file a request for a dispute conference with ((~~MAA~~)) the department. For this section "dispute conference" means an informal administrative hearing for the purpose of resolving contractor/provider disagreements with a department action as described under subsection (1) of this section, and not agreed upon at the first level of appeal. The dispute conference is not governed by the Administrative Procedure Act, chapter 34.05 RCW.

(a) If a contractor/provider files a request for a dispute conference, it must submit the request to ((~~MAA~~)) the department within thirty calendar days after the contractor/provider receives the rate review decision. ((~~MAA~~)) The department does not consider dispute conference requests submitted after the thirty-day period for the first level decision.

(b) ((~~MAA~~)) The department conducts the dispute conference within ninety calendar days of receiving the request.

(c) A department-appointed conference chairperson issues the final decision within thirty calendar days of the conference. Extensions of time for extenuating circumstances may be granted if all parties agree.

(d) Any rate increase or decrease resulting from a dispute conference decision is effective on the date specified in the dispute conference decision.

(e) The dispute conference is the final level of administrative appeal within the department and precede judicial action.

(4) ((~~MAA~~)) The department considers that a contractor/provider who fails to attempt to resolve disputed rates as provided in this section has abandoned the dispute.

AMENDATORY SECTION (Amending WSR 04-20-059, filed 10/1/04, effective 11/1/04)

WAC 388-531-0050 Physician-related services definitions. The following definitions and abbreviations and those found in WAC 388-500-0005, apply to this chapter. Defined words and phrases are bolded the first time they are used in the text.

"Acquisition cost" means the cost of an item excluding shipping, handling, and any applicable taxes.

"Acute care" means care provided for clients who are not medically stable. These clients require frequent monitoring by a health care professional in order to maintain their health status. See also WAC 246-335-015.

"Acute physical medicine and rehabilitation (PM&R)" means a comprehensive inpatient and rehabilitative program coordinated by a multidisciplinary team at ((~~an MAA-approved~~)) a department-approved rehabilitation facility. The program provides twenty-four hour specialized nursing services and an intense level of specialized therapy (speech, physical, and occupational) for a diagnostic category for which the client shows significant potential for functional improvement (see WAC 388-550-2501).

"Add-on procedure(s)" means secondary procedure(s) that are performed in addition to another procedure.

"Admitting diagnosis" means the medical condition responsible for a hospital admission, as defined by ICD-9-M diagnostic code.

"Advanced registered nurse practitioner (ARNP)" means a registered nurse prepared in a formal educational program to assume an expanded health services provider role in accordance with WAC 246-840-300 and 246-840-305.

"Aging and disability services administration (ADSA)" means the administration that administers directly or contracts for long-term care services, including but not limited to nursing facility care and home and community services. See WAC 388-71-0202.

"Allowed charges" means the maximum amount reimbursed for any procedure that is allowed by ((~~MAA~~)) the department.

"Anesthesia technical advisory group (ATAG)" means an advisory group representing anesthesiologists who are affected by the implementation of the anesthesiology fee schedule.

"Bariatric surgery" means any surgical procedure, whether open or by laparoscope, which reduces the size of the stomach with or without bypassing a portion of the small intestine and whose primary purpose is the reduction of body weight in an obese individual.

"Base anesthesia units (BAU)" means a number of anesthesia units assigned to a surgical procedure that includes the usual pre-operative, intra-operative, and post-operative visits. This includes the administration of fluids and/or blood incident to the anesthesia care, and interpretation of noninvasive monitoring by the anesthesiologist.

"Bundled services" means services integral to the major procedure that are included in the fee for the major procedure. Bundled services are not reimbursed separately.

"Bundled supplies" means supplies which are considered to be included in the practice expense RVU of the medical or surgical service of which they are an integral part.

"By report (BR)" means a method of reimbursement in which ((~~MAA~~)) the department determines the amount it will pay for a service that is not included in ((~~MAA's~~)) the department's published fee schedules. ((~~MAA~~)) The department may request the provider to submit a "report" describing the nature, extent, time, effort, and/or equipment necessary to deliver the service.

"Call" means a face-to-face encounter between the client and the provider resulting in the provision of services to the client.

"Cast material maximum allowable fee" means a reimbursement amount based on the average cost among suppliers for one roll of cast material.

"Centers for Medicare and Medicaid Services (CMS)" means the agency within the federal Department of Health and Human Services (DHHS) with oversight responsibility for medicare and medicaid programs.

"Certified registered nurse anesthetist (CRNA)" means an advanced registered nurse practitioner (ARNP) with formal training in anesthesia who meets all state and national criteria for certification. The American Association of Nurse Anesthetists specifies the National Certification and scope of practice.

"Children's health insurance plan (CHIP)," see chapter 388-542 WAC.

"Clinical Laboratory Improvement Amendment (CLIA)" means regulations from the U.S. Department of Health and Human Services that require all laboratory testing sites to have either a CLIA registration or a CLIA certificate of waiver in order to legally perform testing anywhere in the U.S.

"Conversion factors" means dollar amounts ((~~MAA~~)) the department uses to calculate the maximum allowable fee for physician-related services.

"Covered service" means a service that is within the scope of the eligible client's medical care program, subject to the limitations in this chapter and other published WAC.

"CPT," see "current procedural terminology."

"Critical care services" means physician services for the care of critically ill or injured clients. A critical illness or injury acutely impairs one or more vital organ systems such that the client's survival is jeopardized. Critical care is given in a critical care area, such as the coronary care unit, intensive care unit, respiratory care unit, or the emergency care facility.

"Current procedural terminology (CPT)" means a systematic listing of descriptive terms and identifying codes for reporting medical services, procedures, and interventions performed by physicians and other practitioners who provide physician-related services. CPT is copyrighted and published annually by the American Medical Association (AMA).

"Diagnosis code" means a set of numeric or alphanumeric characters assigned by the ICD-9-CM, or successor document, as a shorthand symbol to represent the nature of a disease.

"Emergency medical condition(s)" means a medical condition(s) that manifests itself by acute symptoms of sufficient severity so that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

"Emergency services" means medical services required by and provided to a patient experiencing an emergency medical condition.

"Estimated acquisition cost (EAC)" means the department's best estimate of the price providers generally and currently pay for drugs and supplies.

"Evaluation and management (E&M) codes" means procedure codes which categorize physician services by type of service, place of service, and patient status.

"Expedited prior authorization" means the process of obtaining authorization that must be used for selected services, in which providers use a set of numeric codes to indicate to ((~~MAA~~)) the department which acceptable indications, conditions, diagnoses, and/or criteria are applicable to a particular request for services.

"Experimental" means a term to describe a procedure, or course of treatment, which lacks sufficient scientific evidence of safety and effectiveness. See WAC 388-531-0550. A service is not "experimental" if the service:

(1) Is generally accepted by the medical profession as effective and appropriate; and

(2) Has been approved by the FDA or other requisite government body, if such approval is required.

"Fee-for-service" means the general payment method ((~~MAA~~)) the department uses to reimburse providers for covered medical services provided to medical assistance clients when those services are not covered under ((~~MAA's~~)) the department's healthy options program or children's health insurance program (CHIP) programs.

"Flat fee" means the maximum allowable fee established by ((~~MAA~~)) the department for a service or item that does not have a relative value unit (RVU) or has an RVU that is not appropriate.

"Geographic practice cost index (GPCI)" as defined by medicare, means a medicare adjustment factor that includes local geographic area estimates of how hard the provider has to work (work effort), what the practice expenses are, and what malpractice costs are. The GPCI reflects one-fourth the difference between the area average and the national average.

"Global surgery reimbursement," see WAC 388-531-1700.

"HCPCS Level II" means a coding system established by CMS (formerly known as the Health Care Financing Administration) to define services and procedures not included in CPT.

"Health care financing administration common procedure coding system (HCPCS)" means the name used for the Centers for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration) codes made up of CPT and HCPCS level II codes.

"Health care team" means a group of health care providers involved in the care of a client.

"Hospice" means a medically directed, interdisciplinary program of palliative services which is provided under arrangement with a Title XVIII Washington licensed and certified Washington state hospice for terminally ill clients and the clients' families.

"ICD-9-CM," see "International Classification of Diseases, 9th Revision, Clinical Modification."

"Informed consent" means that an individual consents to a procedure after the provider who obtained a properly completed consent form has done all of the following:

(1) Disclosed and discussed the client's diagnosis; and

(2) Offered the client an opportunity to ask questions about the procedure and to request information in writing; and

(3) Given the client a copy of the consent form; and

(4) Communicated effectively using any language interpretation or special communication device necessary per 42 C.F.R. Chapter IV 441.257; and

(5) Given the client oral information about all of the following:

(a) The client's right to not obtain the procedure, including potential risks, benefits, and the consequences of not obtaining the procedure; and

(b) Alternatives to the procedure including potential risks, benefits, and consequences; and

(c) The procedure itself, including potential risks, benefits, and consequences.

"Inpatient hospital admission" means an admission to a hospital that is limited to medically necessary care based on an evaluation of the client using objective clinical indicators, assessment, monitoring, and therapeutic service required to best manage the client's illness or injury, and that is documented in the client's medical record.

"International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM)" means the systematic listing that transforms verbal descriptions of diseases, injuries, conditions, and procedures into numerical or alphanumerical designations (coding).

"Investigational" means a term to describe a procedure, or course of treatment, which lacks sufficient scientific evidence of benefit for a particular condition. A service is not "investigational" if the service:

(1) Is generally accepted by the medical professional as effective and appropriate for the condition in question; or

(2) Is supported by an overall balance of objective scientific evidence, in which the potential risks and potential benefits are examined, demonstrating the proposed service to be of greater overall benefit to the client in the particular circumstance than another, generally available service.

"Life support" means mechanical systems, such as ventilators or heart-lung respirators, which are used to supplement or take the place of the normal autonomic functions of a living person.

"Limitation extension" means a process for requesting and approving reimbursement for covered services whose proposed quantity, frequency, or intensity exceeds that which ((~~MAA~~)) the department routinely reimburses. Limitation extensions require prior authorization.

"Maximum allowable fee" means the maximum dollar amount that ((~~MAA~~)) the department will reimburse a provider for specific services, supplies, and equipment.

"Medically necessary," see WAC 388-500-0005.

"Medicare physician fee schedule data base (MPFSDB)" means the official HCFA publication of the medicare policies and RVUs for the RBRVS reimbursement program.

"Medicare program fee schedule for physician services (MPFSPS)" means the official HCFA publication of the medicare fees for physician services.

"Medicare clinical diagnostic laboratory fee schedule" means the fee schedule used by medicare to reimburse for clinical diagnostic laboratory procedures in the state of Washington.

"Mentally incompetent" means a client who has been declared mentally incompetent by a federal, state, or local court.

"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 physician 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.

"Outpatient" means a client who is receiving medical services in other than an inpatient hospital setting.

"Peer-reviewed medical literature" means medical literature published in professional journals that submit articles for review by experts who are not part of the editorial staff. It does not include publications or supplements to publications primarily intended as marketing material for pharmaceutical, medical supplies, medical devices, health service providers, or insurance carriers.

"Physician care plan" means a written plan of medically necessary treatment that is established by and periodically reviewed and signed by a physician. The plan describes the medically necessary services to be provided by a home health agency, a hospice agency, or a nursing facility.

"Physician standby" means physician attendance without direct face-to-face client contact and which does not involve provision of care or services.

"Physician's current procedural terminology," see "CPT, current procedural terminology."

"PM&R," see acute physical medicine and rehabilitation.

"Podiatric service" means the diagnosis and medical, surgical, mechanical, manipulative, and electrical treatments of ailments of the foot and ankle.

"Pound indicator (#)" means a symbol (#) indicating a CPT procedure code listed in ((~~MAA~~)) the department's fee schedules that is not routinely covered.

"Preventive" means medical practices that include counseling, anticipatory guidance, risk factor reduction interventions, and the ordering of appropriate laboratory and diagnostic procedures intended to help a client avoid or reduce the risk or incidence of illness or injury.

"Prior authorization" means a process by which clients or providers must request and receive ((~~MAA~~)) the department approval for certain medical services, equipment, or supplies, based on medical necessity, before the services are provided to clients, as a precondition for provider reimbursement. Expedited prior authorization and limitation extension are forms of prior authorization.

"Professional component" means the part of a procedure or service that relies on the provider's professional skill or training, or the part of that reimbursement that recognizes the provider's cognitive skill.

"Prognosis" means the probable outcome of a client's illness, including the likelihood of improvement or deterioration in the severity of the illness, the likelihood for recurrence, and the client's probable life span as a result of the illness.

"Prolonged services" means face-to-face client services furnished by a provider, either in the inpatient or outpatient setting, which involve time beyond what is usual for such services. The time counted toward payment for prolonged E&M services includes only face-to-face contact between the provider and the client, even if the service was not continuous.

"Provider," see WAC 388-500-0005.

"Radioallergosorbent test" or **"RAST"** means a blood test for specific allergies.

"RBRVS," see resource based relative value scale.

"RVU," see relative value unit.

"Reimbursement" means payment to a provider or other ((~~MAA approved~~)) department-approved entity who bills according to the provisions in WAC 388-502-0100.

"Reimbursement steering committee (RSC)" means an interagency work group that establishes and maintains RBRVS physician fee schedules and other payment and purchasing systems utilized by the health care authority, ((~~MAA~~)) the department, and department of labor and industries.

"Relative value guide (RVG)" means a system used by the American Society of Anesthesiologists for determining base anesthesia units (BAUs).

"Relative value unit (RVU)" means a unit which is based on the resources required to perform an individual service or intervention.

"Resource based relative value scale (RBRVS)" means a scale that measures the relative value of a medical service or intervention, based on the amount of physician resources involved.

"RBRVS RVU" means a measure of the resources required to perform an individual service or intervention. It is set by medicare based on three components - physician work, practice cost, and malpractice expense. Practice cost varies depending on the place of service.

"RSC RVU" means a unit established by the RSC for a procedure that does not have an established RBRVS RVU or has an RBRVS RVU deemed by the RSC as not appropriate for the service.

"Stat laboratory charges" means charges by a laboratory for performing tests immediately. "Stat" is an abbreviation for the Latin word "statim," meaning immediately.

"Sterile tray" means a tray containing instruments and supplies needed for certain surgical procedures normally done in an office setting. For reimbursement purposes, tray components are considered by HCFA to be nonroutine and reimbursed separately.

"Technical advisory group (TAG)" means an advisory group with representatives from professional organizations whose members are affected by implementation of RBRVS physician fee schedules and other payment and purchasing systems utilized by the health care authority, ((~~MAA~~)) the department, and department of labor and industries.

"Technical component" means the part of a procedure or service that relates to the equipment set-up and technician's time, or the part of the procedure and service reimbursement that recognizes the equipment cost and technician time.

AMENDATORY SECTION (Amending WSR 05-12-022, filed 5/20/05, effective 6/20/05)

WAC 388-531-0150 Noncovered physician-related services—General and administrative. (1) Except as provided in WAC 388-531-0100 and subsection (2) of this section, ((~~MAA~~)) the department does not cover the following:

(a) Acupuncture, massage, or massage therapy;

(b) Any service specifically excluded by statute;

(c) Care, testing, or treatment of infertility, frigidity, or impotency. This includes procedures for donor ovum, sperm, womb, and reversal of vasectomy or tubal ligation;

(d) Cosmetic treatment or surgery, except for medically necessary reconstructive surgery to correct defects attributable to trauma, birth defect, or illness;

(e) Experimental or investigational services, procedures, treatments, devices, drugs, or application of associated services, except when the individual factors of an individual client's condition justify a determination of medical necessity under WAC 388-501-0165;

(f) Hair transplantation;

(g) Marital counseling or sex therapy;

(h) More costly services when ((~~MAA~~)) the department determines that less costly, equally effective services are available;

(i) Vision-related services listed as noncovered in chapter 388-544 WAC;

(j) Payment for body parts, including organs, tissues, bones and blood, except as allowed in WAC 388-531-1750;

(k) Physician-supplied medication, except those drugs administered by the physician in the physician's office;

(l) Physical examinations or routine checkups, except as provided in WAC 388-531-0100;

(m) Routine foot care. This does not include clients who have a medical condition that affects the feet, such as diabetes or arteriosclerosis obliterans. Routine foot care includes, but is not limited to:

(i) Treatment of mycotic disease;

(ii) Removal of warts, corns, or calluses;

(iii) Trimming of nails and other hygiene care; or

(iv) Treatment of flat feet;

(n) Except as provided in WAC 388-531-1600, weight reduction and control services, procedures, treatments, devices, drugs, products, gym memberships, equipment for the purpose of weight reduction, or the application of associated services.

(o) Nonmedical equipment; and

(p) Nonemergent admissions and associated services to out-of-state hospitals or noncontracted hospitals in contract areas.

(2) ((~~MAA~~)) The department covers excluded services listed in (1) of this subsection if those services are mandated under and provided to a client who is eligible for one of the following:

(a) The EPSDT program;

(b) A medicaid program for qualified **medicare** beneficiaries (QMBs); or

(c) A waiver program.

AMENDATORY SECTION (Amending WSR 05-12-022, filed 5/20/05, effective 6/20/05)

WAC 388-531-0200 Physician-related services requiring prior authorization. (1) ((~~MAA~~)) The department requires **prior authorization** for certain services. Prior authorization includes **expedited prior authorization (EPA)** and **limitation extension (LE).** See WAC 388-501-0165.

(2) The EPA process is designed to eliminate the need for telephone prior authorization for selected admissions and procedures.

(a) The provider must create an authorization number using the process explained in ((~~MAA's~~)) the department's physician-related billing instructions.

(b) Upon request, the provider must provide supporting clinical documentation to ((~~MAA~~)) the department showing how the authorization number was created.

(c) Selected nonemergent admissions to contract hospitals require EPA. These are identified in ((~~MAA~~)) the department billing instructions.

(d) Procedures requiring expedited prior authorization include, but are not limited to, the following:

(i) Bladder repair;

(ii) Hysterectomy for clients age forty-five and younger, except with a diagnosis of cancer(s) of the female reproductive system;

(iii) Outpatient magnetic resonance imaging (MRI) and magnetic resonance angiography (MRA);

(iv) Reduction mammoplasties/mastectomy for geynecomastia; and

(v) Strabismus surgery for clients eighteen years of age and older.

(3) ((~~MAA~~)) The department evaluates new technologies under the procedures in WAC 388-531-0550. These require prior authorization.

(4) Prior authorization is required for the following:

(a) Abdominoplasty;

(b) All inpatient hospital stays for **acute physical medicine and rehabilitation (PM&R);**

(c) Cochlear implants, which also:

(i) For coverage, must be performed in an ambulatory surgery center (ASC) or an inpatient or outpatient hospital facility; and

(ii) For reimbursement, must have the invoice attached to the claim;

(d) Diagnosis and treatment of eating disorders for clients twenty-one years of age and older;

(e) Osteopathic manipulative therapy in excess of ((~~MAA's~~)) the department's published limits;

(f) Panniculectomy;

(g) Bariatric surgery (see WAC 388-531-1600); and

(h) Vagus nerve stimulator insertion, which also:

(i) For coverage, must be performed in an inpatient or outpatient hospital facility; and

(ii) For reimbursement, must have the invoice attached to the claim.

(5) ((~~MAA~~)) The department may require a second opinion and/or consultation before authorizing any elective surgical procedure.

(6) Children six year of age and younger do not require authorization for hospitalization.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-0300 Anesthesia providers and covered physician-related services. ((~~MAA~~)) The department bases coverage of anesthesia services on medicare policies and the following rules:

(1) ((~~MAA~~)) The department reimburses providers for covered anesthesia services performed by:

(a) Anesthesiologists;

(b) **Certified registered nurse anesthetists (CRNAs);**

(c) Oral surgeons with a special agreement with ((~~MAA~~)) the department to provide anesthesia services; and

(d) Other providers who have a special agreement with ((~~MAA~~)) the department to provide anesthesia services.

(2) ((~~MAA~~)) The department covers and reimburses anesthesia services for children and noncooperative clients in those situations where the medically necessary procedure cannot be performed if the client is not anesthetized. A statement of the client-specific reasons why the procedure could not be performed without specific anesthesia services must be kept in the client's medical record. Examples of such procedures include:

(a) Computerized tomography (CT);

(b) Dental procedures;

(c) Electroconvulsive therapy; and

(d) Magnetic resonance imaging (MRI).

(3) ((~~MAA~~)) The department covers anesthesia services provided for any of the following:

(a) Dental restorations and/or extractions:

(b) Maternity per subsection (9) of this section. See WAC 388-531-1550 for information about sterilization/hysterectomy anesthesia;

(c) Pain management per subsection (5) of this section;

(d) Radiological services as listed in WAC 388-531-1450; and

(e) Surgical procedures.

(4) For each client, the anesthesiologist provider must do all of the following:

(a) Perform a pre-anesthetic examination and evaluation;

(b) Prescribe the anesthesia plan;

(c) Personally participate in the most demanding aspects of the anesthesia plan, including, if applicable, induction and emergence;

(d) Ensure that any procedures in the anesthesia plan that the provider does not perform, are performed by a qualified individual as defined in the program operating instructions;

(e) At frequent intervals, monitor the course of anesthesia during administration;

(f) Remain physically present and available for immediate diagnosis and treatment of emergencies; and

(g) Provide indicated post anesthesia care.

(5) ((~~MAA~~)) The department does not allow the anaesthesiologist provider to:

(a) Direct more than four anesthesia services concurrently; and

(b) Perform any other services while directing the single or concurrent services, other than attending to medical emergencies and other limited services as allowed by medicare instructions.

(6) ((~~MAA~~)) The department requires the anesthesiologist provider to document in the client's medical record that the medical direction requirements were met.

(7) General anesthesia:

(a) When a provider performs multiple operative procedures for the same client at the same time, ((~~MAA~~)) the department reimburses the base anesthesia units (BAU) for the major procedure only.

(b) ((~~MAA~~)) The department does not reimburse the attending surgeon for anesthesia services.

(c) When more than one anesthesia provider is present on a case, ((~~MAA~~)) the department reimburses as follows:

(i) The supervisory anesthesiologist and certified registered nurse anesthetist (CRNA) each receive fifty percent of the allowed amount.

(ii) For anesthesia provided by a team, ((~~MAA~~)) the department limits reimbursement to one hundred percent of the total allowed reimbursement for the service.

(8) Pain management:

(a) ((~~MAA~~)) The department pays CRNAs or anesthesiologists for pain management services.

(b) ((~~MAA~~)) The department allows two postoperative or pain management epidurals per client, per hospital stay plus the two associated E&M fees for pain management.

(9) Maternity anesthesia:

(a) To determine total time for obstetric epidural anesthesia during normal labor and delivery and c-sections, time begins with insertion and ends with removal for a maximum of six hours. "Delivery" includes labor for single or multiple births, and/or cesarean section delivery.

(b) ((~~MAA~~)) The department does not apply the six-hour limit for anesthesia to procedures performed as a result of post-delivery complications.

(c) See WAC 388-531-1550 for information on anesthesia services during a delivery with sterilization.

(d) See chapter 388-533 WAC for more information about maternity-related services.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-0350 Anesthesia services—Reimbursement for physician-related services. (1) ((~~MAA~~)) The department reimburses anesthesia services on the basis of base anesthesia units (BAU) plus time.

(2) ((~~MAA~~)) The department calculates payment for anesthesia by adding the BAU to the time units and multiplying that sum by the conversion factor. The formula used in the calculation is: (BAU x fifteen) + time) x (conversion factor divided by fifteen) = reimbursement.

(3) ((~~MAA~~)) The department obtains BAU values from the relative value guide **(RVG)**, and updates them annually. ((~~MAA~~)) The department and/or the anesthesia technical advisory group **(ATAG)** members establish the base units for procedures for which anesthesia is appropriate but do not have BAUs established by RVSP and are not defined as add-on.

(4) ((~~MAA~~)) The department determines a budget neutral anesthesia conversion factor by:

(a) Determining the BAUs, time units, and expenditures for a **base period** for the provided procedure. Then,

(b) Adding the latest BAU RVSP to the time units for the base period to obtain an estimate of the new time unit for the procedure. Then,

(c) Multiplying the time units obtained in (b) of this subsection for the new period by a conversion factor to obtain estimated expenditures. Then,

(d) Comparing the expenditures obtained in (c) of this subsection with base period expenditure levels obtained in (a) of this subsection. Then,

(e) Adjusting the dollar amount for the anesthesia conversion factor and the projected time units at the new BAUs equals the allocated amount determined in (a) of this subsection.

(5) ((~~MAA~~)) The department calculates anesthesia time units as follows:

(a) One minute equals one unit.

(b) The total time is calculated to the next whole minute.

(c) Anesthesia time begins when the anesthesiologist, surgeon, or CRNA begins physically preparing the client for the induction of anesthesia; this must take place in the operating room or its equivalent. When there is a break in continuous anesthesia care, blocks of time may be added together as long as there is continuous monitoring. Examples of this include, but are not limited to, the following:

(i) The time a client spends in an anesthesia induction room; or

(ii) The time a client spends under the care of an operating room nurse during a surgical procedure.

(d) Anesthesia time ends when the anesthesiologist, surgeon, or CRNA is no longer in constant attendance (i.e., when the client can be safely placed under post-operative supervision).

(6) ((~~MAA~~)) The department changes anesthesia **conversion factors** if the legislature grants a vendor rate increase, or other increase, and if the effective date of that increase is not the same as ((~~MAA's~~)) the department's annual update.

(7) If the legislatively authorized vendor rate increase or other increase becomes effective at the same time as ((~~MAA's~~)) the department's annual update, ((~~MAA~~)) the department applies the increase after calculating the budget-neutral conversion factor.

(8) When more than one surgical procedure is performed at the same operative session, ((~~MAA~~)) the department uses the BAU of the major procedure to determine anesthesia **allowed charges.** ((~~MAA~~)) The department reimburses for add-on procedures as defined by CPT only for the time spent on the add-on procedure that is in addition to the time spent on the major procedure.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-0450 Critical care—Physician-related services. (1) ((~~MAA~~)) The department reimburses the following physicians for critical care services:

(a) The attending physician who assumes responsibility for the care of a client during a life-threatening episode;

(b) More than one physician if the services provided involve multiple organ systems; or

(c) Only one physician for services provided in the emergency room.

(2) ((~~MAA~~)) The department reimburses preoperative and postoperative critical care in addition to a **global surgical package** when all the following apply:

(a) The client is critically ill and the physician is engaged in work directly related to the individual client's care, whether that time is spent at the immediate bedside or elsewhere on the floor;

(b) The critical injury or illness acutely impairs one or more vital organ systems such that the client's survival is jeopardized;

(c) The critical care is unrelated to the specific anatomic injury or general surgical procedure performed; and

(d) The provider uses any necessary, appropriate modifier when billing ((~~MAA~~)) the department.

(3) ((~~MAA~~)) The department limits payment for critical care services to a maximum of three hours per day, per client.

(4) ((~~MAA~~)) The department does not pay separately for certain services performed during a critical care period when the services are provided on a per hour basis. These services include, but are not limited to, the following:

(a) Analysis of information data stored in computers (e.g., ECG, blood pressure, hematologic data);

(b) Blood draw for a specimen;

(c) Blood gases;

(d) Cardiac output measurement;

(e) Chest X rays;

(f) Gastric intubation;

(g) Pulse oximetry;

(h) Temporary transcutaneous pacing;

(i) Vascular access procedures; and

(j) Ventilator management.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-0500 Emergency physician-related services. (1) ((~~MAA~~)) The department reimburses for E&M services provided in the hospital emergency department to clients who arrive for immediate medical attention.

(2) ((~~MAA~~)) The department reimburses emergency physician services only when provided by physicians assigned to the hospital emergency department or the physicians on **call** to cover the hospital emergency department.

(3) ((~~MAA~~)) The department pays a provider who is called back to the emergency room at a different time on the same day to attend a return visit the same client. When this results in multiple claims on the same day, the time of each encounter must be clearly indicated on the claim.

(4) ((~~MAA~~)) The department does not pay emergency room physicians for **hospital admission** charges or additional service charges.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-0550 Experimental and investigational services. (1) When ((~~MAA~~)) the department makes a determination as to whether a proposed service is experimental or investigational, ((~~MAA~~)) the department follows the procedures in this section. The policies and procedures and any criteria for making decisions are available upon request.

(2) The determination of whether a service is experimental and/or investigational is subject to a case-by-case review under the provisions of WAC 388-501-0165 which relate to medical necessity. ((~~MAA~~)) The department also considers the following:

(a) Evidence in **peer-reviewed medical literature**, as defined in WAC 388-531-0050, and preclinical and clinical data reported to the National Institute of Health and/or the National Cancer Institute, concerning the probability of the service maintaining or significantly improving the enrollee's length or quality of life, or ability to function, and whether the benefits of the service or treatment are outweighed by the risks of death or serious complications;

(b) Whether evidence indicates the service or treatment is more likely than not to be as beneficial as existing conventional treatment alternatives for the treatment of the condition in question;

(c) Whether the service or treatment is generally used or generally accepted for treatment of the condition in the United States;

(d) Whether the service or treatment is under continuing scientific testing and research;

(e) Whether the service or treatment shows a demonstrable benefit for the condition;

(f) Whether the service or treatment is safe and efficacious;

(g) Whether the service or treatment will result in greater benefits for the condition than another generally available service; and

(h) If approval is required by a regulating agency, such as the Food and Drug Administration, whether such approval has been given before the date of service.

(3) ((~~MAA~~)) The department applies consistently across clients with the same medical condition and health status, the criteria to determine whether a service is experimental. A service or treatment that is not experimental for one client with a particular medical condition is not determined to be experimental for another enrollee with the same medical condition and health status. A service that is experimental for one client with a particular medical condition is not necessarily experimental for another, and subsequent individual determinations must consider any new or additional evidence not considered in prior determinations.

(4) ((~~MAA~~)) The department does not determine a service or treatment to be experimental or investigational solely because it is under clinical investigation when there is sufficient evidence in peer-reviewed medical literature to draw conclusions, and the evidence indicates the service or treatment will probably be of greater overall benefit to the client in question than another generally available service.

(5) All determinations that a proposed service or treatment is "experimental" or "investigation" are subject to the review and approval of a physician who is:

(a) Licensed under chapter 18.57 RCW or an osteopath licensed under chapter 18.71 RCW;

(b) Designated by ((~~MAA's~~)) the department's medical director to issue such approvals; and

(c) Available to consult with the client's treating physician by telephone.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-0600 HIV/AIDS counseling and testing as physician-related services. ((~~MAA~~)) The department covers one pre- and one post-HIV/AIDS counseling/testing session per client each time the client is tested for HIV/AIDS.

AMENDATORY SECTION (Amending WSR 05-12-022, filed 5/20/05, effective 6/20/05)

WAC 388-531-0650 Hospital physician-related services not requiring authorization when provided in ((~~MAA approved~~)) department-approved centers of excellence or hospitals authorized to provide the specific services. ((~~MAA~~)) The department covers the following services without prior authorization when provided in ((~~MAA approved~~)) department-approved centers of excellence. ((~~MAA~~)) The department issues periodic publications listing centers of excellence. These services include the following:

(1) All transplant procedures specified in WAC 388-550-1900;

(2) Chronic pain management services, including outpatient evaluation and inpatient treatment, as described under WAC 388-550-2400. See also WAC 388-531-0700;

(3) Sleep studies including but not limited to polysomnograms for clients one year of age and older. ((~~MAA~~)) The department allows sleep studies only in outpatient hospital settings as described under WAC 388-550-6350. See also WAC 388-531-1500; and

(4) Diabetes education, in a DOH-approved facility, per WAC 388-550-6300.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-0700 Inpatient chronic pain management physician-related services. (l) ((~~MAA~~)) The department covers inpatient chronic pain management services only when the services are obtained through ((~~an MAA approved~~)) a department-approved chronic pain facility.

(2) A client qualifies for inpatient chronic pain management services when all of the following apply:

(a) The client has had chronic pain for at least three months, that has not improved with conservative treatment, including tests and therapies;

(b) At least six months have passed since a previous surgical procedure was done in relation to the pain problem; and

(c) Clients with active substance abuse must have completed a detoxification program, if appropriate, and must be free from drugs or alcohol for six months.

(3) For chronic pain management, ((~~MAA~~)) the department limits coverage to only one inpatient hospital stay per client's lifetime, up to a maximum of twenty-one days.

(4) ((~~MAA~~)) The department reimburses for only the chronic pain management services and procedures that are listed in the fee schedule.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-0750 Inpatient hospital physician-related services. (1) ((~~MAA~~)) The department separately reimburses the attending provider for inpatient hospital professional services rendered by the attending provider during the surgical follow-up period only if the services are performed for an emergency condition or a diagnosis that is unrelated to the inpatient stay.

(2) ((~~MAA~~)) The department reimburses for only one inpatient hospital call per client, per day for the same or related diagnoses. If a call is included in the **global surgery reimbursement,** ((~~MAA~~)) the department does not reimburse separately.

(3) ((~~MAA~~)) The department reimburses a hospital admission related to a planned surgery through the global fee for surgery.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-0800 Laboratory and pathology physician-related services. (1) ((~~MAA~~)) The department reimburses providers for laboratory services only when:

(a) The provider is certified according to Title XVII of the Social Security Act (medicare), if required; and

(b) The provider has a clinical laboratory improvement amendment (CLIA) certificate and identification number.

(2) ((~~MAA~~)) The department includes a handling, packaging, and mailing fee in the reimbursement for lab tests and does not reimburse these separately.

(3) ((~~MAA~~)) The department reimburses only one blood drawing fee per client, per day. ((~~MAA~~)) The department allows additional reimbursement for an independent laboratory when it goes to a nursing facility or a private home to obtain a specimen.

(4) ((~~MAA~~)) The department reimburses only one catheterization for collection of a urine specimen per client, per day.

(5) ((~~MAA~~)) The department reimburses automated multichannel tests done alone or as a group, as follows:

(a) The provider must bill a panel if all individual tests are performed. If not all tests are performed, the provider must bill individual tests.

(b) If the provider bills one automated multichannel test, ((~~MAA~~)) the department reimburses the test at the individual procedure code rate, or the internal code maximum allowable fee, whichever is lower.

(c) Tests may be performed in a facility that owns or leases automated multichannel testing equipment. The facility may be any of the following:

(i) A clinic;

(ii) A hospital laboratory;

(iii) An independent laboratory; or

(iv) A physician's office.

(6) ((~~MAA~~)) The department allows a **STAT** fee in addition to the maximum allowable fee when a laboratory procedure is performed STAT.

(a) ((~~MAA~~)) The department reimburses STAT charges for only those procedures identified by the clinical laboratory advisory council as appropriate to be performed STAT.

(b) Tests generated in the emergency room do not automatically justify a STAT order, the physician must specifically order the tests as STAT.

(c) Refer to the fee schedule for a list of STAT procedures.

(7) ((~~MAA~~)) The department reimburses for drug screen charges only when medically necessary and when ordered by a physician as part of a total medical evaluation.

(8) ((~~MAA~~)) The department does not reimburse for drug screens for clients in the division of alcohol and substance abuse (DASA)-contracted methadone treatment programs. These are reimbursed through a contract issued by DASA.

(9) ((~~MAA~~)) The department does not cover for drug screens to monitor any of the following:

(a) Program compliance in either a residential or outpatient drug or alcohol treatment program;

(b) Drug or alcohol abuse by a client when the screen is performed by a provider in private practice setting; or

(c) Suspected drug use by clients in a residential setting, such as a group home.

(10) ((~~MAA~~)) The department may require a drug or alcohol screen in order to determine a client's suitability for a specific test.

(11) An independent laboratory must bill ((~~MAA~~)) the department directly. ((~~MAA~~)) The department does not reimburse a medical practitioner for services referred to or performed by an independent laboratory.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-0850 Laboratory and pathology physician-related services reimbursement. (1) ((~~MAA~~)) The department pays for clinical diagnostic laboratory procedures based on the **medicare clinical diagnostic laboratory fee schedule (MCDLF)** for the state of Washington. ((~~MAA~~)) The department obtains information used to update fee schedule regulations from Program Memorandum and Regional Medicare Letters as published by HCFA.

(2) ((~~MAA~~)) The department updates budget-neutral fees each July by:

(a) Determining the units of service and expenditures for a base period. Then,

(b) Determining in total the ratio of current ((~~MAA~~)) department fees to existing medicare fees. Then,

(c) Determining new ((~~MAA~~)) department fees by adjusting the new medicare fee by the ratio. Then,

(d) Multiplying the units of service by the new ((~~MAA~~)) department fee to obtain total estimated expenditures. Then,

(e) Comparing the expenditures in subsection (14)(d) of this section to the base period expenditures. Then,

(f) Adjusting the new ratio until estimated expenditures equals the base period amount.

(3) ((~~MAA~~)) The department calculates maximum allowable fees (MAF) by:

(a) Calculating fees using methodology described in subsection (2) of this section for procedure codes that have an applicable medicare clinical diagnostic laboratory fee (MCDLF).

(b) Establishing **RSC** fees for procedure codes that have no applicable MCDLF.

(c) Establishing maximum allowable fees, or **"flat fees"** for procedure codes that have no applicable MCDLF or RSC fees. ((~~MAA~~)) The department updates flat fee reimbursement only when authorized by the legislature.

(d) ((~~MAA~~)) The department reimbursement for clinical laboratory diagnostic procedures does not exceed the regional MCDLF schedule.

(4) ((~~MAA~~)) The department increases fees if the legislature grants a vendor rate increase or other increase. If the legislatively authorized increase becomes effective at the same time as ((~~MAA's~~)) the department's annual update, ((~~MAA~~)) the department applies the increase after calculating budget-neutral fees.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-0900 Neonatal intensive care unit (NICU) physician-related services. (1) ((~~MAA~~)) The department pays the physician directing the care of a neonate or infant in an NICU, for NICU services.

(2) NICU services include, but are not limited to, any of the following:

(a) Patient management;

(b) Monitoring and treatment of the neonate, including nutritional, metabolic and hematologic maintenance;

(c) Parent counseling; and

(d) Personal direct supervision by the **health care team** of activities required for diagnosis, treatment, and supportive care of the patient.

(3) Payment for NICU care begins with the date of admission to the NICU.

(4) ((~~MAA~~)) The department reimburses a provider for only one NICU service per client, per day.

(5) A provider may bill for NICU services in addition to **prolonged services** and newborn resuscitation when the provider is present at the delivery.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-0950 Office and other outpatient physician-related services. (l) ((~~MAA~~)) The department reimburses for the following:

(a) Two calls per month for routine medical conditions for a client residing in a nursing facility; and.

(b) One call per noninstitutionalized client, per day, for an individual physician, except for valid call-backs to the emergency room per WAC 388-531-0500.

(2) The provider must provide justification based on medical necessity at the time of billing for visits in excess of subsection (l) of this section.

(3) See physician billing instructions for procedures that are included in the office call and cannot be billed separately.

(4) Using selected diagnosis codes, ((~~MAA~~)) the department reimburses the provider at the appropriate level of physician office call for history and physical procedures in conjunction with dental surgery services performed in an outpatient setting.

(5) ((~~MAA~~)) The department may reimburse providers for injection procedures and/or injectable drug products only when:

(a) The injectable drug is administered during an office visit; and

(b) The injectable drug used is from office stock and purchased by the provider from a pharmacist or drug manufacturer as described in WAC 388-530-1200.

(6) ((~~MAA~~)) The department does not reimburse a prescribing provider for a drug when a pharmacist dispenses the drug.

(7) ((~~MAA~~)) The department does not reimburse the prescribing provider for an immunization when the immunization material is received from the department of health; ((~~MAA~~)) the department does reimburse an administrative fee. If the immunization is given in a health department and is the only service provided, ((~~MAA~~)) the department reimburses a minimum E&M service.

(8) ((~~MAA~~)) The department reimburses immunizations at **estimated acquisition costs (EAC)** when the immunizations are not part of the vaccine for children program. ((~~MAA~~)) The department reimburses a separate administration fee for these immunizations. Covered immunizations are listed in the fee schedule.

(9) ((~~MAA~~)) The department reimburses therapeutic and diagnostic injections subject to certain limitations as follows:

(a) ((~~MAA~~)) The department does not pay separately for the administration of intra-arterial and intravenous therapeutic or diagnostic injections provided in conjunction with intravenous infusion therapy services. ((~~MAA~~)) The department does pay separately for the administration of these injections when they are provided on the same day as an E&M service. ((~~MAA~~)) The department does not pay separately an administrative fee for injectables when both E&M and infusion therapy services are provided on the same day. ((~~MAA~~)) The department reimburses separately for the drug(s).

(b) ((~~MAA~~)) The department does not pay separately for subcutaneous or intramuscular administration of antibiotic injections provided on the same day as an E&M service. If the injection is the only service provided, ((~~MAA~~)) the department pays an administrative fee. ((~~MAA~~)) The department reimburses separately for the drug.

(c) ((~~MAA~~)) The department reimburses injectable drugs at **acquisition cost.** The provider must document the name, strength, and dosage of the drug and retain that information in the client's file. The provider must provide an invoice when requested by ((~~MAA~~)) the department. This subsection does not apply to drugs used for chemotherapy; see subsection (11) in this section for chemotherapy drugs.

(d) The provider must submit a manufacturer's invoice to document the name, strength, and dosage on the claim form when billing ((~~MAA~~)) the department for the following drugs:

(i) Classified drugs where the billed charge to ((~~MAA~~)) the department is over one thousand, one hundred dollars; and

(ii) Unclassified drugs where the billed charge to ((~~MAA~~)) the department is over one hundred dollars. This does not apply to unclassified antineoplastic drugs.

(10) ((~~MAA~~)) The department reimburses allergen immunotherapy only as follows:

(a) Antigen/antigen preparation codes are reimbursed per dose.

(b) When a single client is expected to use all the doses in a multiple dose vial, the provider may bill the total number of doses in the vial at the time the first dose from the vial is used. When remaining doses of a multiple dose vial are injected at subsequent times, ((~~MAA~~)) the department reimburses the injection service (administration fee) only.

(c) When a multiple dose vial is used for more than one client, the provider must bill the total number of doses provided to each client out of the multiple dose vial.

(d) ((~~MAA~~)) The department covers the antigen, the antigen preparation, and an administration fee.

(e) ((~~MAA~~)) The department reimburses a provider separately for an E&M service if there is a diagnosis for conditions unrelated to allergen immunotherapy.

(f) ((~~MAA~~)) The department reimburses for **RAST** testing when the physician has written documentation in the client's record indicating that previous skin testing failed and was negative.

(11) ((~~MAA~~)) The department reimburses for chemotherapy drugs:

(a) Administered in the physician's office only when:

(i) The physician personally supervises the E&M services furnished by office medical staff; and

(ii) The medical record reflects the physician's active participation in or management of course of treatment.

(b) At established maximum allowable fees that are based on the medicare pricing method for calculating the estimated acquisition cost (EAC), or maximum allowable cost (MAC) when generics are available;

(c) For unclassified antineoplastic drugs, the provider must submit the following information on the claim form:

(i) The name of the drug used;

(ii) The dosage and strength used; and

(iii) The national drug code (NCD).

(12) Notwithstanding the provisions of this section, ((~~MAA~~)) the department reserves the option of determining drug pricing for any particular drug based on the best evidence available to ((~~MAA~~)) the department, or other good and sufficient reasons (e.g., fairness/equity, budget), regarding the actual cost, after discounts and promotions, paid by typical providers nationally or in Washington state.

(13) ((~~MAA~~)) The department may request an invoice as necessary.

Reviser's note: The typographical errors in 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.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-1050 Osteopathic manipulative treatment. (1) ((~~MAA~~)) The department reimburses osteopathic manipulative therapy (OMT) only when OMT is provided by an osteopathic physician licensed under chapter 18.71 RCW.

(2) ((~~MAA~~)) The department reimburses OMT only when the provider bills using the appropriate CPT codes that involve the number of body regions involved.

(3) ((~~MAA~~)) The department allows an osteopathic physician to bill ((~~MAA~~)) the department for an evaluation and management (E&M) service in addition to the OMT when one of the following apply:

(a) The physician diagnoses the condition requiring manipulative therapy and provides it during the same visit;

(b) The existing related diagnosis or condition fails to respond to manipulative therapy or the condition significantly changes or intensifies, requiring E&M services beyond those included in the manipulation codes; or

(c) The physician treats the client during the same encounter for an unrelated condition that does not require manipulative therapy.

(4) ((~~MAA~~)) The department limits reimbursement for manipulations to ten per client, per calendar year. Reimbursement for each manipulation includes a brief evaluation as well as the manipulation.

(5) ((~~MAA~~)) The department does not reimburse for physical therapy services performed by osteopathic physicians.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-1100 Out-of-state physician services. (1) ((~~MAA~~)) The department covers medical services provided to eligible clients who are temporarily located outside the state, subject to the provisions of this chapter and WAC 388-501-0180.

(2) Out-of-state border areas as described under WAC 388-501-0175 are not subject to out-of-state limitations. ((~~MAA~~)) The department considers physicians in border areas as providers in the state of Washington.

(3) In order to be eligible for reimbursement, out-of-state physicians must meet all criteria for, and must comply with all procedures required of in-state physicians, in addition to other requirements of this chapter.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-1150 Physician care plan oversight services. (1) ((~~MAA~~)) The department covers **physician care plan** oversight services only when:

(a) A physician provides the service; and

(b) The client is served by a home health agency, a nursing facility, or a **hospice**.

(2) ((~~MAA~~)) The department reimburses for physician care plan oversight services when both of the following apply:

(a) The facility/agency has established a plan of care; and

(b) The physician spends thirty or more minutes per calendar month providing oversight for the client's care.

(3) ((~~MAA~~)) The department reimburses only one physician per client, per month, for physician care plan oversight services.

(4) ((~~MAA~~)) The department reimburses for physician care plan oversight services during the global surgical reimbursement period only when the care plan oversight is unrelated to the surgery.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-1200 Physician office medical supplies. (1) Refer to RBRVS billing instructions for a list of:

(a) Supplies that are a routine part of office or other outpatient procedures and that cannot be billed separately; and

(b) Supplies that can be billed separately and that ((~~MAA~~)) the department considers nonroutine to office or outpatient procedures.

(2) ((~~MAA~~)) The department reimburses at acquisition cost certain supplies under fifty dollars that do not have a maximum allowable fee listed in the fee schedule. The provider must retain invoices for these items and make them available to ((~~MAA~~)) the department upon request.

(3) Providers must submit invoices for items costing fifty dollars or more.

(4) ((~~MAA~~)) The department reimburses for **sterile tray** for certain surgical services only. Refer to the fee schedule for a list of covered items.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-1250 Physician standby services. (1) ((~~MAA~~)) The department reimburses **physician standby** services only when the standby physician does not provide care or service to other clients during this period, and either:

(a) The services are provided in conjunction with newborn care history and examination, or result in an admission to a neonatal intensive care unit on the same day; or

(b) A physician requests another physician to stand by, resulting in the prolonged attendance by the second physician without face-to-face client contact.

(2) ((~~MAA~~)) The department does not reimburse physician standby services when any of the following occur:

(a) The standby ends in a surgery or procedure included in a global surgical reimbursement;

(b) The standby period is less than thirty minutes; or

(c) Time is spent proctoring another physician.

(3) One unit of physician standby service equals thirty minutes. ((~~MAA~~)) The department reimburses subsequent periods of physician standby service only when full thirty minutes of standby is provided for each unit billed. ((~~MAA~~)) The department rounds down fractions of a thirty-minute time unit.

(4) The provider must clearly document the need for physician standby services in the client's medical record.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-1300 Podiatric physician-related services. (1) ((~~MAA~~)) The department covers podiatric services as listed in this section when provided by any of the following:

(a) A medical doctor;

(b) A doctor of osteopathy; or

(c) A podiatric physician.

(2) ((~~MAA~~)) The department reimburses for the following:

(a) Nonroutine foot care when a medical condition that affects the feet (such as diabetes or arteriosclerosis obliterans) requires that any of the providers in subsection (1) of this section perform such care;

(b) One treatment in a sixty-day period for debridement of nails. ((~~MAA~~)) The department covers additional treatments in this period if documented in the client's medical record as being medically necessary;

(c) Impression casting. ((~~MAA~~)) The department includes ninety-day follow-up care in the reimbursement;

(d) A surgical procedure performed on the ankle or foot, requiring a local nerve block, and performed by a qualified provider. ((~~MAA~~)) The department does not reimburse separately for the anesthesia, but includes it in the reimbursement for the procedure; and

(e) Custom fitted and/or custom molded orthotic devices:

(i) ((~~MAA's~~)) The department's fee for the orthotic device includes reimbursement for a biomechanical evaluation (an evaluation of the foot that includes various measurements and manipulations necessary for the fitting of an orthotic device); and

(ii) ((~~MAA~~)) The department includes an E&M fee reimbursement in addition to an orthotic fee reimbursement if the E&M services are justified and well documented in the client's medical record.

(3) ((~~MAA~~)) The department does not reimburse podiatrists for any of the following radiology services:

(a) X rays for soft tissue diagnosis;

(b) Bilateral X rays for a unilateral condition;

(c) X rays in excess of two views;

(d) X rays that are ordered before the client is examined; or

(e) X rays for any part of the body other than the foot or ankle.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-1350 Prolonged physician-related service. (1) ((~~MAA~~)) The department reimburses prolonged services based on established medicare guidelines. The services provided may or may not be continuous. The services provided must meet both of the following:

(a) Consist of face-to-face contact between the physician and the client; and

(b) Be provided with other services.

(2) ((~~MAA~~)) The department allows reimbursement for a prolonged service procedure in addition to an E&M procedure or consultation, up to three hours per client, per diagnosis, per day, subject to other limitations in the CPT codes that may be used. The applicable CPT codes are indicated in the fee schedule.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-1450 Radiology physician-related services. (1) ((~~MAA~~)) The department reimburses radiology services subject to the limitations in this section and under WAC 388-531-0300.

(2) ((~~MAA~~)) The department does not make separate payments for contrast material. The exception is low osmolar contrast media (LOCM) used in intrathecal, intravenous, and intra-arterial injections. Clients receiving these injections must have one or more of the following conditions:

(a) A history of previous adverse reaction to contrast material. An adverse reaction does not include a sensation of heat, flushing, or a single episode of nausea or vomiting;

(b) A history of asthma or allergy;

(c) Significant cardiac dysfunction including recent or imminent cardiac decompensation, severe arrhythmias, unstable angina pectoris, recent myocardial infarction, and pulmonary hypertension;

(d) Generalized severe debilitation;

(e) Sickle cell disease;

(f) Pre-existing renal insufficiency; and/or

(g) Other clinical situations where use of any media except LOCM would constitute a danger to the health of the client.

(3) ((~~MAA~~)) The department reimburse separately for radiopharmaceutical diagnostic imaging agents for nuclear medicine procedures. Providers must submit invoices for these procedures when requested by ((~~MAA~~)) the department, and reimbursement is at acquisition cost.

(4) ((~~MAA~~)) The department reimburses general anesthesia for radiology procedures. See WAC 388-531-0300.

(5) ((~~MAA~~)) The department reimburses radiology procedures in combination with other procedures according to the rules for multiple surgeries. See WAC 388-531-1700. The procedures must meet all of the following conditions:

(a) Performed on the same day;

(b) Performed on the same client; and

(c) Performed by the same physician or more than one member of the same group practice.

(6) ((~~MAA~~)) The department reimburses consultation on X-ray examinations. The consulting physician must bill the specific radiological X-ray code with the appropriate **professional component** modifier.

(7) ((~~MAA~~)) The department reimburses for portable X-ray services furnished in the client's home or in nursing facilities, limited to the following:

(a) Chest or abdominal films that do not involve the use of contract media;

(b) Diagnostic mammograms; and

(c) Skeletal films involving extremities, pelvis, vertebral column or skull.

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.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-1500 Sleep studies. (1) ((~~MAA~~)) The department covers sleep studies only when all of the following apply:

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

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

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

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

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

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

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

(4) When a sleep lab changes directors, ((~~MAA~~)) the department requires the provider to submit accreditation for the new director. If an accredited director moves to a facility that ((~~MAA~~)) the department has not approved, the provider must submit certification for the facility.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-1550 Sterilization physician-related services. (1) For purposes of this section, sterilization is any medical procedure, treatment, or operation for the purpose of rendering a client permanently incapable of reproducing. A hysterectomy is a surgical procedure or operation for the purpose of removing the uterus. Hysterectomy results in sterilization, but ((~~MAA~~)) the department does not cover hysterectomy performed solely for that purpose. Both hysterectomy and sterilization procedures require the use of specific consent forms.

STERILIZATION

(2) ((~~MAA~~)) The department covers sterilization when all of the following apply:

(a) The client is at least eighteen years of age at the time consent is signed;

(b) The client is a mentally competent individual;

(c) The client has voluntarily given **informed consent** in accordance with all the requirements defined in this subsection; and

(d) At least thirty days, but not more than one hundred eighty days, have passed between the date the client gave informed consent and the date of the sterilization.

(3) ((~~MAA~~)) The department does not require the thirty-day waiting period, but does require at least a seventy-two hour waiting period, for sterilization in the following circumstances:

(a) At the time of premature delivery, the client gave consent at least thirty days before the expected date of delivery. The expected date of delivery must be documented on the consent form;

(b) For emergency abdominal surgery, the nature of the emergency must be described on the consent form.

(4) ((~~MAA~~)) The department waives the thirty-day consent waiting period for sterilization when the client requests that sterilization be performed at the time of delivery, and completes a sterilization consent form. One of the following circumstances must apply:

(a) The client became eligible for **medical assistance** during the last month of pregnancy;

(b) The client did not obtain medical care until the last month of pregnancy; or

(c) The client was a substance abuser during pregnancy, but is not using alcohol or illegal drugs at the time of delivery.

(5) ((~~MAA~~)) The department does not accept informed consent obtained when the client is in any of the following conditions:

(a) In labor or childbirth;

(b) Seeking to obtain or obtaining an abortion; or

(c) Under the influence of alcohol or other substances that affect the client's state of awareness.

(6) ((~~MAA~~)) The department has certain consent requirements that the provider must meet before ((~~MAA~~)) the department reimburses sterilization of a **mentally incompetent** or institutionalized client. ((~~MAA~~)) The department requires both of the following:

(a) A court order; and

(b) A sterilization consent form signed by the legal guardian, sent to ((~~MAA~~)) the department at least thirty days prior to the procedure.

(7) ((~~MAA~~)) The department reimburses epidural anesthesia in excess of the six-hour limit for sterilization procedures that are performed in conjunction with or immediately following a delivery. ((~~MAA~~)) The department determines total billable units by:

(a) Adding the time for the sterilization procedure to the time for the delivery; and

(b) Determining the total billable units by adding together the delivery BAUs, the delivery time, and the sterilization time.

(c) The provider cannot bill separately for the BAUs for the sterilization procedure.

(8) The physician identified in the "consent to sterilization" section of the ((~~DSHS-approved~~)) department-approved sterilization consent form must be the same physician who completes the "physician's statement" section and performs the sterilization procedure. If a different physician performs the sterilization procedure, the client must sign and date a new consent form at the time of the procedure that indicates the name of the physician performing the operation under the "consent for sterilization" section. This modified consent must be attached to the original consent form when the provider bills ((~~MAA~~)) the department.

(9) ((~~MAA~~)) The department reimburses all attending providers for the sterilization procedure only when the provider submits an appropriate, completed DSHS-approved

consent form with the claim for reimbursement. ((~~MAA~~)) The department reimburses after the procedure is completed.

HYSTERECTOMY

(10) Hysterectomies performed for medical reasons may require expedited prior authorization as explained in WAC 388-531-0200(2).

(11) ((~~MAA~~)) The department reimburses hysterectomy without prior authorization in either of the following circumstances:

(a) The client has been diagnosed with cancer(s) of the female reproductive organs; and/or

(b) The client is forty-six years of age or older.

(12) ((~~MAA~~)) The department reimburses all attending providers for the hysterectomy procedure only when the provider submits an appropriate, completed DSHS-approved consent form with the claim for reimbursement. If a prior authorization number is necessary for the procedure, it must be on the claim. ((~~MAA~~)) The department reimburses after the procedure is completed.

AMENDATORY SECTION (Amending WSR 03-19-081, filed 9/12/03, effective 10/13/03)

WAC 388-531-1650 Substance abuse detoxification physician-related services. (1) ((~~MAA~~)) The department covers physician services for three-day alcohol detoxification or five-day drug detoxification services for a client eligible for medical care program services in ((~~an MAA-enrolled~~)) a department-enrolled hospital-based detoxification center.

(2) ((~~MAA~~)) The department covers treatment in programs certified under chapter 388-805 WAC or its successor.

(3) ((~~MAA~~)) The department covers detoxification and medical stabilization services to chemically using pregnant (CUP) women for up to twenty-seven days in an inpatient hospital setting.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-1700 Surgical physician-related services. (1) ((~~MAA's~~)) The department's global surgical reimbursement for all covered surgeries includes all of the following:

(a) The operation itself;

(b) Postoperative dressing changes, including:

(i) Local incision care and removal of operative packs;

(ii) Removal of cutaneous sutures, staples, lines, wire, tubes, drains, and splints;

(iii) Insertion, irrigation, and removal of urinary catheters, routine peripheral intravenous lines, nasogastric and rectal tubes; or

(iv) Change and removal of tracheostomy tubes.

(c) All additional medical or surgical services required because of complications that do not require additional operating room procedures.

(2) ((~~MAA's~~)) The department's global surgical reimbursement for major surgeries, includes all of the following:

(a) Preoperative visits, in or out of the hospital, beginning on the day before surgery; and

(b) Services by the primary surgeon, in or out of the hospital, during a standard ninety-day postoperative period.

(3) ((~~MAA's~~)) The department's global surgical reimbursement for minor surgeries includes all of the following:

(a) Preoperative visits beginning on the day of surgery; and

(b) Follow-up care for zero or ten days, depending on the procedure.

(4) When a second physician provides follow-up services for minor procedures performed in hospital emergency departments, ((~~MAA~~)) the department does not include these services in the global surgical reimbursement. The physician may bill these services separately.

(5) ((~~MAA's~~)) The department's global surgical reimbursement for multiple surgical procedures is as follows:

(a) Payment for multiple surgeries performed on the same client on the same day equals one hundred percent of ((~~MAA's~~)) the department's allowed fee for the highest value procedure. Then,

(b) For additional surgical procedures, payment equals fifty percent of ((~~MAA's~~)) the department's allowed fee for each procedure.

(6) ((~~MAA~~)) The department allows separate reimbursement for any of the following:

(a) The initial evaluation or consultation;

(b) Preoperative visits more than one day before the surgery;

(c) Postoperative visits for problems unrelated to the surgery; and

(d) Postoperative visits for services that are not included in the normal course of treatment for the surgery.

(7) ((~~MAA's~~)) The department's reimbursement for endoscopy is as follows:

(a) The global surgical reimbursement fee includes follow-up care for zero or ten days, depending on the procedure.

(b) Multiple surgery rules apply when a provider bills multiple endoscopies from different endoscopy groups. See subsection (4) of this section.

(c) When a physician performs more than one endoscopy procedure from the same group on the same day, ((~~MAA~~)) the department pays the full amount of the procedure with the highest maximum allowable fee.

(d) ((~~MAA~~)) The department pays the procedure with the second highest maximum allowable fee at the maximum allowable fee minus the base diagnostic endoscopy procedure's maximum allowed amount.

(e) ((~~MAA~~)) The department does not pay when payment for other codes within an endoscopy group is less than the base code.

(8) ((~~MAA~~)) The department restricts reimbursement for surgery assists to selected procedures as follows:

(a) ((~~MAA~~)) The department applies multiple surgery reimbursement rules for surgery assists apply. See subsection (4) of this section.

(b) Surgery assists are reimbursed at twenty percent of the maximum allowable fee for the surgical procedure.

(c) A surgical assist fee for a registered nurse first assistant (RNFA) is reimbursed if the nurse has been assigned a provider number.

(d) A provider must use a modifier on the claim with the procedure code to identify surgery assist.

(9) ((~~MAA~~)) The department bases payment splits between preoperative, intraoperative, and postoperative services on medicare determinations for given surgical procedures or range of procedures. ((~~MAA~~)) The department pays any procedure that does not have an established medicare payment split according to a split of ten percent - eighty percent - ten percent respectively.

(10) For preoperative and postoperative critical care services provided during a global period refer to WAC 388-531-0450.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-1750 Transplant coverage for physician-related services. ((~~MAA~~)) The department covers transplants when performed in ((~~an MAA approved~~)) a department-approved center of excellence. See WAC 388-550-1900 for information regarding transplant coverage.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-1850 Payment methodology for physician-related services—General and billing modifiers.

GENERAL PAYMENT METHODOLOGY

(l) ((~~MAA~~)) The department bases the payment methodology for most physician-related services on medicare's RBRVS. ((~~MAA~~)) The department obtains information used to update ((~~MAA's~~)) the department's RBRVS from the **MPFSPS.**

(2) ((~~MAA~~)) The department updates and revises the following RBRVS areas each January prior to ((~~MAA's~~)) the department's annual update.

(3) ((~~MAA~~)) The department determines a budget-neutral conversion factor (CF) for each RBRVS update, by:

(a) Determining the units of service and expenditures for a **base period.** Then,

(b) Applying the latest medicare RVU obtained from the MPFSDB, as published in the MPFSPS, and GCPI changes to obtain projected units of service for the new period. Then,

(c) Multiplying the projected units of service by conversion factors to obtain estimated expenditures. Then,

(d) Comparing expenditures obtained in (c) of this subsection with base period expenditure levels.

(e) Adjusting the dollar amount for the conversion factor until the product of the conversion factor and the projected units of service at the new RVUs equals the base period amount.

(4) ((~~MAA~~)) The department calculates maximum allowable fees (MAFs) in the following ways:

(a) For procedure codes that have applicable medicare RVUs, the three components (practice, malpractice, and work) of the RVU are:

(i) Each multiplied by the statewide GPCI. Then,

(ii) The sum of these products is multiplied by the applicable conversion factor. The resulting RVUs are known as RBRVS RVUs.

(b) For procedure codes that have no applicable medicare RVUs, RSC RVUs are established in the following way:

(i) When there are three RSC RVU components (practice, malpractice, and work):

(A) Each component is multiplied by the statewide GPCI. Then,

(B) The sum of these products is multiplied by the applicable conversion factor.

(ii) When the RSC RVUs have just one component, the RVU is not GPCI adjusted and the RVU is multiplied by the applicable conversion factor.

(c) For procedure codes with no RBRVS or RSC RVUs, ((~~MAA~~)) the department establishes maximum allowable fees, also known as "flat" fees.

(i) ((~~MAA~~)) The department does not use the conversion factor for these codes.

(ii) ((~~MAA~~)) The department updates flat fee reimbursement only when the legislature authorizes a vendor rate increase, except for the following categories which are revised annually during the update:

(A) Immunization codes are reimbursed at EAC. (See WAC 388-530-1050 for explanation of EAC.) When the provider receives immunization materials from the department of health, ((~~MAA~~)) the department pays the provider a flat fee only for administering the immunization.

(B) A **cast material maximum allowable fee** is set using an average of wholesale or distributor prices for cast materials.

(iii) Other supplies are reimbursed at physicians' acquisition cost, based on manufacturers' price sheets. Reimbursement applies only to supplies that are not considered part of the routine cost of providing care (e.g., intrauterine devices (IUDs)).

(d) For procedure codes with no RVU or maximum allowable fee, ((~~MAA~~)) the department reimburses "by report." By report codes are reimbursed at a percentage of the amount billed for the service.

(e) For supplies that are dispensed in a physician's office and reimbursed separately, the provider's acquisition cost when flat fees are not established.

(f) ((~~MAA~~)) The department reimburses at acquisition cost those HCPCS J and Q codes that do not have flat fees established.

(5) The **technical advisory group** reviews RBRVS changes.

(6) ((~~MAA~~)) The department also makes fee schedule changes when the legislature grants a vendor rate increase and the effective date of that increase is not the same as ((~~MAA's~~)) the department's annual update.

(7) If the legislatively authorized vendor rate increase, or other increase, becomes effective at the same time as the annual update, ((~~MAA~~)) the department applies the increase after calculating budget-neutral fees. ((~~MAA~~)) The department pays providers a higher reimbursement rate for primary health care E&M services that are provided to children age twenty and under.

(8) ((~~MAA~~)) The department does not allow separate reimbursement for bundled services. However, ((~~MAA~~)) the department allows separate reimbursement for items considered prosthetics when those items are used for a permanent condition and are furnished in a provider's office.

(9) Variations of payment methodology which are specific to particular services and which differ from the general payment methodology described in this section are included in the sections dealing with those particular services.

CPT/HCFA MODIFIERS

(10) A modifier is a code a provider uses on a claim in addition to a billing code for a standard procedure. Modifiers eliminate the need to list separate procedures that describe the circumstance that modified the standard procedure. A modifier may also be used for information purposes.

(11) Certain services and procedures require modifiers in order for ((~~MAA~~)) the department to reimburse the provider. This information is included in the sections dealing with those particular services and procedures, as well as the fee schedule.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-1900 Reimbursement—General requirements for physician-related services. (1) ((~~MAA~~)) The department reimburses physicians and related providers for covered services provided to eligible clients on a fee-for-service basis, subject to the exceptions, restrictions, and other limitations listed in this chapter and other published issuances.

(2) In order to be reimbursed, physicians must bill ((~~MAA~~)) the department according to the conditions of payment under WAC 388-501-0150 and other issuances.

(3) ((~~MAA~~)) The department does not separately reimburse certain administrative costs or services. ((~~MAA~~)) The department considers these costs to be included in the reimbursement. These costs and services include the following:

(a) Delinquent payment fees;

(b) Educational supplies;

(c) Mileage;

(d) Missed or canceled appointments;

(e) Reports, client charts, insurance forms, copying expenses;

(f) Service charges;

(g) Take home drugs; and

(h) Telephoning (e.g., for prescription refills).

(4) ((~~MAA~~)) The department does not routinely pay for procedure codes which have a "#" indicator in the fee schedule. ((~~MAA~~)) The department reviews these codes for conformance to medicaid program policy only as an exception to policy or as a limitation extension. See WAC 388-501-0160 and 388-501-0165.

AMENDATORY SECTION (Amending WSR 08-11-031, filed 5/13/08, effective 6/13/08)

WAC 388-532-730 TAKE CHARGE program—Provider requirements. (1) A TAKE CHARGE provider must:

(a) Be a department-approved family planning provider as described in WAC 388-532-050;

(b) Sign the supplemental TAKE CHARGE agreement to participate in the TAKE CHARGE demonstration and research program according to the department's TAKE CHARGE program guidelines;

(c) Participate in the department's specialized training for the TAKE CHARGE demonstration and research program prior to providing TAKE CHARGE services. Providers must document that each individual responsible for providing TAKE CHARGE services is trained on all aspects of the TAKE CHARGE program;

(d) Comply with the required general department and TAKE CHARGE provider policies, procedures, and administrative practices as detailed in the department's billing instructions and provide referral information to clients regarding available and affordable nonfamily planning primary care services;

(e) If requested by the department, participate in the research and evaluation component of the TAKE CHARGE demonstration and research program.

(f) Forward the client's ((~~medical identification~~)) services card and TAKE CHARGE brochure to the client within seven working days of receipt unless otherwise requested in writing by the client;

(g) Inform the client of his or her right to seek services from any TAKE CHARGE provider within the state; and

(h) Refer the client to available and affordable nonfamily planning primary care services, as needed.

(2) Department providers (e.g., pharmacies, laboratories, surgeons performing sterilization procedures) who are not TAKE CHARGE providers may furnish family planning ancillary TAKE CHARGE services, as defined in this chapter, to eligible ((~~[TAKE CHARGE]~~)) TAKE CHARGE clients. The department reimburses for these services under the rules and fee schedules applicable to the specific services provided under the department's other programs.

AMENDATORY SECTION (Amending WSR 08-11-031, filed 5/13/08, effective 6/13/08)

WAC 388-532-760 TAKE CHARGE program—Documentation requirements. In addition to the documentation requirements in WAC 388-502-0020, TAKE CHARGE providers must keep the following records:

(1) TAKE CHARGE application form(s);

(2) Signed supplemental TAKE CHARGE agreement to participate in the TAKE CHARGE program;

(3) Documentation of the department's specialized TAKE CHARGE training and/or in-house in-service TAKE CHARGE training for each individual responsible for providing TAKE CHARGE.

(4) Chart notes that reflect the primary focus and diagnosis of the visit was family planning;

(5) Contraceptive methods discussed with the client;

(6) Notes on any discussions of emergency contraception and needed prescription(s);

(7) The client's plan for the contraceptive method to be used, or the reason for no contraceptive method and plan;

(8) Documentation of the education, counseling and risk reduction (ECRR) service, if provided, with sufficient detail that allows for follow-up;

(9) Documentation of referrals to or from other providers;

(10) A form signed by the client authorizing release of information for referral purposes, as necessary;

(11) The client's written and signed consent requesting that his or her ((~~medical identification~~)) services card be sent to the TAKE CHARGE provider's office to protect confidentiality;

(12) A copy of the client's picture identification;

(13) A copy of the documentation used to establish United States citizenship or legal permanent residency; and

(14) If applicable, a copy of the completed ((~~DSHS~~)) department sterilization consent form (DSHS 13-364 - available for download at http://www.dshs.wa.gov/msa/forms/eforms.html) (see WAC 388-531-1550).

AMENDATORY SECTION (Amending WSR 02-07-016, filed 3/8/02, effective 4/8/02)

WAC 388-534-0200 Enhanced payments for EPSDT screens for children ((~~receiving foster care placement services from the department of social and health services (DSHS)~~)) in out-of-home placement. The ((~~medical assistance administration (MAA)~~)) department reimburses providers an enhanced ((~~flat~~)) fee for EPSDT ((~~screens~~)) exams provided to children ((~~receiving certain foster care~~)) in out-of-home placement ((~~services from the department of social and health services (DSHS)~~)). See ((~~MAA's~~)) the department's EPSDT billing instructions for specific billing code requirements and the fee.

(1) For the purposes of this section, ((~~foster care~~)) out-of-home placement is defined as twenty-four hour per day, temporary, substitute care for a child:

(a) Placed away from the child's parents or guardians in licensed, paid, out-of-home care; and

(b) For whom the department or a licensed or certified child placing agency has placement and care responsibility.

(2) ((~~MAA~~)) The department pays an enhanced ((~~flat~~)) fee to the providers listed in subsection (3) of this section for EPSDT ((~~screens~~)) exams provided to only those children ((~~receiving foster care~~)) in out-of-home placement ((~~services from DSHS~~)).

(3) The following providers are eligible to perform EPSDT ((~~screens~~)) exams and bill ((~~MAA~~)) the enhanced rate for children ((~~receiving foster care~~)) in out-of-home placement ((~~services from DSHS~~)):

(a) EPSDT clinics;

(b) Physicians;

(c) Advanced registered nurse practitioners (ARNPs);

(d) Physician assistants (PAs) working under the guidance ((~~and MAA provider number~~)) of a physician;

(e) Nurses specially trained through the department of health (DOH) to perform EPSDT ((~~screens~~)) exams; and

(f) Registered nurses working under the guidance ((~~and MAA provider number~~)) of a physician or ARNP.

(4) In order to be paid an enhanced fee, services furnished by the providers listed in subsection (3) of this section must meet the federal requirements for EPSDT ((~~screens~~)) exams at 42 CFR Part 441 Subpart B, which were in effect as of December 1, 2001.

(5) The provider must retain documentation of the EPSDT ((~~screens~~)) exams in the client's medical file. The provider must use the ((~~DSHS~~)) department's Well Child Exam forms or provide equivalent information. ((~~DSHS~~)) The Well Child Exam forms include the required elements for an EPSDT exam. The Well Child Exam forms (DSHS 13-683A through 13-686B) are available for downloading at no charge ((~~by sending a request in writing or by fax to:~~

~~DSHS Warehouse~~

~~P.O. Box 45816~~

~~Olympia, WA. 98504-5816~~

~~fax: 360-664-0597~~))

at http://www1.dshs.wa.gov/msa/forms/eforms.html.

(6) ((~~MAA~~)) The department conducts evaluations of client files and payments made under this program. ((~~MAA~~)) The department may recover the enhanced payment amount when:

(a) The client was not ((~~receiving foster care~~)) in out-of-home placement ((~~services from DSHS~~)) as defined in subsection (1) of this section when the EPSDT ((~~screen~~)) exam was provided; or

(b) Documentation was not in the client's medical file (see subsection (5) of this section).

AMENDATORY SECTION (Amending WSR 00-14-070, filed 7/5/00, effective 8/5/00)

WAC 388-539-0200 AIDS—Health insurance premium payment program. (1) The purpose of the AIDS health insurance premium payment program is to help individuals who are not eligible for ((~~MAA's~~)) the department's medical programs and who are diagnosed with AIDS, pay their health insurance premiums.

(2) To be eligible for the AIDS health insurance premium payment program, individuals must:

(a) Be diagnosed with AIDS as defined in WAC 246-100-011;

(b) Be a resident of the state of Washington;

(c) Be responsible for all, or part of, the health insurance premium payment (without ((~~MAA's~~)) the department's help);

(d) Not be eligible for one of ((~~MAA's~~)) the department's other medical programs;

(e) Not have personal income that exceeds three hundred seventy percent of the federal poverty level; and

(f) Not have personal assets, after exemptions, exceeding fifteen thousand dollars. The following personal assets are exempt from the personal assets calculation:

(i) A home used as the person's primary residence; and

(ii) A vehicle used as personal transportation.

(3) ((~~MAA~~)) The department may contract with a not-for-profit community agency to administer the Aids health insurance premium payment program. ((~~MAA~~)) The department or its contractor determines an individual's initial eligibility and redetermines eligibility on a periodic basis. To be eligible, individuals must:

(a) Cooperate with ((~~MAA's~~)) the department's contractor;

(b) Cooperate with eligibility determination and redetermination process; and

(c) Initially meet and continue to meet the eligibility criteria in subsection (2) of this section.

(4) Individuals, diagnosed with AIDS, who are eligible for one of ((~~MAA's~~)) the department's medical programs may

ask ((~~MAA~~)) the department to pay their health insurance premiums under a separate process. The client's community services office (CSO) is able to assist the client with this process.

(5) Once an individual is eligible to participate in the AIDS health insurance premium payment program, eligibility would cease only when one of the following occurs. The individual:

(a) Is deceased;

(b) Voluntarily quits the program;

(c) No longer meets the requirements of subsection (2) of this section; or

(d) Has benefits terminated due to the legislature's termination of the funding for this program.

(6) ((~~MAA~~)) The department sets a reasonable payment limit for health insurance premiums. ((~~MAA~~)) The department sets its limit by tracking the charges billed to ((~~MAA~~)) the department for ((~~MAA~~)) department clients who have AIDS. ((~~MAA~~)) The department does not pay health insurance premiums that exceed fifty percent of the average of charges billed to ((~~MAA~~)) the department for its clients with AIDS.

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.

AMENDATORY SECTION (Amending WSR 00-23-070, filed 11/16/00, effective 12/17/00)

WAC 388-539-0300 Case management for persons living with HIV/AIDS. ((~~MAA~~)) The department provides HIV/AIDS case management to assist persons infected with HIV to: Live as independently as possible; maintain and improve health; reduce behaviors that put the client and others at risk; and gain access to needed medical, social, and educational services.

(1) To be eligible for ((~~MAA~~)) department reimbursed HIV/AIDS case management services, the person must:

(a) Have a current medical diagnosis of HIV or AIDS;

(b) Be eligible for Title XIX (medicaid) coverage under either the categorically needy program (CNP) or the medically needy program (MNP); and

(c) Require:

(i) Assistance to obtain and effectively use necessary medical, social, and educational services; or

(ii) Ninety days of continued monitoring as provided in WAC 388-539-0350(2).

(2) ((~~MAA~~)) The department has an interagency agreement with the Washington state department of health (DOH) to administer the HIV/AIDS case management program for ((~~MAA's~~)) the department's Title XIX (medicaid) clients.

(3) HIV/AIDS case management agencies who serve ((~~MAA's~~)) the department's clients must be approved to perform these services by HIV client services, DOH.

(4) HIV/AIDS case management providers must:

(a) Notify HIV positive persons of their statewide choice of available HIV/AIDS case management providers and document that notification in the client's record. This notification requirement does not obligate HIV/AIDS case management providers to accept all clients who request their services.

(b) Have a current client-signed authorization to release/obtain information form. The provider must have a valid authorization on file for the months that case management services are billed to ((~~MAA~~)) the department (see RCW 70.02.030). The fee referenced in RCW 70.02.030 is included in ((~~MAA's~~)) the department's reimbursement to providers. ((~~MAA's~~)) The department's clients may not be charged for services or documents related to covered services.

(c) Maintain sufficient contact to ensure the effectiveness of ongoing services per subsection (5) of this section. ((~~MAA~~)) The department requires a minimum of one contact per month between the HIV/AIDS case manager and the client. However, contact frequency must be sufficient to ensure implementation and ongoing maintenance of the individual service plan (ISP).

(5) HIV/AIDS case management providers must document services as follows:

(a) Providers must initiate a comprehensive assessment within two working days of the client's referral to HIV/AIDS case management services. Providers must complete the assessment before billing for ongoing case management services. If the assessment does not meet these requirements, the provider must document the reason(s) for failure to do so. The assessment must include the following elements as reported by the client:

(i) Demographic information (e.g., age, gender, education, family composition, housing.);

(ii) Physical status, the identity of the client's primary care provider, and current information on the client's medications/treatments;

(iii) HIV diagnosis (both the documented diagnosis at the time of assessment and historical diagnosis information);

(iv) Psychological/social/cognitive functioning and mental health history;

(v) Ability to perform daily activities;

(vi) Financial and employment status;

(vii) Medical benefits and insurance coverage;

(viii) Informal support systems (e.g., family, friends and spiritual support);

(ix) Legal status, durable power of attorney, and any self-reported criminal history; and

(x) Self-reported behaviors which could lead to HIV transmission or re-infection (e.g., drug/alcohol use).

(b) Providers must develop, monitor, and revise the client's individual service plan (ISP). The ISP identifies and documents the client's unmet needs and the resources needed to assist in meeting the client's needs. The case manager and the client must develop the ISP within two days of the comprehensive assessment or the provider must document the reason this is not possible. An ISP must be:

(i) Signed by the client, documenting that the client is voluntarily requesting and receiving ((~~MAA~~)) the department reimbursed HIV/AIDS case management services; and

(ii) Reviewed monthly by the case manager through in-person or telephone contact with the client. Both the review and any changes must be noted by the case manager:

(A) In the case record narrative; or

(B) By entering notations in, initialing and dating the ISP.

(c) Maintained ongoing narrative records - These records must document case management services provided in each month for which the provider bills ((~~MAA~~)) the department. Records must:

(i) Be entered in chronological order and signed by the case manager;

(ii) Document the reason for the case manager's interaction with the client; and

(iii) Describe the plans in place or to be developed to meet unmet client needs.

AMENDATORY SECTION (Amending WSR 00-23-070, filed 11/16/00, effective 12/17/00)

WAC 388-539-0350 HIV/AIDS case management reimbursement information. (1) ((~~MAA~~)) The department reimburses HIV/AIDS case management providers for the following three services:

(a) Comprehensive assessment - The assessment must cover the areas outlined in WAC 388-539-0300 (1) and (5).

(i) ((~~MAA~~)) The department reimburses only one comprehensive assessment unless the client's situation changes as follows:

(A) There is a fifty percent change in need from the initial assessment; or

(B) The client transfers to a new case management provider.

(ii) ((~~MAA~~)) The department reimburses for a comprehensive assessment in addition to a monthly charge for case management (either full-month or partial-month) if the assessment is completed during a month the client is medicaid eligible and the ongoing case management has been provided.

(b) HIV/AIDS case management, full-month - Providers may request the full-month reimbursement for any month in which the criteria in WAC 388-539-0300 have been met and the case manager has an individual service plan (ISP) in place for twenty or more days in that month. ((~~MAA~~)) The department reimburses only one full-month case management fee per client in any one month.

(c) HIV/AIDS case management, partial-month - Providers may request the partial-month reimbursement for any month in which the criteria in WAC 388-539-0300 have been met and the case manager has an ISP in place for fewer than twenty days in that month. Using the partial-month reimbursement, ((~~MAA~~)) the department may reimburse two different case management providers for services to a client who changes from one provider to a new provider during that month.

(2) ((~~MAA~~)) The department limits reimbursement to HIV/AIDS case managers when a client becomes stabilized and no longer needs an ISP with active service elements. ((~~MAA~~)) The department limits reimbursement for monitoring to ninety days past the time the last active service element of the ISP is completed. Case Management providers who are monitoring a stabilized client must meet all of the following criteria in order to bill ((~~MAA~~)) the department for up to ninety days of monitoring:

(a) Document the client's history of recurring need;

(b) Assess the client for possible future instability; and

(c) Provide monthly monitoring contacts.

(3) ((~~MAA~~)) The department reinstates reimbursement for ongoing case management if a client shifts from monitoring status to active case management status due to documented need(s). Providers must meet the requirements in WAC 388-539-0300 when a client is reinstated to active case management.

AMENDATORY SECTION (Amending WSR 05-18-033, filed 8/30/05, effective 10/1/05)

WAC 388-551-1350 Discharges from hospice care. (1) A hospice agency may discharge a client from hospice care when the client:

(a) Is no longer certified for hospice care;

(b) Is no longer appropriate for hospice care; or

(c) The hospice agency's medical director determines the client is seeking treatment for the terminal illness outside the plan of care (POC).

(2) At the time of a client's discharge, a hospice agency must:

(a) Within five working days, complete a medicaid hospice 5-day notification form (DSHS 13-746) and forward to the department's hospice program manager (see WAC 388-551-1400 for additional requirements), and a copy to the appropriate home and community services office (HCS) or community services office (CSO);

(b) Keep the discharge statement in the client's hospice record;

(c) Provide the client with a copy of the discharge statement; and

(d) Inform the client that the discharge statement must be:

(i) Presented with the client's current ((~~medical identification (medical ID)~~)) services card when obtaining medicaid covered healthcare services or supplies, or both; and

(ii) Used until the department ((~~issues the client a new medical ID card that identifies that the client is no longer a hospice client~~)) removes the hospice restriction from the client's information available online at https://www.waproviderone.org.

AMENDATORY SECTION (Amending WSR 04-11-007, filed 5/5/04, effective 6/5/04)

WAC 388-553-100 Home infusion therapy/parenteral nutrition program—General. The ((~~medical assistance administration's (MAA's)~~)) department's home infusion therapy/parenteral nutrition program provides the supplies and equipment necessary for parenteral infusion of therapeutic agents to medical assistance clients. An eligible client receives equipment, supplies, and parenteral administration of therapeutic agents in a qualified setting to improve or sustain the client's health.

AMENDATORY SECTION (Amending WSR 04-11-007, filed 5/5/04, effective 6/5/04)

WAC 388-553-300 Home infusion therapy/parenteral nutrition program—Client eligibility and assignment. (1) Clients in the following medical assistance

((~~administration (MAA)~~)) programs are eligible to receive home infusion therapy and parenteral nutrition, subject to the limitations and restrictions in this section and other applicable WAC:

(a) Categorically needy program (CNP);

(b) Categorically needy program - Children's health insurance program (CNP-CHIP);

(c) General assistance - Unemployable (GA-U); and

(d) Limited casualty program - Medically needy program (LCP-MNP).

(2) Clients enrolled in ((~~an MAA~~)) a department-contracted managed care ((~~plan~~)) organization (MCO) are eligible for home infusion therapy and parenteral nutrition through that plan.

(3) Clients eligible for home health program services may receive home infusion related services according to WAC 388-551-2000 through 388-551-3000.

(4) To receive home infusion therapy, a client must:

(a) Have a written physician order for all solutions and medications to be administered.

(b) Be able to manage their infusion in one of the following ways:

(i) Independently;

(ii) With a volunteer caregiver who can manage the infusion; or

(iii) By choosing to self-direct the infusion with a paid caregiver (see WAC 388-71-0580).

(c) Be clinically stable and have a condition that does not warrant hospitalization.

(d) Agree to comply with the protocol established by the infusion therapy provider for home infusions. If the client is not able to comply, the client's caregiver may comply.

(e) Consent, if necessary, to receive solutions and medications administered in the home through intravenous, enteral, epidural, subcutaneous, or intrathecal routes. If the client is not able to consent, the client's legal representative may consent.

(f) Reside in a residence that has adequate accommodations for administering infusion therapy including:

(i) Running water;

(ii) Electricity;

(iii) Telephone access; and

(iv) Receptacles for proper storage and disposal of drugs and drug products.

(5) To receive parenteral nutrition, a client must meet the conditions in subsection (4) of this section and:

(a) Have one of the following that prevents oral or enteral intake to meet the client's nutritional needs:

(i) Hyperemesis gravidarum; or

(ii) An impairment involving the gastrointestinal tract that lasts three months or longer.

(b) Be unresponsive to medical interventions other than parenteral nutrition; and

(c) Be unable to maintain weight or strength.

(6) A client who has a functioning gastrointestinal tract is not eligible for parenteral nutrition program services when the need for parenteral nutrition is only due to:

(a) A swallowing disorder;

(b) Gastrointestinal defect that is not permanent unless the client meets the criteria in subsection (7) of this section;

(c) A psychological disorder (such as depression) that impairs food intake;

(d) A cognitive disorder (such as dementia) that impairs food intake;

(e) A physical disorder (such as cardiac or respiratory disease) that impairs food intake;

(f) A side effect of medication; or

(g) Renal failure or dialysis, or both.

(7) A client with a gastrointestinal impairment that is expected to last less than three months is eligible for parenteral nutrition only if:

(a) The client's physician or appropriate medial provider has documented in the client's medical record the gastrointestinal impairment is expected to last less ((~~then~~)) than three months;

(b) The client meets all the criteria in subsection (4) of this section;

(c) The client has a written physician order that documents the client is unable to receive oral or tube feedings; and

(d) It is medically necessary for the gastrointestinal tract to be totally nonfunctional for a period of time.

(8) A client is eligible to receive intradialytic parenteral nutrition (IDPN) solutions when:

(a) The parenteral nutrition is not solely supplemental to deficiencies caused by dialysis; and

(b) The client meets the criteria in subsection (4) and (5) of this section and other applicable WAC.

AMENDATORY SECTION (Amending WSR 04-11-007, filed 5/5/04, effective 6/5/04)

WAC 388-553-400 Home infusion therapy/parenteral nutrition program—Provider requirements. (1) Eligible providers of home infusion supplies and equipment and parenteral nutrition solutions must:

(a) Have a signed core provider agreement with the ((~~medical assistance administration (MAA)~~)) department; and

(b) Be one of the following provider types:

(i) Pharmacy provider;

(ii) Durable medical equipment (DME) provider; or

(iii) Infusion therapy provider.

(2) ((~~MAA~~)) The department pays eligible providers for home infusion supplies and equipment and parenteral nutrition solutions only when the providers:

(a) Are able to provide home infusion therapy within their scope of practice;

(b) Have evaluated each client in collaboration with the client's physician, pharmacist, or nurse to determine whether home infusion therapy/parenteral nutrition is an appropriate course of action;

(c) Have determined that the therapies prescribed and the client's needs for care can be safely met;

(d) Have assessed the client and obtained a written physician order for all solutions and medications administered to the client in the client's residence or in a dialysis center through intravenous, epidural, subcutaneous, or intrathecal routes;

(e) Meet the requirements in WAC 388-502-0020, including keeping legible, accurate and complete client

charts, and providing the following documentation in the client's medical file:

(i) For a client receiving infusion therapy, the file must contain:

(A) A copy of the written prescription for the therapy;

(B) The client's age, height, and weight; and

(C) The medical necessity for the specific home infusion service.

(ii) For a client receiving parenteral nutrition, the file must contain:

(A) All the information listed in (e)(i) of this subsection;

(B) Oral or enteral feeding trials and outcomes, if applicable;

(C) Duration of gastrointestinal impairment; and

(D) The monitoring and reviewing of the client's lab values:

(I) At the initiation of therapy;

(II) At least once per month; and

(III) When the client and/or the client's lab results are unstable.

AMENDATORY SECTION (Amending WSR 00-16-031, filed 7/24/00, effective 8/24/00)

WAC 388-556-0200 Chiropractic services for children. (1) ((~~MAA~~)) The department will pay only for chiropractic services:

(a) For ((~~MAA~~)) clients who are:

(i) Under twenty-one years of age; and

(ii) Referred by a screening provider under the healthy kids/early and periodic screening, diagnosis, and treatment (EPSDT) program.

(b) That are:

(i) Medically necessary, safe, effective, and not experimental;

(ii) Provided by a chiropractor licensed in the state where services are provided; and

(iii) Within the scope of the chiropractor's license.

(c) Limited to:

(i) Chiropractic manipulative treatments of the spine; and

(ii) X rays of the spine.

(2) Chiropractic services are paid according to fees established by ((~~MAA~~)) the department using methodology set forth in WAC 388-531-1850.

WSR 10-15-026
PROPOSED RULES
GAMBLING COMMISSION

[Filed July 13, 2010, 9:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-09-059.

Title of Rule and Other Identifying Information: WAC 230-03-020 Punch board and pull-tab service business permit and 230-03-210 Applying for a gambling service supplier license.

Hearing Location(s): State Investment Board, 2100 Evergreen Park Drive S.W., Olympia, WA 98504, on September 9 or 10, 2010, at 9:00 a.m.

Date of Intended Adoption: September 9 or 10, 2010.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail SusanA@wsgc.wa.gov, fax (360) 486-3625, by September 1, 2010.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by September 1, 2010, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The petitioner requests the combined gross billings threshold for a punchboard/pull-tab (PB/PT) service business be increased from $25,000 to $30,000 a year. Currently, if their combined gross billings are more than $25,000 a year, they must have a gambling service supplier license. PB/PT service businesses enter into agreements with licensed PB/PT operators to count, weigh, and/or store punch board and pull-tab games that have been pulled from play. PB/PT service businesses operate under either a PB/PT service business permit or a gambling service supplier license. If the business has yearly combined gross billings of:

$25,000 or less, they may operate under a permit. The initial permit fee is $236, with an annual renewal fee of $56. These businesses are typically a sole proprietorship or partnership.

More than $25,000, they must operate under a gambling service supplier license. The fee for a service supplier license is $687 each year. The level of background scrutiny and investigation to source funds is greater than a permit investigation.

In July 2006, the commission increased the combined gross billings threshold from $20,000 to $25,000 at the request of a PB/PT service permit holder.

Reasons Supporting Proposal: The petitioner verbally stated to staff that his combined gross billings are approximately $20,000 a year. He is requesting the increase because he plans to increase his billing rate and needs a "cushion" to ensure he doesn't go over the combined gross billings threshold for a PB/PT service permit.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Casey's Dead Game Service, private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the proposed rule change does not impose more than minor costs, as defined in chapter 19.85 RCW, to licensees.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is

not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

July 13, 2010
Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 457, filed 3/22/06, effective 1/1/08)

WAC 230-03-020 Punch board and pull-tab service business permit. (1) You must apply for a punch board and pull-tab service business permit if you:

(a) Reconcile sales, prizes, and cash on hand for punch board and pull-tab series; or

(b) Complete records we require; or

(c) Store punch boards and pull-tab series removed from play.

(2) The owners or employees of the punch boards and pull-tab service business must not be employees of the operator.

(3) The owners or employees of the punch boards and pull-tab service business must not provide management advice to the operator.

(4) The punch board and pull-tab service business must apply for a gambling service supplier license if combined gross billings exceed ((~~twenty-five~~)) thirty thousand dollars during the permit period.

AMENDATORY SECTION (Amending Order 617, filed 10/22/07, effective 1/1/08)

WAC 230-03-210 Applying for a gambling service supplier license. (1) You must apply for a gambling service supplier license if you perform any of the following gambling-related services for compensation:

(a) Consulting or advisory services regarding gambling activities; or

(b) Gambling management services; or

(c) Financing for more than one licensee for purchases or leases of gambling equipment or financing for providing infrastructure or facilities, or equipment that supports gambling operations:

(i) Once you have financed more than one licensee, you must be a licensed gambling service supplier until all loans with licensees or previous licensees are paid.

(ii) Once you have been a licensed gambling service supplier, you must be licensed as a gambling service supplier again before financing purchases or leases for any licensee; or

(d) Acting as a lending agent, or loan servicer, or placement agent; or

(e) Providing the assembly of components for gambling equipment under a contract with a licensed manufacturer or entering into an ongoing financial arrangement for gambling related software with a licensed manufacturer; or

(f) Installing, integrating, maintaining, or servicing digital surveillance systems that allow direct access to the operating system; or

(g) Training individuals to conduct authorized gambling activities; or

(h) Providing any other service or activity where influence may be exerted over any gambling activity licensed by the commission; or

(i) Performing the testing and certification of tribal lottery systems in meeting requirements specified in the tribal-state compact; or

(j) Providing nonmanagement-related recordkeeping or storage services for punch board and pull-tab operators, when the combined total gross billings from such services exceed thirty thousand dollars during any permit period or license year.

(2) You do not need a gambling service supplier license if you are:

(a) A bank, mutual savings bank, or credit union regulated by the department of financial institutions or any federally regulated commercial lending institution; or

(b) A university or college regulated by the Washington state board of community and technical colleges and the higher education coordinating board that trains individuals to conduct authorized gambling activities; or

(c) An attorney, accountant, or governmental affairs consultant whose primary business is providing professional services that are unrelated to the management or operation of gambling activities; or

(d) A person who only provides nonmanagement-related recordkeeping or storage services for punch board and pull-tab operators, when the combined total gross billings from such services do not exceed ((~~twenty-five~~)) thirty thousand dollars during any ((~~calendar year~~)) permit period; or

(e) A person who provides names, images, artwork or associated copyrights, or trademarks, or patent use, or other features that do not affect the results or outcome of the game, for use in gambling equipment; or

(f) Regulated lending institutions.

WSR 10-15-029
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed July 13, 2010, 11:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-07-075.

Title of Rule and Other Identifying Information: WAC 392-169-033 Institution of higher education—Definition.

Hearing Location(s): Office of Superintendent of Public Instruction, Old Capitol Building, 600 South Washington, Olympia, WA, on August 25, 2010, at 10:00 a.m.

Date of Intended Adoption: August 25, 2010.

Submit Written Comments to: Becky McLean, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail becky.mclean@k12.wa.us, fax (360) 664-3683, by August 24, 2010.

Assistance for Persons with Disabilities: Contact Kristin Collins by August 24, 2010, TTY (360) 664-3631 or (360) 725-6270.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The definition of institution of higher education should be revised to include public tribal colleges, The Evergreen State College and community colleges in Idaho and Oregon.

Reasons Supporting Proposal: The definition of institution of higher education should be revised to align with RCW 28A.600.300 and 28A.600.385.

Statutory Authority for Adoption: RCW 28A.150.290.

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

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Becky McLean, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: Calvin W. Brodie, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301; and Enforcement: Shawn Lewis, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

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

July 8, 2010
Randy Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending Order 95-02, filed 4/14/95, effective 5/15/95)

WAC 392-169-033 Institution of higher education—Definition. As used in this chapter, the term "institution of higher education" means:

(1) A Washington community college established under chapter 28B.50 RCW;

(2) A Washington technical college established under chapter 28B.50 RCW;

(3) Central Washington University, Eastern Washington University ((~~and~~)), Washington State University, and The Evergreen State College if:

(a) The university has decided to participate in the running start program; and

(b) The board of directors of the school district through which an eligible student seeks to obtain running start program high school credit has decided to participate in the universities' running start program.

(4) A public tribal college located in Washington and accredited by the northwest commission on colleges and universities or another accrediting association recognized by the United States Department of Education pursuant to RCW 28A.600.300.

(5) Community colleges in Idaho or Oregon pursuant to RCW 28A.600.385.

WSR 10-15-038
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed July 13, 2010, 12:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-09-009.

Hearing Location(s): Old Capitol Building, 600 South Washington Street, Wanamaker Conference Room, P.O. Box 47200, Olympia, WA, on August 25, 2010, at 10:30 a.m.

Date of Intended Adoption: August 25, 2010.

Submit Written Comments to: Steve Shish, P.O. Box 47200, Olympia, WA 98504-7200, e-mail steve.shish@k12.wa.us, fax (360) 664-3683, by August 24, 2010.

Assistance for Persons with Disabilities: Contact Kristin Collins, by August 24, 2010, TTY (360) 664-3631 or (360) 725-6270.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule revisions add the new federal stimulus revenue codes to the levy base.

For 6114 Federal Stimulus-IDEA one half the 2009-10 allocation is added to the levy base for the 2011 levy authority calculation, and one half added to the levy base for the 2012 calculation.

Rules defining the local effort assistance calculation are repealed. These rules repeat the process defined in chapter 28A.500 RCW, without adding to that process. Rather than revising these rules for changes made in the last legislative session, we are repealing the rules.

Reasons Supporting Proposal: Revisions are required to add the new federal revenues to the levy base.

Statutory Authority for Adoption: RCW 28A.150.290 and 84.52.0531.

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

Name of Proponent: [Superintendent of public instruction], governmental.

Name of Agency Personnel Responsible for Drafting: Steve Shish, Office of Superintendent of Public Instruction, (360) 725-6307; Implementation: Cal Brodie, Office of Superintendent of Public Instruction, (360) 725-6301; and Enforcement: Shawn Lewis, Office of Superintendent of Public Instruction, (360) 725-6292.

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

A cost-benefit analysis is not required under RCW 34.05.328. The superintendent of public instruction is not subject to RCW 34.05.328 (5)(a)(1)[(i)]. Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

July 13, 2010
Randy Dorn
State Superintendent

AMENDATORY SECTION (Amending WSR 00-09-017, filed 4/11/00, effective 5/12/00)

WAC 392-139-007 Organization of this chapter. This chapter contains rules for excess levy authority and state matching money for excess levies also known as local effort assistance. The general organization of the chapter is as follows:

Sections 001-099 General provisions and definitions.

Sections 100-299 Definitions for excess levy authority.

Sections 300-399 Determination of excess levy authority.

((~~Sections 600-649 Definitions for local effort assistance.~~))

Sections ((~~660-679~~)) 665-676 Determination of local effort assistance.

Sections 900-999 Notification, petitions and requests for review.

AMENDATORY SECTION (Amending WSR 08-20-054, filed 9/24/08, effective 10/25/08)

WAC 392-139-310 Determination of excess levy base. The superintendent of public instruction shall calculate each school district's excess levy base as provided in this section.

(1) Sum the following state and federal allocations from the prior school year(s) as determined in subsections (4) and (5) of this section:

(a) The basic education allocation as defined in WAC 392-139-115 and as reported on the August Report 1191;

(b) The state and federal categorical allocations for the following:

(i) Pupil transportation. Allocations for pupil transportation include allocations for the following accounts:

4199 Transportation - operations;
4399 Transportation - operations;
4499 Transportation - depreciation;
6199 Transportation - operations;
6299 Transportation - operations; and
6399 Transportation - operations.

(ii) Special education. Allocations for special education include allocations for the following accounts:

4121 Special education;
4321 Special education;
6114 Federal Stimulus - IDEA;
6124 Special education supplemental;
6214 Federal Stimulus - IDEA;
6224 Special education supplemental; ((~~and~~))
6314 Federal Stimulus - IDEA; and
6324 Special education supplemental.

(iii) Education of highly capable students. Allocations for education of highly capable students include allocations identified by account 4174 Highly capable.

(iv) Compensatory education. Allocations for compensatory education include allocations identified by the following accounts:

3100 Barrier reduction;
4155 Learning assistance;
4165 Transitional bilingual;
4163 Promoting academic success;
4166 Student achievement;
4365 Transitional bilingual;
6111 Federal Stimulus - Title 1;
6151 Disadvantaged;
6153 Migrant;
6164 Limited English proficiency;
6211 Federal Stimulus - Title 1;
6251 Disadvantaged;
6253 Migrant;
6264 Limited English proficiency;
6267 Indian education - JOB;
6268 Indian education - ED;
6311 Federal Stimulus - Title 1;
6351 Disadvantaged;
6353 Migrant;
6364 Limited English proficiency;
6367 Indian education - JOM; and
6368 Indian education - ED.

(v) Food services. Allocations for food services include allocations identified by the following accounts:

4198 School food services (state);
4398 School food services;
6198 School food services (federal);
6298 School food services;
6398 School food services; and
6998 USDA commodities.

(vi) Statewide block grant programs. Allocations for statewide block grant programs include allocations identified by the following accounts:

310004 Full-day kindergarten;
4134 Middle school vocational;
4175 Professional development;
6113 Federal Stimulus - State Fiscal Stabilization Fund;
6176 Targeted assistance;
6213 Federal Stimulus - State Fiscal Stabilization Fund;
6276 Targeted assistance; ((~~and~~))
6313 Federal Stimulus - State Fiscal Stabilization Fund; and
6376 Targeted assistance.

(c) General federal programs. Allocations for general federal programs identified by the following accounts:

5200 General purpose direct federal grants - unassigned;
6100 Special purpose - OSPI - unassigned;
6112 Federal Stimulus - School Improvement;
6118 Federal Stimulus - Competitive Grants;
6119 Federal Stimulus - Other;
6121 Special education - Medicaid reimbursement;
6138 Secondary vocational education;
6146 Skills center;
6152 School improvement;
6154 Reading first;
6162 Math and science - professional development;
6200 Direct special purpose grants;
6212 Federal Stimulus - School Improvement;
6218 Federal Stimulus - Competitive Grants;
6219 Federal Stimulus - Other;
6221 Special education - Medicaid reimbursement;
6238 Secondary vocational education;
6246 Skills center;

6252 School improvement;
6254 Reading first;
6262 Math and science - professional development;
6300 Federal grants through other agencies - unassigned;
6310 Medicaid administrative match;
6312 Federal Stimulus - School Improvement;
6318 Federal Stimulus - Competitive Grants;
6319 Federal Stimulus - Other;
6321 Special education - Medicaid reimbursement;
6338 Secondary vocational education;
6346 Skills center;
6352 School improvement;
6354 Reading first; and
6362 Math and science - professional development.

(2) Increase the result obtained in subsection (1) of this section by the percentage increase per full-time equivalent student in the state basic education appropriation between the prior school year and the current school year as stated in the state Operating Appropriations Act divided by 0.55.

(3) Revenue accounts referenced in this section are defined in the accounting manual for public school districts in the state of Washington.

(4) The dollar amount of revenues for state and federal categorical allocations identified in this section shall come from the following sources:

(a) The following state and federal categorical allocations are taken from the Report 1197 Column A (Annual Allotment Due):

3100 Barrier reduction;
310004 Full-day kindergarten;
4121 Special education;
4134 Middle school vocational;
4155 Learning assistance;
4163 Promoting academic success;
4165 Transitional bilingual;
4166 Student achievement;
4174 Highly capable;
4175 Professional development;
4198 School food services (state);
4199 Transportation - operations;
4499 Transportation - depreciation;
6111 Federal Stimulus - Title 1;
6112 Federal Stimulus - School Improvement;
6113 Federal Stimulus - State Fiscal Stabilization Fund;
6114 Federal Stimulus - IDEA, one-half the August 2010 amount will be used in the 2011 calculation, and one-half in the 2012;
6118 Federal Stimulus - Competitive Grants;
6119 Federal Stimulus - Other;
6121 Special education - Medicaid reimbursements;
6124 Special education - supplemental;
6138 Secondary vocational education;
6146 Skills center;
6151 Disadvantaged;
6152 School improvement;
6153 Migrant;
6154 Reading first;
6162 Math and science - professional development;
6164 Limited English proficiency;
6176 Targeted assistance;
6198 School food services (federal); and
6199 Transportation - operations.

(b) For the 2004 calendar year, the following state and federal allocations are taken from the F-195 budget including budget extensions.

For the 2005 calendar year and thereafter, the following federal allocations shall be taken from the school district's second prior year F-196 annual financial report:

4321 Special education;
4365 Transitional bilingual;
4398 School food services;
4399 Transportation - operations;
5200 General purpose direct federal grants - unassigned;
6100 Special purpose - OSPI - unassigned;
6200 Direct special purpose grants;
6211 Federal Stimulus - Title 1;
6212 Federal Stimulus - School Improvement;
6213 Federal Stimulus - State Fiscal Stabilization Fund;
6214 Federal Stimulus - IDEA;
6218 Federal Stimulus - Competitive Grants;
6219 Federal Stimulus - Other;
6221 Special education - Medicaid reimbursement;
6224 Special education supplemental;
6238 Secondary vocational education;
6246 Skills center;
6251 Disadvantaged;
6252 School improvement;
6253 Migrant;
6254 Reading first;
6262 Math and science - professional development;
6264 Limited English proficiency;
6267 Indian education - JOM;
6268 Indian education - ED;
6276 Targeted assistance;
6298 School food services;
6299 Transportation - operations;
6300 Federal grants through other agencies - unassigned;
6310 Medicaid administrative match;
6311 Federal Stimulus - Title 1;
6312 Federal Stimulus - School Improvement;
6313 Federal Stimulus - State Fiscal Stabilization Fund;
6314 Federal Stimulus - IDEA;
6318 Federal Stimulus - Competitive Grants;
6319 Federal Stimulus - Other;
6321 Special education - Medicaid reimbursement;
6324 Special education supplemental;
6338 Secondary vocational education;
6346 Skills center;
6351 Disadvantaged;
6352 School improvement;
6353 Migrant;
6354 Reading first;
6362 Math and science - professional development;
6364 Limited English proficiency;
6367 Indian education - JOM;
6368 Indian education - ED;
6376 Targeted assistance;
6398 School food services;
6399 Transportation - operations; and
6998 USDA commodities.

(5) Effective for levy authority and local effort assistance calculations for the 2005 calendar year and thereafter:

(a) District revenues determined in subsection (4) of this section shall be reduced for revenues received as a fiscal agent. School districts shall report fiscal agent revenues pursuant to instructions provided by the superintendent of public instruction.

(b) The amount determined in subsection (4)(b) of this section, after adjustment for fiscal agent moneys, shall be inflated for one year using the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the Bureau of Economic Analysis of the Federal Department of Commerce.

(6) State and federal moneys generated by a school district's students and redirected by the superintendent of public instruction to an educational service district at the request of the school district shall be included in the district's levy base.

(7) State basic education moneys generated by a school district's students and allocated directly to a technical college shall be included in the district's levy base.

(8) Funding which the district would have received calculated pursuant to RCW 84.52.0531 shall be included in the district's levy base.

AMENDATORY SECTION (Amending WSR 00-09-017, filed 4/11/00, effective 5/12/00)

WAC 392-139-320 Determination of maximum excess levy percentage. The superintendent of public instruction shall calculate each school district's maximum excess levy percentage ((~~as the greater of twenty-four percent or the percentage calculated as follows:~~

~~(1) Multiply the district's excess levy base determined pursuant to WAC 392-139-310 by the school district's maximum excess levy percentage for the prior calendar year;~~

~~(2) Subtract from the result of subsection (1) of this section the school district's levy reduction funds for the year of the levy; and~~

~~(3) Divide the result of subsection (2) of this section by the school district's excess levy base~~)) pursuant to RCW 84.52.0531.

AMENDATORY SECTION (Amending WSR 02-17-113, filed 8/21/02, effective 9/21/02)

WAC 392-139-670 Local effort assistance allocations. The superintendent of public instruction shall calculate each eligible school district's local effort assistance entitlement ((~~as the lesser of the amounts in subsections (1) and (2) of this section:~~

~~(1)(a) For the 2003 calendar year, the school district's certified excess levy for the calendar year as reported to the superintendent of public instruction pursuant to WAC 392-139-665 times the school district's state matching ratio for the calendar year calculated pursuant to WAC 392-139-625 times 0.99;~~

~~(b) For the 2004 calendar year and thereafter, the school district's certified excess levy for the calendar year as reported to the superintendent of public instruction pursuant to WAC 392-139-665 times the school district's state matching ratio for the calendar year calculated pursuant to WAC 392-139-625;~~

~~(2) The school district's maximum local effort assistance calculated pursuant to WAC 392-139-660~~)) pursuant to chapter 28A.500 RCW.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-139-600	Definition—Adjusted assessed valuation.
WAC 392-139-606	Definition—District twelve percent levy amount.
WAC 392-139-610	Definition—District twelve percent levy rate.
WAC 392-139-615	Definition—Statewide average twelve percent levy rate.
WAC 392-139-620	Definition—Eligible school district.
WAC 392-139-625	Definition—State matching ratio.
WAC 392-139-660	Determination of maximum local effort assistance.

WSR 10-15-040
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed July 13, 2010, 12:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-13-017.

Title of Rule and Other Identifying Information: WAC 392-140-950 through 392-140-967, Finance—Special allocations—Learning improvement days.

Hearing Location(s): Old Capitol Building, 600 South Washington Street, Wanamaker Conference Room, P.O. Box 47200, Olympia, WA 98502, on August 25, 2010, at 11:00 a.m.

Date of Intended Adoption: August 25, 2010.

Submit Written Comments to: Legal Services, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, fax (360) 753-4201, by August 24, 2010.

Assistance for Persons with Disabilities: Contact Kristin Collins by August 24, 2010, TTY (360) 664-3631 or (360) 725-6270.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rule revisions reduce the number of state-funded learning improvement days from one to zero for the 2010–11 school year, pursuant to section 503(7) of the 2010–11 State Operating Supplemental Appropriations Act, ESSB 6444. Furthermore, these revisions limit the state-funding of learning improve-

ment days to the number of days provided for in the State Biennial Operating Appropriations Act.

Statutory Authority for Adoption: RCW 28A.150.290 (1).

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

Name of Proponent: [Superintendent of public instruction], governmental.

Name of Agency Personnel Responsible for Drafting: Ross Bunda, Office of Superintendent of Public Instruction, (360) 725-6308; Implementation: Cal Brodie, Office of Superintendent of Public Instruction, (360) 725-6301; and Enforcement: Shawn Lewis, Office of Superintendent of Public Instruction, (360) 725-6292.

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

A cost-benefit analysis is not required under RCW 34.05.328. The superintendent of public instruction is not subject to RCW 34.05.328 (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

July 13, 2010
Randy Dorn
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 09-19-050, filed 9/11/09, effective 10/12/09)

WAC 392-140-956 Learning improvement days—Other definitions. As used in WAC 392-140-950 through 392-140-967:

(1) "Certificated instructional staff" means district certificated instructional employees and contractor certificated instructional employees as defined in WAC 392-121-205 and 392-121-206.

(2) "Base contract" means a contract protected by the continuing contract law, RCW 28A.405.300. The base contract does not include hours or compensation provided under a supplemental contract as defined in RCW 28A.400.200.

(3) "Number of days in the base contract" means the number of full work days in the school year for a full-time certificated instructional employee holding the position for the full school year. Days include paid leave. The number of hours in a full work day is determined by each school district. Days scheduled before September 1 can be counted in the school year if included and compensated in the base contract for the school year beginning September 1.

(4) "Selected state-funded programs" means the following programs as defined in the *Accounting Manual for Public School Districts in the State of Washington*:

01 Basic Education
02 Basic Education-Alternative Learning Experience
21 Special Education-Supplemental-State
31 Vocational-Basic-State
34 Middle School Career and Technical Education-State
45 Skills Center-Basic-State
55 Learning Assistance Program-State
65 Transitional Bilingual-State
74 Highly Capable
97 District-wide Support

(5) "State institutional education programs" means the following programs:

26 Special Education-Institutions-State
56 State Institutions, Centers, and Homes-Delinquent
59 Institutions-Juveniles in Adult Jails

AMENDATORY SECTION (Amending WSR 09-19-050, filed 9/11/09, effective 10/12/09)

WAC 392-140-961 Learning improvement days—Determination of the number of funded learning improvement days ((~~in the 2001-02 school year and thereafter~~)). The superintendent of public instruction shall separately determine for selected state-funded programs and for institutional education programs the number of funded learning improvement days for each school district ((~~for the 2001-02 school year and~~)) for each school year ((~~thereafter~~)) as follows:

(1) In September through December of each school year, the superintendent will use the number of learning improvement days budgeted by the district and reported on Form F-203.

(2) Monthly, beginning in January of the school year, using current personnel data reported on the S-275 Personnel Report:

(a) Select all certificated instructional staff with assignments in the selected state-funded programs.

(b) For each employee, subtract one hundred eighty days from the number of days reported in the base contract.

(c)((~~(i) For the 2001-02 school year, take the lesser of three days or the result of (b) of this subsection but not less than zero.~~

~~(ii) For the 2002-03 through 2008-09 school years, take the lesser of two days or the result of (b) of this subsection but not less than zero.~~

~~(iii) For the 2009-10 school year and thereafter, take the lesser of one day or the result of (b) of this subsection but not less than zero~~)) For each school year, take the lesser of the number of learning improvement days funded in the state Biennial Operating Appropriations Act or the result of (b) of this subsection, but not less than zero.

(d) Sum the number of days determined for all employees pursuant to (b) and (c) of this subsection.

(e) Divide the result of (d) of this subsection by the number of employees and round to two decimal places.

(f) The result is the number of funded learning improvement days for the district.

(3) After the close of the school year, the superintendent shall fund the lesser of:

(a) The number of days determined pursuant to subsection (2) of this section; or

(b) The number of days reported by the district pursuant to WAC 392-140-967.

AMENDATORY SECTION (Amending WSR 09-19-050, filed 9/11/09, effective 10/12/09)

WAC 392-140-962 Learning improvement days—Salary allocations for learning improvement days. Using the number of learning improvement days determined pursu-

ant to WAC 392-140-961, the superintendent of public instruction shall adjust salary allocations to school districts as follows:

(1) For general apportionment, the derived base salary allocation for learning improvement days as shown on LEAP Document 2, or successor salary allocation schedules, shall be reduced pro rata for any district with less than ((~~three learning improvement days in the 2001-02 school year, or less than two learning improvement days in the 2002-03 through 2008-09 school years, or less than one learning improvement day in the 2009-10 school year and thereafter in selected state-funded programs~~)) the number of learning improvement days funded in the state Biennial Operating Appropriations Act as the result of the determination under WAC 392-140-961.

(2) Special education allocations shall be adjusted based on adjustments to the unenhanced basic education allocation per full-time equivalent student.

(3) For transitional bilingual, highly capable, and learning assistance program allocations, the additional state allocation per pupil for ((~~three~~)) learning improvement days ((~~in the 2001-02 school year, for two learning improvement days in the 2002-03 through 2008-09 school years, and for one learning improvement day in the 2009-10 school year and thereafter as calculated by the superintendent~~)) shall be reduced pro rata for any district with ((~~fewer learning improvement days in selected state-funded programs~~)) less than the number of learning improvement days funded in the state Biennial Operating Appropriations Act as the result of the determination under WAC 392-140-961.

(4) For state institutional education programs the salary allocation for ((~~three~~)) learning improvement days ((~~in the 2001-02 school year, for two learning improvement days in the 2002-03 through 2008-09 school years, and for one learning improvement day in the 2009-10 school year and thereafter as calculated by the superintendent~~)) shall be reduced pro rata for any district with ((~~fewer learning improvement days in state institutional education programs~~)) less than the number of learning improvement days funded in the state Biennial Operating Appropriations Act as the result of the determination under WAC 392-140-961. Educational service districts or contractors operating state-funded institutional education programs shall be eligible for learning improvement day funding in the same manner as school districts.

(5) Allocations for learning improvement days are subject to adjustment or recovery based on findings of the Washington state auditor and chapters 392-115 and 392-117 WAC.

WSR 10-15-042
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed July 13, 2010, 1:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-09-007.

Title of Rule and Other Identifying Information: WAC 392-344-095 Construction documents—Compliance with public works statutory provisions and 392-344-165 Documents required for release of retainage by school districts.

Hearing Location(s): Office of Superintendent of Public Instruction, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, on August 25, 2010, at 11:30.

Date of Intended Adoption: August 25, 2010.

Submit Written Comments to: Scott Black, Office of Superintendent of Public Instruction, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail schoolfacilitiesrules@k12.wa.us, fax (360) 586-3946, by August 24, 2010.

Assistance for Persons with Disabilities: Contact Kristin Collins by August 24, 2010, TTY (360) 664-3631 or (360) 725-6270.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Requirements per RCW 39.04.320 [(1)](c)(i) regarding apprenticeship utilization necessitate making changes to the rules in order to educate and verify that the districts have fulfilled the apprenticeship requirements.

Statutory Authority for Adoption: RCW 28A-525-020 [28A.525.020] Duties of the superintendent of public instruction.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Scott Black, P.O. Box 47200, Olympia, WA 98504-7200, (360) 725-6268; and Enforcement: Gordon Beck, P.O. Box 47200, Olympia, WA 98504-7200, (360) 725-6261.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

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

July 13, 2010
Randy Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

WAC 392-344-095 Construction documents—Compliance with public works statutory provisions. The construction documents shall provide for compliance by the contractor with pertinent statutory provisions relating to public works including the following:

(1) Chapter 39.08 RCW relating to contractor's bond;

(2) Chapter 39.12 RCW relating to prevailing wages;

(3) Chapter 18.27 RCW relating to contractor registration;

(4) Chapter 49.28 RCW relating to hours of labor;

(5) Chapter 49.60 RCW relating to discrimination; ((~~and~~))

(6) Chapter 70.92 RCW relating to the provisions for the aged and physically handicapped;

(7) RCW 39.04.320 relating to apprenticeship utilization.

AMENDATORY SECTION (Amending WSR 08-20-008, filed 9/18/08, effective 10/19/08)

WAC 392-344-165 Documents required for release of retainage by school district. Release of retainage on contracts shall be subject to receipt by the superintendent of public instruction of the following documents:

(1) These documents shall be required no later than thirty days after official acceptance:

(a) Properly executed state invoice voucher as per the requirements of WAC 392-344-145;

(b) Architect/engineer certificate(s) of completion;

(c) School district board of directors' resolution of final acceptance signed by the authorized agent of the school district;

(d) School district board of directors' resolution accepting the building commissioning report;

(e) Certification by the authorized agent of the school district that the requirements of RCW 39.04.320 apprenticeship utilization have been met.

(2) These documents shall be required no later than sixty days after official acceptance:

(a) Certification by the authorized agent of the school district that the district has on file all affidavits of wages paid in compliance with RCW 39.12.040;

(b) After expiration of forty-five days following acceptance of the project by the school district, a signed statement by the authorized agent of the school district that no lien(s) is on file with the school district or a certified list of each lien is on file with the school district. A copy of each lien shall be forwarded to the superintendent of public instruction;

(c) Either a permanent or temporary occupancy permit by building official of the jurisdiction. Also required are release documents as defined in chapter 60.28 RCW, RCW 50.24.130, and 51.12.050.

WSR 10-15-058
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed July 15, 2010, 9:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-23-078.

Title of Rule and Other Identifying Information: Model traffic ordinance.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA (check in at counter on first floor), on August 24, 2010, at 3:00 p.m.

Date of Intended Adoption: August 25, 2010.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 586-8351, by June 21, 2010.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by June 21, 2010, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amends WAC 308-330-197, 308-330-316, 308-330-320, 308-330-415, 308-330-464 and 308-330-700, to incorporate statutory changes made from 2004 to 2009, inclusive.

Reasons Supporting Proposal: The department is required to adopt a model traffic ordinance for use by any city, town, or county under the provisions of RCW 46.90.010.

Statutory Authority for Adoption: RCW 46.90.010.

Statute Being Implemented: RCW 46.90.010.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Doron Maniece, Highways-Licenses Building, Olympia, Washington, (360) 902-3850.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

July 15, 2010
Walt Fahrer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-18-061, filed 8/27/04)

WAC 308-330-197 RCW sections adopted—Off-road and nonhighway vehicles. The following sections of the Revised Code of Washington (RCW) pertaining to off road and nonhighway vehicles as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.09.020, 46.09.040, 46.09.050, 46.09.085, 46.09.115, 46.09.117, 46.09.120, 46.09.130, 46.09.140, 46.09.180, and 46.09.190.

AMENDATORY SECTION (Amending WSR 04-18-061, filed 8/27/04)

WAC 308-330-316 RCW sections adopted—Vehicle lighting and other equipment. The following sections of the Revised Code of Washington (RCW) pertaining to vehicle lighting and other equipment as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.37.010, 46.37.020, 46.37.030, 46.37.040, 46.37.050, 46.37.060, 46.37.070, 46.37.080, 46.37.090, 46.37.100, 46.37.110, 46.37.120, 46.37.130, 46.37.140, 46.37.150, 46.37.160, 46.37.170, 46.37.180, 46.37.184, 46.37.185, 46.37.186, 46.37.187, 46.37.188, 46.37.190, 46.37.193, 46.37.196, 46.37.200, 46.37.210, 46.37.215, 46.37.220, 46.37.230, 46.37.240, 46.37.260, 46.37.270, 46.37.280, 46.37.290, 46.37.300, 46.37.310, 46.37.340, 46.37.351, 46.37.360, 46.37.365, 46.37.369, 46.37.375, 46.37.380, 46.37.390, 46.37.395, 46.37.400, 46.37.410, 46.37.420,

46.37.4215, 46.37.4216, 46.37.423, 46.37.424, 46.37.425, 46.37.430, 46.37.435, 46.37.440, 46.37.450, 46.37.465, 46.37.467, 46.37.470, 46.37.480, 46.37.490, 46.37.495, 46.37.500, 46.37.510, 46.37.513, 46.37.517, 46.37.518, 46.37.520, 46.37.522, 46.37.523, 46.37.524, 46.37.525, 46.37.527, 46.37.528, 46.37.529, 46.37.530, 46.37.535, 46.37.537, 46.37.539, 46.37.540, 46.37.550, 46.37.560, 46.37.570, 46.37.590, 46.37.600, 46.37.610, 46.37.620, 46.37.630, 46.37.640, 46.37.650, ((~~and~~)) 46.37.660, 46.37.670, 46.37.671, 46.37.672, 46.37.673, 46.37.674, 46.37.675, and 46.37.680.

AMENDATORY SECTION (Amending WSR 04-18-061, filed 8/27/04)

WAC 308-330-320 RCW sections adopted—Size, weight, load. The following sections of the Revised Code of Washington (RCW) pertaining to vehicle size, weight, and load as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.44.010, 46.44.013, 46.44.020, 46.44.030, 46.44.034, 46.44.036, 46.44.037, 46.44.041, 46.44.042, 46.44.043, 46.44.047, 46.44.050, 46.44.060, 46.44.070, 46.44.090, 46.44.091, 46.44.092, 46.44.093, 46.44.095, 46.44.096, 46.44.105, 46.44.120, 46.44.130, 46.44.140, 46.44.170, 46.44.173, 46.44.175, 46.44.180, and 46.44.190.

AMENDATORY SECTION (Amending WSR 00-18-067, filed 9/1/00)

WAC 308-330-415 RCW sections adopted—Right of way. The following sections of the Revised Code of Washington (RCW) pertaining to vehicles and pedestrians use of roadways, right of way, rights and duties as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.61.100, 46.61.105, 46.61.110, 46.61.115, 46.61.120, 46.61.125, 46.61.130, 46.61.135, 46.61.140, 46.61.145, 46.61.150, 46.61.155, 46.61.160, 46.61.165, 46.61.180, 46.61.183, 46.61.185, 46.61.190, 46.61.195, 46.61.200, 46.61.202, 46.61.205, 46.61.210, 46.61.212, 46.61.215, 46.61.220, 46.61.230, 46.61.235, 46.61.240, 46.61.245, 46.61.250, 46.61.255, 46.61.260, 46.61.261, 46.61.264, 46.61.266, and 46.61.269.

AMENDATORY SECTION (Amending WSR 04-18-061, filed 8/27/04)

WAC 308-330-464 RCW sections adopted—Operation and restrictions. The following sections of the Revised Code of Washington (RCW) pertaining to the operation of vehicles and the restriction of certain acts and practices of vehicle operators and passengers as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.61.600, 46.61.605, 46.61.606, 46.61.608, 46.61.610, 46.61.611, 46.61.612, 46.61.614, 46.61.615, 46.61.620, 46.61.625, 46.61.630, 46.61.635, 46.61.640, 46.61.645, 46.61.655, 46.61.660, 46.61.665, 46.61.667, 46.61.668, 46.61.670, 46.61.675, 46.61.680, 46.61.685, 46.61.687, 46.61.688, 46.61.690, 46.61.700, 46.61.710, 46.61.720, 46.61.723, 46.61.725, 46.61.730, 46.61.735, and 46.61.740.

AMENDATORY SECTION (Amending WSR 04-18-061, filed 8/27/04)

WAC 308-330-700 RCW sections adopted—Disposition of traffic infractions. The following sections of the Revised Code of Washington (RCW) pertaining to the disposition of traffic infractions as now or hereafter amended are hereby adopted by such reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.63.010, 46.63.020, 46.63.030, 46.63.040, 46.63.060, 46.63.070, 46.63.073, 46.63.075, 46.63.080, 46.63.090, 46.63.100, 46.63.110, 46.63.120, 46.63.130, 46.63.140, 46.63.151, ((~~and~~)) 46.63.160, and 46.63.170.

WSR 10-15-067
PROPOSED RULES
DEPARTMENT OF HEALTH
(Board of Pharmacy)

[Filed July 16, 2010, 11:31 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 246-863-035 Temporary permit—Pharmacist. The proposed amendments will allow for temporary practice permits to be issued to applicants applying for a Washington state pharmacist license through the license transfer process. Applicants must meet all requirements for licensure, but are in the process of completing a fingerprint-based national background check.

Hearing Location(s): Blackriver Training and Conference Center, 800 Oakesdale Avenue S.W., Renton, WA 98057, on September 16, 2010, at 9:15 a.m.

Date of Intended Adoption: September 16, 2010.

Submit Written Comments to: Doreen E. Beebe, Washington State Board of Pharmacy, 310 Israel Road S.E., P.O. Box 47863, Olympia, WA 98504-7863, web site http://www3.doh.wa.gov/policyreview/, fax (360) 236-2901, by September 13, 2010.

Assistance for Persons with Disabilities: Contact Doreen E. Beebe by September 13, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule is to allow individuals waiting for federal criminal fingerprint checks to work in Washington state under a temporary practice permit. The national background check process is lengthy and has caused licensing delays that may affect the public's access to health care. Applicants must meet all licensing requirements and must be eligible for the license transfer/reciprocity process. The temporary practice permit grants the individual the full scope of practice as a pharmacist, except the ability to qualify as a responsible

pharmacist manager. The temporary practice permit is valid up to one hundred eighty days.

Reasons Supporting Proposal: RCW 18.130.064 authorizes fingerprint-based national background checks for those situations when a Washington criminal background check is inadequate. RCW 18.130.075 authorizes the board of pharmacy to adopt rules to determine the duration of a temporary permit to reduce barriers for out-of-state licensed applicant[s] who otherwise meet all licensing requirements.

Statutory Authority for Adoption: RCW 18.130.075, 18.130.064, 18.64.005.

Statute Being Implemented: RCW 18.130.075, 18.130.-064, 18.64.080.

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

Name of Proponent: Department of health, board of pharmacy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Susan Teil Boyer, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(g)(ii), a small business economic impact statement is not required for proposed rules that adopt, amend, or repeal a filing or related process requirement for applying to an agency for a license or permit.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) exempts rules the content of which is explicitly and specifically dictated by statute.

July 16, 2010
Susan Teil Boyer
Executive Director

AMENDATORY SECTION (Amending Order 317B, filed 11/17/92, effective 12/18/92)

WAC 246-863-035 Temporary permits. (1) A temporary practice permit to practice pharmacy may be issued to an applicant ((~~licensed~~)) who meets all of the requirements and qualifications for the license, except the results of the fingerprint-based national background check, if required.

(2) A temporary practice permit to practice pharmacy may be issued to an applicant who:

(a) Holds an unrestricted, active license by examination in ((~~a~~)) another state which participates in the ((~~licensure~~)) license transfer or reciprocity process ((~~unless there is a basis for denial of the license or issuance of a conditional license.~~

~~(b) The applicant shall meet all the qualifications, submit the necessary paperwork and fees for licensure transfer, and submit a written request for a permit to practice pharmacy with the temporary permit fee specified in WAC 246-907-030.~~

~~Prior to issuance of the permit to practice pharmacy, the board shall receive the following documents:~~

~~(1) A completed Washington pharmacy license application;~~

~~(2) The fee specified in WAC 246-907-030;~~

~~(3) A disciplinary report from the National Association of Boards of Pharmacy (NABP) Clearinghouse;~~

~~(4) Completed NABP "Official Application for Transfer of Pharmaceutic Licensure";~~

~~(5) Proof of seven hours of approved AIDS education.~~

~~Such a permit shall expire on the first day of the month following the date of the next jurisprudence examination. In case of failure or nonattendance, the permit shall not be extended~~)):

(b) Has completed a Washington application for pharmacist license by transfer or reciprocity;

(c) Has submitted pharmacist license application fees;

(d) Has passed the Washington state jurisprudence exam;

(e) Is not subject to denial of a license or issuance of a conditional or restricted license; and

(f) Does not have a criminal record in Washington state.

(3) A temporary practice permit grants the individual the full scope of practice of pharmacy, except the ability to qualify as a responsible pharmacist manager.

(4) A temporary practice permit expires when any one of the following occurs:

(a) The license is granted;

(b) A notice of decision on the application is mailed to the applicant, unless the notice of decision specifically extends the duration of the temporary practice permit; or

(c) One hundred eighty days after the temporary practice permit is issued.

(5) To receive a temporary practice permit, the applicant must submit the fingerprint card, a written request for a temporary practice permit, and applicable fees.

WSR 10-15-071
PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Order 10-05—Filed July 16, 2010, 3:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-09-103.

Title of Rule and Other Identifying Information: Department of ecology (ecology) will update chapter 173-430 WAC, Agricultural burning, to:

- Adjust the 2011 field burning fee to cover the costs of administering and enforcing the permit programs,
- Change the pile burning fee to a per ton fee rather than a per acre fee,
- Adopt a process for adjusting agricultural burning fees in the future,
- Address the finding in *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III (*Rasmussen v. Ecology*),
- Make housekeeping changes for consistency.

Hearing Location(s): Columbia County, Rural Library District, 111 South 3rd Street, Dayton, WA, on August 26, 2010, at 7 p.m.; and at the Wenatchee Public Library, 310 Douglas Street, Wenatchee, WA, on September 2, 2010, at 6 p.m.

Date of Intended Adoption: November 10, 2010.

Submit Written Comments to: Richelle Perez, P.O. Box 47600, Olympia, WA 98504-7600, e-mail Richelle.Perez@ecy.wa.gov, fax (360) 407-7528, by September 9, 2010.

Assistance for Persons with Disabilities: Contact Tami Dahlgren at (360) 407-6830, by August 19, 2010. Persons with hearing loss, call 711 for Washington relay service. Persons with a speech disability, call 877-833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule adopts the fees as determined by the agricultural burning practices and research task force (task force) based on the new fee structure established in RCW 70.94.6528. For pile burning, the rule changes fees to a per ton basis from a per acre. For field burning, the rule increases the fee. Field burning fees remain on a per acre basis. Additionally, it adopts a process for adjusting the fees within the caps in the future. Finally, this rule making includes some minor changes for consistency with the authorizing statue [statute] and the findings in the *Rasmussen v. Ecology* court case.

Reasons Supporting Proposal: The legislature authorizes ongoing agricultural burning fee increases until the fee reaches the $3.75 cap per acre for field burning and $1.00 per ton for pile burning. According to statute, the task force determines fees within these caps.

SSB 6556 (2010) introduced a per-ton fee for pile burns to replace the per-acre fee. The volume of piled material burned exceeds the volume of crop residue from a field of the same size. So, this fee structure provides a closer link to the amount of the fee and the quantity of material burned. *Rasmussen v. Ecology* requires ecology to remove language it found as outside of ecology's regulatory authority.

Statutory Authority for Adoption: Chapter 70, Laws of 2010 (SSB 6556) authorizes ongoing fee increases until the fee reaches the cap, RCW 70.94.6528.

Statute Being Implemented: RCW 70.94.6528.

Rule is necessary because of state court decision, *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Richelle Perez, Lacey, Washington, (360) 407-7528; Implementation and Enforcement: Karen Wood, Spokane, Washington, (509) 329-3469.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Executive Summary: In this rule making, ecology is proposing updates to chapter 173-430 WAC to:

- Adjust the field burning fee to cover the costs of administering and enforcing the permit programs.
- Change the pile burning fee to a per-ton fee rather than a per-acre fee.
- Address the finding in *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III (*Rasmussen v. Ecology*), by removing a section of the existing rule that is beyond ecology's regulatory scope.
- Make housekeeping changes for consistency with the authorizing statute.

The rule making was authorized by both existing law and by SSB 6556 (passed in 2010). The legislature authorizes ongoing agricultural burning fee increases until the fee reaches the $3.75 cap per acre for field burning, and the $1 cap per ton for pile burning. RCW 70.94.6528 (6)(b) directs the task force to determine fees at a level to, "cover the cost of administering and enforcing the programs" and provide research funds.

Ecology calculated cost-to-employment ratios to examine the relative impacts of the proposed rule on small versus large businesses overall and in each industry likely affected. Other measures of business ability to cope with compliance costs (sales, hours of labor) were not sufficiently available for the representative set of permittees.

Median ratios of total cost to employment ranged from $0.11 per employee for the largest businesses, to $15.29 for small business. It is clear from these ratios that the proposed rule creates a disproportionate impact on small business, as based on employment rolls. This means ecology must make reasonable effort to mitigate these disproportionate impacts.

Ecology had limited scope in reducing the disproportionate impact of the proposed rule on small businesses. Fees were determined by the task force, and could thus not be reallocated or adjusted for small versus large businesses. Ecology was not able to include additional actions to reduce small business impacts in the proposed rule. Ecology did, however, include multiple representatives of small business in the task force decision process (see Section 5).

Ecology extensively involved businesses in the development of the proposed rule, including small businesses. Ecology involved the business community, and especially those businesses that might be disproportionately impacted by regulation, because they provide unique input into the views of the regulated community.

In particular, several members of the task force represent farmers, a diverse set of primarily small businesses. The Wheat Growers, Alfalfa Growers, and Tree Fruit Growers associations have representatives on the task force.

Ecology estimated that the proposed rule could result in the loss of three jobs each year in the Washington state economy.

Note: Due to size limitations relating to the filing of documents with the code reviser, the small business economic impact statement does not contain a fully detailed explanation of ecology's analysis. The cost-benefit analysis (ecology publication #10-02-014) contains full details of the analysis, including additional contextual information and methodology.

Section 1: Introduction and Background: Based on research and analysis required by the Regulatory Fairness Act, RCW 19.85.070, ecology has determined that the proposed rule amendments (chapter 173-430 WAC) have a disproportionate impact on small business. Therefore, ecology included cost-minimizing features in the rule where it is legal and feasible to do so.

This document presents the background for the analysis of impacts on small business relative to other businesses, the results of the analysis, and cost-mitigating action taken by

ecology. It is intended to be read with the associated cost-benefit analysis (ecology publication #10-02-014), which contains more in-depth discussion of the analyses.

A small business is defined as having fifty or fewer employees.

History: The Clean Air Washington Act of 1991 (chapter 70.94 RCW) regulates multiple air quality standards and practices in Washington. Among these is outdoor burning - including agricultural burning. Chapter 173-430 WAC, Agricultural burning, implements the Clean Air Act. It defines fees, best management practices, fee use and research, delegation authority, and permit conditions and procedures.

Regulatory Baseline: The regulatory baseline is the way agricultural burning would be done if the proposed rule is not adopted - that is, the existing laws and rules at various jurisdictional levels that determine how agricultural burning is regulated and performed now. The baseline does not include, however, guidance and common practices that, while they are commonly used in agricultural burning, are not technically a legal requirement.

Under the current law and its implementing rule (chapters 70.94 RCW and 173-430 WAC, respectively) entities such as, but not limited to, businesses, individuals, governments, and other organizations must have an agricultural burning permit to do any agricultural burning.

While it is legal to burn for approved agronomic reasons with a permit, it is not legal to allow smoke to impact others. The agricultural burning of field crop residue and orchard tear out residue can directly impact the safety and health of citizens breathing the smoke-filled air. See chapter 2 for further discussion of the avoided health costs that result from regulation of agricultural burning and smoke.

To help reduce smoke-related environmental and health concerns, the department of ecology's eastern and central Washington burn teams make a daily burn/no-burn decision called the "burn call" for agricultural burning permit holders. The burn call provides daily current and forecasted air quality conditions and burn decisions to the public and business. This information is available on-line, by phone, or through listserv.

Agricultural Burning Practices and Research Task Force: The task force is established by RCW 70.94.6528 of the Washington State Clean Air Act. The goal of the task force is to work toward a reduction in air pollution emissions from agricultural burning. The task force, which is chaired by the department of ecology, is represented by many different interests. The representatives include:

- Eastern Washington local air authorities.
- The agricultural community.
- The department of agriculture.
- Local universities or colleges.
- Public health.
- Conservation districts.

The task force is empowered by the Clean Air Act to develop best management practices (BMP) to reduce air emissions from agricultural activities, determine the level of permit fees, and identify research opportunities.

Agricultural Burn Permits: Ecology requires a permit for all types of agricultural burning, with the exception of:

- Orchard prunings.
- Organic debris along fence lines or irrigation or drainage ditches.
- Organic debris blown by the wind.

Burn permits are issued at the local level by ecology, a local air authority, or a delegated permitting authority (e.g., a county or conservation district). Ecology provides access to burn zone maps outlining these areas.

Only complete applications are processed by the relevant permitting agency. Incomplete applications are denied. Complete applications include all of the following:

- A completed permit application.
- A map of the area to be burned.
- A fee payment.

Agricultural burn permits in Asotin, Garfield, Columbia, Walla Walla, Franklin, Adams, Grant, or Whitman counties are processed through local conservation districts:

- Adams Conservation District.
- Asotin Conservation District.
- Columbia Conservation District.
- Franklin Conservation Department.
- Garfield; Pomeroy Conservation District.
- Grant Conservation District.
- Othello Conservation District.
- Walla Walla Conservation District.
- Palouse Conservation District.
- Palouse Rock Lake Conservation District.
- Pine Creek Conservation District.
- Whitman Conservation District.

Agricultural burn permits in western Washington, or in Benton, Yakima, or Spokane counties are processed by local air agencies:

- Benton Clean Air Agency.
- Northwest Clean Air Agency.
- Olympic Region Clean Air Agency.
- Puget Sound Clean Air Agency.
- Southwest Clean Air Agency.
- Spokane Regional Clean Air Agency.
- Yakima Regional Clean Air Agency.

Agricultural burn permits for land on Indian reservations are processed through tribal governments. Burning in all other areas is processed directly through ecology.

There are separate permit applications for field burning, pile burning, spot burning, and bale burning.

Best Management Practices: Applicants must use BMPs as identified by the state's task force to complete their application. Agricultural burning is allowed when it is reasonably necessary to carry out the enterprise. A permit applicant can show burning is reasonably necessary when it meets the criteria of the BMPs and no practical alternative exists. BMPs are one of the ways to demonstrate the need to burn. Permit applicants not using BMPs must establish that their proposed burn is reasonably necessary and that no practical alternative is available. The burden of proof is on the grower, and the demonstration must satisfy the local clean air authority with

jurisdiction, or the department of ecology and the local delegated permitting authority, if there is a local permitting authority.

Permit Fees: The existing rule lists fees for different types of agricultural burning. Fees are determined by the type of burning, as well as the size of the permitted burn area. Under the baseline, agricultural burning fees are:

- Field burn permits are a minimum of $25, or $2.25 per acre, whichever is more.
- Spot burn permits are a flat fee of $25 (minimum field burning fee).
- Bale burn permits are a flat fee of $25 (minimum field burning fee).
- Orchard burn permits are a minimum of $50, or $2.25 per acre, whichever is more.

Permit fees fund program activities, including administration and smoke management, as well as research in the field of agricultural burning.

Changes under the Proposed Rule: In this rule making, ecology is proposing updates to chapter 173-430 WAC to:

- Adjust the field burning fee to cover more of the costs of administering and enforcing the permit programs.
- Change the pile burning fee to a per-ton fee rather than a per-acre fee.
- Address the finding in *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III (*Rasmussen v. Ecology*), by removing a section of the existing rule that is beyond ecology's regulatory scope.
- Make housekeeping changes for consistency with the authorizing statute.

The rule making was authorized by both existing law and by SSB 6556 (passed in 2010). The legislature authorizes ongoing agricultural burning fee increases until the fee reaches the $3.75 cap per acre for field burning, and the $1 cap per ton for pile burning. RCW 70.94.6528 (6)(b) directs the task force to set fees at a level to, "cover the cost of administering and enforcing the programs" and provide research funds.

Proposed Fees and Changes to Pile Burning (Mostly Orchard Tear-out): Current fees cover only about twenty-five percent of costs, according to internal review of budget records. Increasing fees would bring the program closer to cost recovery. Since the state's general fund deficit could limit the amount of money available to subsidize the program, an agricultural burning permit program that pays for itself may prevent cuts to the program, and limit resulting cuts to services provided to farms, businesses, and the public - especially in terms of allowable burn days.

Additionally, SSB 6556 introduced a per-ton fee for pile burns to replace the per-acre fee. The volume of piled material burned exceeds the volume of crop residue from a field of the same size. A per-ton fee structure provides a closer link between the size of the fee and the amount of material burned.

The proposed fee schedule is:

- Field burn permits are a minimum of $30 for the first 10 acres, plus $3 per additional acre.
- Spot burn permits are a flat fee of $30 for up to 10 acre.
- Pile burn permits are a minimum of $80 for the first 100 tons, plus fifty cents per additional ton.

This rule making evaluated the options for setting the fees in 2012 and later, and determined that the preferred process (as proposed in the rule) is regular review and public input to fee setting. Ecology chose this option over inclusion of a set fee structure or tying of fees to an index measure of growth, such as an inflation index.

Rasmussen v. Ecology: *Rasmussen v. Ecology*[1] requires ecology to remove language from the existing rule that the court found to be outside of ecology's regulatory authority. The proposed rule eliminates the identified language.

Housekeeping and Clarification: Finally, the proposed rule clarifies language and the structure of the rule to facilitate understanding of the requirements, and in turn, compliance with the rule.

Analytical Scope Comments: Ecology is proposing raising fees to a level determined by the task force. While the level of fees determined for each type of agricultural burning is technically exogenous to the proposed rule (determined by the task force; not determined independently by ecology), ecology is the chair of the task force, and has chosen to propose the higher fees set by the task force in rule.

Ecology is only required to analyze rule amendments in which ecology had discretion. Because the proposed fees were determined by the task force, it is somewhat ambiguous the extent to which task force decisions are within ecology's discretion. Ecology is the entity amending the rule and officially proposing the fees, but they were not determined by ecology alone, but rather by the task force. Despite this minor ambiguity, ecology believes that it will benefit readers of this document to include the impacts of the overall rule changes.

Section 2: Compliance Costs for Washington Businesses: The primary compliance cost to Washington businesses arising from the proposed rule is an increase in agricultural burn permit fees for some permit holders. Ecology estimated fees for existing permittees under both the baseline (existing) fee schedule, and the proposed fee schedule in the proposed rule.

This generated a range of impacts between a $5 increase in fees and an increase of approximately $2,400. The largest increases occurred for field burning permits with the largest acreage, those permittees with multiple permits, and for large orchards that would pay by the ton rather than by acreage under the proposed rule.

Calculations for fees for each permittee were based on data from existing permits on the type of permitted burn and the associated acreage. Ecology used a conservatively large measure of twenty tons per acre of orchard burning, based on professional expertise and experience. For each permittee, where an associated business was apparent, ecology assigned an identifier of industry using the North American industry classification system (NAICS). For those permittees without

an apparent associated business, ecology conservatively assumed that the distribution of industries across those permittees was the same as the distribution of industries across known businesses with agricultural burn permits.

Each industry is associated with a distribution of business sizes, based on data from the Washington state employment security department. These employer sizes were then used to calculate the ratios of costs (fee increase) to number of employees for each industry. The results were evaluated comparing small businesses for each industry to the largest ten percent of businesses.

Section 3: Quantification of Costs and Ratios: Ecology quantified all costs for which reliable data and analytic methods were available. Changes in compliance costs arising from increased permit fees for some permittees ranged from zero to nearly $2,400 at the individual permit level. Across all likely impacted permittees represented, ecology estimated the total cost to be approximately $119 thousand.

Total Cost-to-Employment Ratios: Ecology calculated cost-to-employment ratios to examine the relative impacts of the proposed rule on small versus large businesses overall and in each industry likely affected. Other measures of business ability to cope with compliance costs (sales, hours of labor) were not sufficiently available for the representative set of permittees.

Median ratios of total cost to employment ranged from $0.11 per employee for the largest businesses, to $15.29 for small business. It is clear from these ratios that the proposed rule creates a disproportionate impact on small business, as based on employment rolls. This means ecology must make reasonable effort to mitigate these disproportionate impacts. Table 1 shows the distribution of cost per employee at the median employment level across industries.

TABLE 1: Cost per Employee by Industry (Annual)

NAICS GROUP	AVERAGE EMPLOYMENT—SMALL	AVERAGE EMPLOYMENT—LARGEST 10%	AVERAGE IMPACT—SMALL	AVERAGE IMPACT—LARGEST 10%
111	5	503	$12.60	$0.12
112	6	78	$10.44	$0.75
113	4	64	$14.62	$0.92
115	5	526	$10.75	$0.11
238	4	321	$13.05	$0.18
311	15	451	$3.85	$0.13
339	7	357	$8.90	$0.16
424	8	392	$7.45	$0.15
451	9	96	$6.78	$0.61
453	6	217	$9.61	$0.27
531	4	373	$15.29	$0.16
532	7	146	$8.24	$0.40
721	10	343	$5.96	$0.17
811	5	156	$11.47	$0.38
812	5	138	$11.42	$0.43

At the industry level, and overall across all industries, ecology determined that the proposed rule is likely to have disproportionate impacts on small versus large businesses. Therefore, ecology must include elements in the rule that reduce this disproportional impact, within the range of what is legal and feasible.

Section 4: Action Taken to Reduce Small Business Impacts: Ecology had limited scope in reducing the disproportionate impact of the proposed rule on small businesses. Fees were determined by the task force, and could thus not be reallocated or adjusted for small versus large businesses. Ecology was not able to include additional actions to reduce small business impacts in the proposed rule. Ecology did, however, include multiple representatives of small business in the task force decision process (see Section 5).

Section 5: Small Business Involvement: Ecology extensively involved businesses in the development of the proposed rule, including small businesses. Ecology involved the business community, and especially those businesses that might be disproportionately impacted by regulation, because they provide unique input into the views of the regulated community.

In particular, several members of the task force represent farmers, a diverse set of primarily small businesses. The Wheat Growers, Alfalfa Growers, and Tree Fruit Growers associations have representatives on the task force.

Section 6: NAICS Codes of Impacted Industries: This section lists NAICS codes for industries ecology expects to be impacted by the proposed rule[2]. The list does not include public entities such as state and local agencies that may also be impacted by the proposed rule, as these are not private businesses.

- 111
- 112
- 113
- 115
- 238
- 311
- 339
- 424

- 451
- 453
- 531
- 532
- 721
- 811
- 812

Section 7: Impact on Jobs: Ecology used the Washington state office of financial management's 2002 Washington input-output model (OFM-IO) to estimate the proposed rule's first-round impact on jobs across the state. This methodology estimates the impact as reductions or increases in spending in certain sectors of the state economy flow through to purchases, suppliers, and demand for other goods. Ecology used a sample of 1/5 of permitted acreage with identifiable industry with moderate confidence to model the proposed rule's impact on jobs.

The OFM-IO results indicated a loss of nearly 0.5 jobs resulting each year from the impacts of the proposed rule in the sample of approximately twenty percent of permitted agricultural burning acreage. This result assumes that money paid to the public sector is not respent in the economy. Table 2 shows the estimated employment impacts across multiple industries.

TABLE 2: Estimated Economy-Wide Employment Impacts as Estimated By OFM Input-Output Model

NAICS	Employment Impact	NAICS	Employment Impact
111	-0.158	337	0.000
112	-0.012	316, 326, 339	-0.001
113	0.000	423	-0.036
114	0.000	441, 442, 443, 444	-0.029
21	0.000	481	-0.001
2211	-0.001	483	0.000
2212	0.000	484	-0.002
2213	-0.002	482, 485, 486, 487, 491, 492	-0.005
23	-0.010	488, 493	-0.001
311, 312	-0.003	5112, 518	0.000
313, 314, 315	0.000	517	-0.002
321	-0.001	5111,512, 515, 516, 519	-0.002
322	0.000	521, 522	-0.013
323	-0.001	523, 524, 525	-0.005
324	0.000	53	-0.016

TABLE 2: Estimated Economy-Wide Employment Impacts as Estimated By OFM Input-Output Model

NAICS	Employment Impact	NAICS	Employment Impact
325	0.000	5411, 5412, 5416, 5418, 5419, 55	-0.006
327	0.000	5413, 5414, 5415, 5417	-0.001
331	0.000	61	-0.004
332	0.000	621	-0.009
333	0.000	622	-0.006
334	0.000	623, 624	-0.010
335	0.000	71, 721	-0.055
3364	0.000	722	-0.017
3366	0.000	561	-0.012
3361, 3362, 3363, 3365, 3369	0.000	562, 81, 115	-0.052

Ecology then multiplied these employment impact results to match the total permitted acreage in the state. This resulted in nearly three jobs lost each year as a likely result of the proposed rule's compliance costs.

[1] *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology,* Docket # 22989-1-III (*Rasmussen v. Ecology*)

[2] North American industry classification system (NAICS) codes have largely taken the place of standard industry classification (SIC) codes in the categorization of industries.

A copy of the statement may be obtained by contacting Kasia Patora, Economics and Regulatory Research, Department of Ecology, P.O. Box 47600, Lacey, WA 98504-7600, phone (360) 207-6184 [407-6184], fax (360) 407-6989, e-mail Kasia.Patora@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kasia Patora, Economics and Regulatory Research, Department of Ecology, P.O. Box 47600, Lacey, WA 98504-7600, phone (360) 407-6184, fax (360) 407-6989, e-mail Kasia.Patora@ecy.wa.gov.

July 16, 2010
Polly Zehm
Deputy Director

AMENDATORY SECTION (Amending Order 04-10, filed 7/26/06, effective 8/26/06)

WAC 173-430-010 Purpose of the regulation. Chapter 70.94 RCW, the Washington Clean Air Act, declares it is the intent of the state to protect public health and it is the policy

of the state that the responsibilities and costs of protecting the air resource and operating state and local air pollution control programs be shared as equitably as possible among all sources whose emissions cause air pollution. Some of the sources whose emissions contribute to air pollution in the state include industrial sources (large and small), mobile sources such as vehicles, and area sources such as woodstoves, general outdoor burning, and agricultural burning. A variety of strategies to control and reduce the impact of emissions are described throughout chapter 70.94 RCW, including controls on emissions created from agricultural burning. The act intends that public health be protected and also allows for agricultural burning that is reasonably necessary. The act also requires that burning be restricted and regulated to address the potentially competing goals of both limiting air pollution and allowing agricultural burning. Chapter 70.94 RCW authorizes the Washington state department of ecology (ecology) and local air authorities to implement the provisions of that act related to agricultural burning. This rule establishes control((~~s~~)) strategies for agricultural burning in the state ((~~in order~~)) to minimize adverse health and the ((~~environment~~)) environmental effects from agricultural burning in accord with the most reasonable procedures to follow in safeguarding life and property under all circumstances or is reasonably necessary to carry out the enterprise or both. ((~~The control~~)) These strategies include:

(1) Establishing a permit program with minimum statewide requirements and specific burn authorizations.

(2) Providing for implementation of a research program to explore and identify economical and practical alternatives to agricultural burning.

(3) Encouraging and developing economically feasible alternative methods to agricultural burning.

(4) Limiting the scope of the rule to agricultural burning and distinguishing between agricultural burning and other types of burning.

(5) Providing for local administration of the permitting program through delegation.

(6) Assessing air quality within a region and incorporating this data into an evaluation tailored to emissions from agricultural burning.

(7) Making use of metering as a component of the agricultural burning permit program. Metering is a technique of limiting emissions from agricultural burning at specific times and places by taking into account potential emission rates, forecasted weather (dispersion), and current and projected air quality.

(8) Using improved and proven technology in evaluating the conditions under which burning is authorized, including those related to meteorology, emissions, and air pollution.

(9) Providing for education and communication.

AMENDATORY SECTION (Amending Order 04-10, filed 7/26/06, effective 8/26/06)

WAC 173-430-020 General applicability and conditions. (1) This regulation applies to burning related to agricultural activities. It does not apply to silvicultural burning or other outdoor burning ((~~(~~)). Refer to chapter 173-425 WAC((~~)~~)) for requirements for silvicultural burning and other outdoor burning.

(2) Burning of organic debris related to agricultural activities is allowed when it is reasonably necessary to carry out the enterprise. Agricultural burning is reasonably necessary to carry out the enterprise when it meets the criteria of the best management practices and no practical alternative is reasonably available (((~~RCW 70.94.650~~))).

(3) Anyone conducting burning related to agricultural activities must comply with local fire safety laws and ((~~regulations~~)) rules, and burn when wind takes the smoke away from roads, homes, population centers, or other public areas.

(4) Burning related to agricultural activities must not occur during an air pollution episode or any stage of impaired air quality. Definitions of air pollution episode and impaired air quality are found in WAC 173-430-030.

(5) Burning of organic debris related to agricultural activities requires a permit and fee, except for agricultural burning that is incidental to commercial agricultural activities (RCW ((~~70.94.745~~)) 70.94.6524). An agricultural operation burning under the incidental agricultural burning exception must still notify the local fire department within the area and not burn during an air pollution episode or any stage of impaired air quality. The specific types of burning that qualify as exceptions to the permit requirement are:

(a) Orchard prunings. An orchard pruning is a routine and periodic operation to remove overly vigorous or nonfruiting tree limbs or branches to improve fruit quality, ((~~facilitate~~)) assist with tree canopy training and improve the management of plant and disease, and pest infestations;

(b) Organic debris along fencelines. A fenceline or fencerow is the area bordering a commercial agricultural field that is or would be unworkable by equipment used to cultivate the adjacent field;

(c) Organic debris along or in irrigation or drainage ditches. An irrigation or drainage ditch is a waterway which predictably carries water (not necessarily continuously) and is unworkable by equipment used to cultivate the adjacent field;

(d) Organic debris blown by wind. The primary example is tumbleweeds.

AMENDATORY SECTION (Amending Order 04-10, filed 7/26/06, effective 8/26/06)

WAC 173-430-030 Definition of terms. The definitions of terms contained in chapter 173-400 WAC are incorporated into this chapter by reference. Unless a different meaning is clearly required by context, the meanings of the following words and phrases used in this chapter are listed below.

(1) **Agricultural burning:** Means the burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation ((~~and/~~))or crop rotation, or where identified as a best management practice by the agricultural burning practices and research task force established in RCW ((~~70.94.650~~)) 70.94.6528(6) or other authoritative source on agricultural practices. Propane flaming for the purpose of vegetative debris removal is considered commercial agricultural burning.

(2) **Agricultural operation:** Means a farmer who can substantiate that the operation is commercial agriculture by showing the most recent year's IRS schedule F form or its corporate equivalent. It also includes burning conducted by irrigation district or drainage district personnel as part of water system management.

(3) ((~~**Ag task force:** Means the agricultural burning practices and research task force.~~

~~(4)~~)) **Air pollution episode:** Means a period when a forecast, alert, warning, or emergency air pollution stage is declared as described in RCW 70.94.715.

(((~~(5)~~))) (4) **Best management practice:** Means the criteria established by the agricultural burning practices and research task force (((~~Ag~~))) task force).

(((~~(6)~~))) (5) **Certify:** Means to declare in writing, based on belief after reasonable inquiry, that the statements and information provided are true, accurate, and complete.

(((~~(7) **Department:** Means the department of ecology.~~

~~(8)~~))) (6) **Ecology:** Means the Washington department of ecology.

(7) **Farmer:** Means any person engaged in the business of growing or producing for sale any agricultural product upon their own lands, or upon the land in which they have a present right of possession, any agricultural product. Farmer does not mean persons growing or producing ((~~such~~)) products primarily for their own consumption.

(8) **Field burning:** Agricultural burning of vegetative residue on an area of land used in an agricultural operation. Field burning does not include pile burning.

(9) **Impaired air quality:** Means ((~~a first or second stage~~)) an impaired air quality condition declared by ecology or a local air authority with jurisdiction in accordance with RCW ((~~70.94.715, 70.94.775, and~~)) 70.94.473.

(((~~(a) A first stage of impaired air quality is reached when: (i) Fine particulates are at an ambient level of thirty-five micrograms per cubic meter measured on a twenty-four-hour average; and~~

~~(ii) Forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below thirty-five micrograms per cubic meter for a period of forty-eight hours or more from the time that the fine particulates are measured at the trigger level.~~

~~(b) A second stage of impaired air quality is reached when:~~

~~(i) A first stage of impaired air quality has been in force and not been sufficient to reduce the increasing fine particle pollution trend;~~

~~(ii) Fine particulates are at an ambient level of sixty micrograms per cubic meter measured on a twenty-four-hour average; and~~

~~(iii) Forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below sixty micrograms per cubic meter for a period of forty-eight hours or more from the time that the fine particulates are measured at the trigger level.~~))

(10) **Outdoor burning:** Means all forms of burning except those listed as exempt in WAC 173-425-020.

(11) **Permitting authority:** Means ecology or its delegate or a local air authority with jurisdiction or its delegate. Conservation districts, counties, fire districts, or fire protection agencies may receive delegation for all or portions of the agricultural burning permit program as identified in a delegation agreement. The permitting authority will issue agricultural burning permits for a given locale.

(12) **Pile burning:** Agricultural burning of stacked vegetative residue from an agricultural operation. Burning of windrows does not qualify as pile burning.

(13) **Silvicultural burning:** Means burning on any land the department of natural resources protects per RCW 70.94.030(13), ((~~70.94.660~~)) 70.94.6534, ((~~70.94.690~~)) 70.94.6540, and ((~~pursuant to~~)) under chapter 76.04 RCW.

(14) **Spot burn:** Agricultural burning of an unforeseen and unpredicted small area where burning is reasonably necessary and no practical alternative to burning exists. Examples of spot burns include small weed patches, spots of heavy residue, equipment plugs, and harrow dumps. Burning of windrows does not qualify as a spot burn.

(15) **Task force:** Means the agricultural burning practices and research task force.

AMENDATORY SECTION (Amending Order 04-10, filed 7/26/06, effective 8/26/06)

WAC 173-430-040 Agricultural burning requirements. (1) Agricultural burning is allowed when it is reasonably necessary to carry out the enterprise. A farmer can show it is reasonably necessary when it meets the criteria of the best management practices and no practical alternative is reasonably available. In certain circumstances, ecology may certify an alternative to burning. Where the certified alternative is reasonably available, burning is not allowed. Certified alternatives are described in WAC 173-430-045.

(2) For allowed agricultural burning, ((~~the department of~~)) ecology or local air authorities with jurisdiction will make daily or specific fire burn calls (during times of anticipated burning) and use metering when necessary to minimize the potential for adverse air quality impacts. Metering is a technique of limiting emission from burning at specific times and places by taking into account potential emission rates, forecasted weather (dispersion), and current and projected air quality. The burn decision process will consider: The potential number of burns and their expected size(s) and duration(s); recent and current ambient concentrations of pollutants; other potential emissions sources; and evaluations and judgments about how foreseeable meteorological conditions will affect concentrations of pollutants in the air sheds.

(a) For the purposes of this section: The smoke management index is a set of conditions that guide the production of certain reports as described in (c) of this subsection and evaluations as described in (d) of this subsection. The smoke management index is not an air quality standard as defined in RCW 70.94.030(4) and further identified in RCW 70.94.331. The smoke management index is not an emission standard as defined in RCW 70.94.030(9) and further identified in RCW 70.94.331. The smoke management index is not an air pollution episode as described in RCW 70.94.710.

(b) Ecology and local air authorities making daily or specific fire burn calls in areas where PM2.5 concentrations are regularly monitored will follow the procedures in (c) of this subsection ((~~at the time of~~)) when making the burn decision

whenever either of the following smoke management index conditions exist:

(i) A most recent daily average (twenty-four-hour) PM2.5 concentration was equal to or greater than 16 micrograms per cubic meter. This is based on the division between the "good" and "moderate" classifications of the 2009 U.S. Environmental Protection Agency's Air Quality Index (AQI) for (twenty-four hours average PM2.5) particulate matter ((~~based on the National Ambient Air Quality Standard of 65 micrograms per cubic meter~~)).

(ii) A two-hour rolling average PM2.5 concentration, during the most recent twenty-four to thirty hours was equal to or greater than the regional seasonal average PM2.5 concentration plus 15 micrograms per cubic meter.

(c) In authorizing additional burning, a determination will be documented explaining that the decision to allow additional burning is not expected to result in a further significant deterioration of air quality. The determination will be entered on a standard form noting the date, time, the location of the additional burning, the size of the burn(s), and a brief explanation of the opinion as to why the additional burning is not expected to result in a further, significant reduction of air quality. The purpose of the determination and recordkeeping requirements of this section is to enhance agency and public understanding of the effectiveness of the daily burn and metering decision-making process, and to improve its application over time. A notice of ((~~such~~)) the determinations will be made by ecology or a local air authority with jurisdiction at the time the daily burn decision is communicated. Ecology or a local air authority with jurisdiction will also periodically make the determination forms conveniently available to the public.

(d) Following a determination described in (c) of this subsection and a deterioration of air quality to levels equal to or greater than a two-hour rolling average concentration of the regional seasonal average PM2.5 concentration plus 25 micrograms per cubic meter in the specific area during the twenty hours following such determination, ecology or the local air authority with jurisdiction will evaluate the deterioration and document any findings and opinions regarding why the deterioration occurred. Ecology or the local air authority with jurisdiction will make evaluations under this subsection conveniently available to the public.

(e) Ecology or a local air authority with jurisdiction may evaluate emission dispersion impacts in the regular course of business. In addition, ecology or the local air authority with jurisdiction will produce an annual report summarizing determinations and evaluations ((~~pursuant to~~)) under the smoke management index.

(f) ((~~Pursuant to~~)) Under RCW 70.94.473 and ((~~70.94.775~~)) 70.94.6512, no burning ((~~shall be~~)) is authorized when an air quality alert, warning, emergency or impaired air quality condition has been issued.

(g) For purposes of protecting public health (not eliminating agricultural burning), if an area exceeds or threatens to exceed unhealthy air pollution levels, the permitting authority may limit the number of acres, on a pro rata basis as provided by RCW ((~~70.94.656 and~~)) 70.94.6532 or by RCW ((~~70.94.650~~)) 70.94.6528.

(3) Except as described in WAC 173-430-020(5), all agricultural burning requires a permit.

(a) Ecology or local air authorities with jurisdiction will provide agricultural burning application forms for agricultural burning.

(b) To qualify for an agricultural burning permit the farmer must be an agricultural operation or government entity with specific agricultural burning needs, such as irrigation districts, drainage districts, and weed control boards.

(c) Application information. A farmer must fill out the information requested on a permit application, pay the permitting fee, and submit it to the permitting authority for review and approval ((~~prior to~~)) before burning.

(i) The application must describe the reason for burning and include at least the following information: Name and address of the person or corporation responsible for the burn, the specific location (county; legal description: Section, township, range, block and unit number), the crop type, the type or size of the burn, driving directions to the burn, specific reason for the burn, the target date for burning, a map, signature of the responsible party, and any additional information required by the permitting authority. Each permitting authority may require additional information on the application.

(ii) All applications must comply with other state or local ((~~regulations~~)) rules.

(d) The permitting authority must evaluate the application, and approve the permit ((~~prior to~~)) before burning.

(e) Permit decisions including the issuance, denial, or conditioning must be based on consideration of air quality conditions in the area affected by the proposed burning, the time of year, meteorological conditions, the size and duration of the proposed burning activity, the type and amount of vegetative material to be burned, the applicant's need to carry out ((~~such~~)) the burning, existence of extreme burning conditions, risk of escape onto property owned by another, and the public's interest in the environment.

(f) Ecology or its delegate, or a local air authority with jurisdiction, or its delegate must approve or deny the permit in part or in whole based on information in the application.

(g) Ecology and its delegate or a local air ((~~agency~~)) authority with jurisdiction or its delegate may issue permits for appropriate agricultural burning activities in nonattainment areas, maintenance areas, and urban growth areas as described in RCW ((~~70.94.743~~)) 70.94.6514.

(4) All agricultural burning permits require a fee. ((~~Maximum fee level is set by statute at two dollars and fifty cents per acre (RCW 70.94.650(2)) and is established by the agricultural burning practices and research task force (RCW 70.94.650(4)). The fee is the greater of a minimum fee level or a variable fee level.~~

~~(a) Minimum fee levels:~~

~~(i) Twenty-five dollars per calendar year per agricultural operation based on burning up to ten acres or equivalent;~~

~~(ii) Fifty dollars for orchard tear-out burning per calendar year per agricultural operation based on burning debris from up to twenty acres or equivalent.~~

~~(b) The variable fee level (based on the acreage or equivalent):~~

~~(i) Through the calendar year 2007, the fee is two dollars per acre.~~

~~(ii) Beginning in calendar year 2008, the fee is two dollars and twenty-five cents per acre.~~

~~(c) Permit fee uses. The permit fee is used to off-set the cost of administering and enforcing the agricultural burning permit program. There are three components: Local administration, research, and ecology administration.~~

~~(i) Local permitting program administration. The permitting authority may set the fee as an amount per agricultural operation per calendar year, a set amount per fire, or a set rate no greater than one dollar and twenty five cents per acre burned. The permitting authority must establish this portion of the fee by an appropriate, public process such as a local rule, ordinance, or resolution. In areas of the state where the department has not delegated permitting authority, this portion of the fee shall be one dollar and twenty-five cents per acre burned.~~

~~(ii) Ecology administration. This portion of the fee shall be used to off-set the statewide administrative, education, and oversight costs of the department for the agricultural burning program.~~

~~(iii) Research fund. The agricultural burning applied research portion of the fee shall be no greater than one dollar per acre burned. The amount assessed may be less than one dollar per acre burned as periodically determined by the agricultural burning practices and research task force based on applied research needs, regional needs and the research fund budget. The agricultural burning practices and research task force may also establish discounted assessment rates based on the use of best management practices.~~

~~(iv) The chart below shows the permit fee break-out per category:~~

~~Fee Level~~	~~Section~~	~~Local Administration~~	~~Research~~	~~Ecology Administration~~
~~$25.00~~	~~WAC 173-430-040 (4)(a)(i)~~	~~$12.50~~	~~$12.50~~	~~-0-~~
~~$50.00~~	~~WAC 173-430-040 (4)(a)(ii)~~	~~$12.50~~	~~$12.50~~	~~$25.00~~
~~2006 - $2.00 per acre~~	~~WAC 173-430-040 (4)(b)(i)~~	~~Up to $1.25 per acre~~	~~50 cents per acre~~	~~25 cents per acre~~
~~2007 - $2.00 per acre~~	~~WAC 173-430-040 (4)(b)(i)~~	~~Up to $1.25 per acre~~	~~25 cents per acre~~	~~50 cents per acre~~
~~2008 and beyond - $2.25 per acre~~	~~WAC 173-430-040 (4)(b)(ii)~~	~~Up to $1.25 per acre~~	~~50 cents per acre~~	~~50 cents per acre~~

~~(d) A farmer must pay the fee when submitting the application. Refunds are allowed for portions not burned provided the adjusted fee after subtracting refunds is no less than twenty-five dollars.~~

~~(e) The agricultural burning practices and research task force may set acreage equivalents, for nonfield style agricultural burning practices, based on the amount of emissions relative to typical field burning emissions. Any acreage equivalents, established by rule, shall be used in determining fees. For agricultural burning conducted by irrigation or drainage districts, each mile of ditch (including banks) burned is calculated on an equivalent acreage basis.~~)) The applicant must include the fee when submitting the application. The permitting authority will charge fees as described under WAC 173-430-041.

(5) All agricultural burning permits must include conditions intended to minimize air pollution.

(a) A farmer must comply with the conditions on the agricultural burning permit.

(b) Permits must be conditioned to minimize emissions and impacts insofar as practical, including denial of permission to burn during periods of adverse meteorological conditions. When necessary as determined by ecology or the local air authorities to ensure compliance with the act, permit conditions will include at least one of the following:

• The use of a daily burn decision((~~,~~)).

• Permit specific decisions ((~~and/or~~)).

• Metering.

(c) The permitting authority must:

(i) Act on a complete application (as determined by the ((~~agency~~)) permitting authority) within seven days of receipt.

(((~~(i) The permitting authority must~~)) (ii) Evaluate the application and approve or deny all or part of it.

(((~~(ii) The permitting authority must~~)) (iii) Evaluate the application to determine if the requested burning is within the general or crop-specific best management practices.

(((~~(iii)~~))) (iv) If the permitting authority denies the application ((~~is denied~~)), ((~~the~~)) they must state the reason ((~~must be stated~~)) for the denial.

(6) ((~~Additional requirements for burning of field and turf grasses grown for seed.~~

~~The department of ecology will proceed with the process to certify alternatives to burning as identified in RCW 70.94.656(3). In addition to the certification process, ecology is also limiting the number of acres allowed to be burned as specified in RCW 70.94.656(4).~~

~~(a) Beginning in 1997 and until approved alternatives become available, each farmer shall be limited to burning no more than one-third of the number of acres in grass seed production on May 1, 1996. "In production" means planted, growing and under the control of the farmer.~~

~~Without regard to any previous burn permit history, in 1996, each farmer shall be limited to burning the greater of:~~

~~(i) Two-thirds of the number of acres the farmer burned under a valid permit issued in 1995; or~~

~~(ii) Two-thirds of the number of acres in grass seed production on May 1, 1996. "In production" means planted, growing and under the control of the farmer.~~

~~(b) Exemptions to the requirements for burning of field and turf grasses grown for seed ((a) of this subsection). A farmer may request an exemption for extraordinary circumstances, such as property where a portion(s) of the field is oddly shaped or where the slope is extremely steep. This provision does not apply to WAC 173-430-045 Alternatives to burning field and/or turf grasses grown for seed. Under this subsection, relief from the acreage/emissions reduction requirements of (a) of this subsection shall be limited to no more than five percent of the acreage in production on May 1, 1996, and is also subject to the following provisions:~~

~~(i) The exemption request must be certified by an agronomic professional;~~

~~(ii) The farmer must be able to show full compliance with the emissions reductions in (a) of this subsection for the acreage not exempted; and~~

~~(iii) The farmer must be in full compliance with permit requirements for other crops under WAC 173-430-040.~~

~~(c) Measurement for emission reduction for grass seed field and turf grass. Ecology will use acres as the basis for determining emission reductions as provided by RCW 70.94.656, until another method(s) is shown to be better and meets with the intent of RCW 70.94.656(4). Ecology will investigate alternate methods, as they become available. If ecology finds that an alternate method is appropriate and meets the criteria, it may certify this method using an administrative order.~~

~~(d) The department of ecology or local air authority may provide for trading of permits using the method described in this subsection. This trading system uses a straight transfer of acres, a transfer requiring mandatory compensation, or a combination of both. If ecology or the local air authority finds that emissions resulting from trading are creating a health impact, as defined by ecology or the local air authority, the trading system, once created, may be dissolved. This provision does not apply to WAC 173-430-045 Alternatives to burning field and/or turf grasses grown for seed.~~

~~(i) Ecology or the local air authority may develop a system that allows the trading of permits by:~~

~~(A) Adding a signed transfer line to the written permit that provides for a signature for the current holder of the permit;~~

~~(B) Providing a tracking system that identifies the current holder of the permit, that identifies when the permit was last used to allow burning of acreage, and that allows the name of the holder to be changed if the transfer line is signed by the current holder;~~

~~(C) Requiring that the new holder of the permit must turn in the permit with the signed transfer line at least sixty days before the new holder plans to burn; and~~

~~(D) Assuring that the permits are used only once in a calendar year.~~

~~(ii) By signing the transfer line on the permit the permit holder must indicate that he or she understands that the acres transferred may no longer be burned, that a permit for the acres transferred will not be issued to the signing permit holder in future years, and that the acres being transferred were not already burned during the calendar year during which the transfer takes place.~~

~~(iii) Ecology and the local air authorities may add restrictions to the transfer of permits closer to areas with higher population densities.~~

~~(iv) Only permits for acreage which has not yet been burned may be transferred or traded. The seller of the permit is responsible for permanently reducing the acreage burned by the amount of acreage transferred from January 1 of the year during which the transaction takes place.~~

~~(v) Acreage that is exempted under (c) of this subsection is not eligible for the trading system.~~

~~(vi) The authorities are encouraged to work together to use the same system and to allow trading between authority jurisdictions so as to allow the grass seed growers to adjust to the two-thirds overall reduction in acres permitted for burning as easily as possible.~~

~~(e) Alternate open burning practices for field and turf grass grown for seed. Ecology acknowledges that there may be practices that involve some burning, but which produce emissions quantifiably below those of open field burning. If ecology finds that a practice involves open burning and still substantially reduces emissions below open field burning, ecology may certify the alternate burning practice(s) by administrative order. Any certified practice may be used to satisfy the acreage/emissions reduction requirements of (a) of this subsection provided:~~

~~(i) The acreage application of the practice is adjusted to reflect effectiveness in reducing emissions so as to meet or exceed the emissions reduction required by (a) of this subsection; and~~

~~(ii) In no case shall the emission reduction requirement for the field and turf grass grown for seed be less than that required in (a) of this subsection.~~

~~(7)~~)) Other laws. A farmer must obtain any local permits, licenses, or other approvals required by any other laws, ((~~regulations~~)) rules, or ordinances. The farmer must also honor other agreements entered into with any federal, state, or local agency.

NEW SECTION

WAC 173-430-041 Agricultural burning fees. (1) RCW 70.94.6528 provides the following maximum fees for agricultural burning:

Field burning	$3.75 per acre
Pile burning	$1.00 per ton

(2) RCW 70.94.6528(5) authorizes the agricultural burning practices and research task force (task force) to determine the level of the fee.

(a) **2011 fee schedule.** Fees starting in the calendar year 2011 are found in subsection (5) of this section.

(b) **Establishing new fee schedules.** Ecology and the task force will examine the fee schedule using the process in WAC 173-430-042.

(3) **Calculating the fee.** The fee consists of a minimum fee plus any applicable variable fee.

(a) **Minimum fee.** The minimum fee includes burning of the base number of acres or tons published in the fee schedule.

(b) **Variable fee.** Field burning and pile burning permits allowing the farmer to burn more acres or tons than the base included in the minimum fee require an additional per acre or per ton fee.

(c) The following table shows which types of burning have a variable fee.

Type of Burning	Variable Fee
Field Burning	Fee applied for each additional acre.
Spot Burning	None - Spot burn permits must not exceed the base amount of acres published in the fee schedule.
Pile Burning	Fee applied for each additional ton.

(4) **Fee components.** The permit fee helps off-set the cost of administering and enforcing the agricultural burning permit program. The fee consists of three components:

- Permitting program administration;
- Smoke management administration; and
- Research.

(a) **Permitting program administration.** The permitting authority may set the fee as an amount no more than the amount published in the fee schedule.

(i) The local air authority or delegated permitting authority must establish this portion of the fee by an appropriate, public process such as a local rule, ordinance, or resolution.

(ii) In areas of the state where ecology has permitting authority and has not delegated that authority, ecology will charge the following for local permitting program administration:

(A) Starting in 2011, the amount listed in subsection (6) of this section.

(B) For subsequent fee changes, the amount published in the fee schedule. Ecology will publish the fee schedule using the process in WAC 173-430-042.

(b) **Smoke management administration.** This portion of the fee will:

(i) Help off-set the statewide or regionwide costs of the agricultural burning program.

(ii) Help fund the education, and smoke management activities of ecology or the local air authority.

(c) **Research fund.** The task force will determine the research portion of the fee based on applied research needs, regional needs and the research fund budget.

(5) **Permit fee schedule.** Table 1 shows the permit fee schedule, starting in the calendar year 2011. This fee schedule will remain in place until ecology and the task force adjust it using the process in WAC 173-430-042. Please see http://www.ecy.wa.gov, contact ecology, or contact your local air authority for the most current fee schedule or fee distribution.

Table 1
Agricultural Burning Fee Schedule, Starting Calendar Year 2011

Fee	Minimum Fee	Variable Fee
Field Burning	$30 for the first 10 acres	$3.00 for each additional acre
Spot Burning	$30 for 10 acres or less	None
Pile Burning	$80 for the first 100 tons	$0.50 for each additional ton

(6) **Permit fee distribution.** Table 2 shows the permit fee distribution, starting in the calendar year 2011. This distribution will remain in place until ecology and the task force adjust it using the process in WAC 173-430-042. Please see http://www.ecy.wa.gov, contact ecology, or contact your local air authority for the most current fee schedule or fee distribution.

Table 2
Agricultural Burning Fee Distribution

Fee	Permitting Authority Administration	Research	Smoke Management
Field Burning Minimum Fee	$15.00	$0	$15.00
Field Burning Variable Fee	$1.25 per acre	$0.50 per acre	$1.25 per acre
Spot Burning Fee	$15.00	$0	$15.00
Pile Burning Minimum Fee	$16.00	$16.00	$48.00
Pile Burning Variable Fee	$0.10 per ton	$0.10 per ton	$0.30 per ton

(7) **Refunds.** The farmer may receive a refund. The farmer may only receive a refund for the portion of the variable fee paid for the acres or tons not burned.

(a) The permitting authority may keep the minimum fee as reimbursement for the costs of processing the permit application.

(b) The permitting authority will not issue refunds of less than twenty-five dollars due to the cost of processing refunds.

NEW SECTION

WAC 173-430-042 Adjusting agricultural burning fees. (1) RCW 70.94.6528 provides the following maximum fees for agricultural burning:

Field burning	$3.75 per acre
Pile burning	$1.00 per ton

(2) RCW 70.94.6528(5) authorizes the agricultural burning practices and research task force (task force) to determine the level of the fee.

(3) **Process for adjusting the fee schedule for agricultural burning.** The process for adjusting the fee schedule requires the following two steps:

• The task force must determine the fee schedule using the process established in subsection (4) of this section;

• If the task force decides to adjust the fee schedule, ecology will finalize the new fee schedule through the process established in subsection (6) of this section.

(4) **Task force process to determine agricultural burning fees.** The task force may examine the agricultural burning fee schedule once a year using the process outlined in this section. However, the task force must examine the agricultural burning fee schedule at least every two years. The task force process for examining the agricultural burning fee schedule must include the following:

(a) Ecology will submit, to the task force, a summary of the costs of the permit and smoke management programs before the first task force meeting of the year.

(b) The agenda for the first task force meeting of the year must include examining the current fee schedule.

(c) Ecology will notify stakeholders and permit holders of time, date, location, and agenda for the task force meeting.

(d) Based on the information provided by ecology, under (a) of this subsection, the task force will decide if they need to adjust the agricultural burning fee schedule.

(e) If the task force decides to adjust the agricultural burning fee schedule, they must determine the new fee schedule at a regularly scheduled meeting.

(5) **Examining the fee schedule more frequently.** The task force may examine the agricultural burning fee schedule more frequently than every two years, if all of the following occurs:

(a) The task force determines the fee schedule during one of their regularly scheduled meetings.

(b) Ecology finalizes the fee schedule using the process in subsection (6) of this section.

(6) **Ecology process to finalize fees set by the task force.** After the task force determines a new fee schedule, ecology will:

(a) Post the proposed fee schedule on the agency web site for public review and comment.

(b) Publish a notice of a public hearing.

(i) The notice will include all of the following:

• Time;

• Date;

• Location;

• Last day ecology will accept written comments.

(ii) At a minimum, ecology will publish the notice in the following locations:

(A) *Washington State Register*.

(B) Ecology web site.

(c) Hold a public hearing at least twenty days after completing the actions in (a) and (b) of this subsection.

(d) Accept written comments on the proposed fee schedule. Ecology must receive comments by the time and date specified in the hearing notice, or a later time and date established at the hearing.

(e) Consider comments received and provide a written response to comments to the task force and anyone who commented.

(f) Ecology will finalize the fee schedule by December 1st of the calendar year before it becomes effective.

(g) Ecology will publish the fee schedule by:

(i) Notifying stakeholders and permit holders of the new fees.

(ii) Posting a response to comments on the ecology web site.

(7) **Effective date of the new fee schedule.** The new fee schedule becomes effective January 1st of the calendar year after it is finalized.

NEW SECTION

WAC 173-430-044 Additional requirements for burning field or turf grasses grown for seed. Ecology will proceed with the process to certify alternatives to burning as identified in RCW 70.94.6532(3). In addition to the certification process, ecology is also limiting the number of acres allowed to be burned as specified in RCW 70.94.6532(4).

(1) Beginning in 1997 and until approved alternatives become available, each farmer is limited to burning no more than one-third of the number of acres in grass seed production on May 1, 1996. "In production" means planted, growing and under the control of the farmer.

Without regard to any previous burn permit history, in 1996, each farmer shall be limited to burning the greater of:

(a) Two-thirds of the number of acres the farmer burned under a valid permit issued in 1995; or

(b) Two-thirds of the number of acres in grass seed production on May 1, 1996. "In production" means planted, growing and under the control of the farmer.

(2) Exemptions to the requirements for burning of field and turf grasses grown for seed (subsection (1) of this section). A farmer may request an exemption for extraordinary circumstances, such as property where a portion(s) of the field is oddly shaped or where the slope is extremely steep. This provision does not apply to WAC 173-430-045, Alternatives to burning field or turf grasses grown for seed. Under this subsection, relief from the acreage/emissions reduction requirements of subsection (1) of this section is limited to no more than five percent of the acreage in production on May 1, 1996, and is also subject to the following provisions:

(a) The exemption request must be certified by an agronomic professional;

(b) The farmer must be able to show full compliance with the emissions reductions in subsection (1) of this section for the acreage not exempted; and

(c) The farmer must be in full compliance with permit requirements for other crops under WAC 173-430-040.

(3) Measurement for emission reduction for grass seed field and turf grass. Ecology will use acres as the basis for determining emission reductions as provided by RCW 70.94.6532, until another method(s) is shown to be better and meets with the intent of RCW 70.94.6532(4). Ecology will investigate alternate methods, as they become available. If ecology finds that an alternate method is appropriate and

meets the criteria, it may certify this method using an administrative order.

(4) Ecology or the local air authority may provide for trading of permits using the method described in this subsection. This trading system uses a straight transfer of acres, a transfer requiring mandatory compensation, or a combination of both. If ecology or the local air authority finds that emissions resulting from trading are creating a health impact, as defined by ecology or the local air authority, the trading system, once created, may be dissolved. This provision does not apply to WAC 173-430-045, Alternatives to burning field or turf grasses grown for seed.

(a) Ecology or the local air authority may develop a system that allows the trading of permits by:

(i) Adding a signed transfer line to the written permit that provides for a signature for the current holder of the permit;

(ii) Providing a tracking system that identifies the current holder of the permit, that identifies when the permit was last used to allow burning of acreage, and that allows the name of the holder to be changed if the transfer line is signed by the current holder;

(iii) Requiring that the new holder of the permit must turn in the permit with the signed transfer line at least sixty days before the new holder plans to burn; and

(iv) Assuring that the permits are used only once in a calendar year.

(b) By signing the transfer line on the permit the permit holder must indicate that he or she understands that the acres transferred may no longer be burned, that a permit for the acres transferred will not be issued to the signing permit holder in future years, and that the acres being transferred were not already burned during the calendar year during which the transfer takes place.

(c) Ecology and the local air authorities may add restrictions to the transfer of permits closer to areas with higher population densities.

(d) Only permits for acreage which has not yet been burned may be transferred or traded. The seller of the permit is responsible for permanently reducing the acreage burned by the amount of acreage transferred from January 1st of the year during which the transaction takes place.

(e) Acreage that is exempted under subsection (5) of this section is not eligible for the trading system.

(f) The authorities are encouraged to work together to use the same system and to allow trading between authority jurisdictions so as to allow the grass seed growers to adjust to the two-thirds overall reduction in acres permitted for burning as easily as possible.

(5) Alternate open burning practices for field and turf grass grown for seed. Ecology acknowledges that there may be practices that involve some burning, but which produce emissions quantifiably below those of open field burning. If ecology finds that a practice involves open burning and still substantially reduces emissions below open field burning, ecology may certify the alternate burning practice(s) by administrative order. Any certified practice may be used to satisfy the acreage/emissions reduction requirements of subsection (1) of this section provided:

(a) The acreage application of the practice is adjusted to reflect effectiveness in reducing emissions so as to meet or exceed the emissions reduction required by subsection (1) of this section; and

(b) In no case will the emission reduction requirement for the field and turf grass grown for seed be less than that required in subsection (1) of this section.

AMENDATORY SECTION (Amending Order 97-45, filed 5/26/98, effective 6/26/98)

WAC 173-430-045 Alternatives to burning field ((~~and/~~))or turf grasses grown for seed. (1) When is open burning of field and turf grasses grown for seed prohibited?

The Washington Clean Air Act prohibits open burning of field and turf grasses grown for seed whenever ecology has concluded, through a process spelled out in the act, that any procedure, program, technique, or device constitutes a practical alternate agricultural practice to open burning, and that alternate is reasonably available.

(2) Has ecology certified practical alternatives to open burning of field or turf grasses grown for seed?

Yes. Ecology concludes that mechanical residue management constitutes a practical alternate agricultural practice to the open burning of field ((~~and/~~))or turf grasses grown for seed. Mechanical residue management means removing, including arranging for removal of, the residue using nonthermal, mechanical techniques including, but not limited to: Tilling, swathing, chopping, baling, flailing, mowing, raking, and other substantially similar nonthermal, mechanical techniques. Ecology further concludes that mechanical residue management is practical throughout all phases of seed production including:

(a) When the field is planted (establishment);

(b) When the field is producing seed (harvest years);

(c) When the field is prepared for replanting (tear-out).

(3) Are the alternatives to open burning that have been certified by ecology reasonably available?

Ecology concludes that mechanical residue management is reasonably available throughout the state wherever baling can be used. Baling is the process of gathering the residue and moving it off the field. Typically, a machine known as a "baler" is used to gather and bundle residue that is already cut.

Based on this conclusion, the open burning of field ((~~and/~~))or turf grasses grown for seed is prohibited except as described in subsection (4) of this section. This rule does not require the use of any particular practice or technique. A farmer may use any alternate practice that does not involve field burning.

(4) Under what circumstances may open burning of field or turf grasses grown for seed be allowed?

(a) Where a farmer establishes that mechanical residue management is not reasonably available on specific portions of a field under specific production conditions due to slope. In a request for a waiver, a farmer must certify in writing to ecology or local air authority the following:

(i) Baling is not reasonably available due to slope. A farmer must explain why baling is not reasonably available, referring to specific facts supporting this belief. Unacceptable facts include, but are not limited to, general statements about burning as a tool for the routine control of weed and

disease, for seed propagation purposes, or as a less costly alternative to mechanical residue management. A farmer may use statements from three separate businesses providing baling services as part of their commercial operation to support the belief that baling is not reasonably available due to slope. In the statements, the businesses must certify that they are independent from the farmer and have no financial interest in the farmer's operation;

(ii) Current harvest practices have not diminished the ability to use mechanical residue management;

(iii) ((~~Field production is after the first harvest season and prior to the fourth harvest season;~~

~~(iv)~~)) The ground or portions of the field have not been burned three years in a row in the three years preceding the request for a waiver;

(((~~(v)~~))) (iv) The ground or portions of the field will remain, without replanting, in grass production at least through the next harvest season following burning;

(((~~(vi)~~))) (v) Residue from any neighboring fields or portions of fields under the control of the farmer will be removed ((~~prior to~~)) before burning and reasonable precautions will be taken to prevent fire from spreading to areas where burning is not allowed; and

(((~~(vii)~~))) (vi) Adjustments in field rotations and locations cannot be made at any time during the rotational cycle and could not have been made when planted to allow the use of mechanical residue management techniques.

(b) Where a farmer establishes that extreme conditions exist. Ecology or a local air authority, at their discretion, may grant a request for a waiver for extreme conditions. The farmer must certify in writing the following:

(i) Why mechanical residue management is not reasonably available, referring to specific facts supporting this belief. Unacceptable facts include, but are not limited to, general statements about burning as a tool for the routine control of weed and disease, for seed propagation purposes, or as a less costly alternative to mechanical residue management;

(ii) He/she did not cause or create the condition to purposefully avoid using mechanical residue management techniques;

(iii) ((~~Field production is after the first harvest season and prior to the fourth harvest season;~~

~~(iv)~~)) The ground or portions of the field have not been burned three years in a row in the three years preceding the request for a waiver;

(((~~(v)~~))) (iv) The field will remain, without replanting, in grass production at least through the next harvest season following burning;

(((~~(vi)~~))) (v) Residue from any neighboring fields or portions of fields under the control of the farmer will be removed prior to burning and that reasonable precautions will be taken to prevent fire from spreading to areas where burning is not allowed; and

(((~~(vii)~~))) (vi) Adjustments in field rotations and locations cannot be made at any time during the rotational cycle, and could not have been made when planted to allow the use of mechanical residue management techniques.

(c) Where a farmer demonstrates to ecology or local air authority that his/her small agricultural operation is eligible for mitigation.

For 1998 only, ecology or a local air authority may allow burning on a small agricultural operation. A small agricultural operation owner has a gross 1997 revenue from all agricultural operations of less than $300,000. A farmer must show information of sufficient quantity and quality to ecology or a local air authority to establish gross revenue from agricultural operations. A small farm owner may burn current acreage up to 25% of 1997 acreage burned under a valid permit. Fields taken out of production after the 1997 harvest season and in 1998 cannot be counted in the determination of 1997 acreage burned for the purpose of eligible burn acreage.

(d) Where a request for a waiver is approved under (a), (b), and (c) of this subsection, the following additional limitations also apply:

Total burn acreage must not exceed 1/3 of a farmer's acreage in production on May 1, 1996. Permits issued ((~~pursuant to~~)) under (a), (b), or (c) of this subsection are not eligible for the permit trading program identified in WAC 173-430-040.

(5) What is the process for a farmer to request a waiver for circumstances described in subsection (4) of this section?

(a) A farmer submits a request for a waiver.

Sixty days ((~~prior to~~)) before the planned burn date, a farmer must submit in writing a request to ecology or a local air authority. In the request, the farmer must identify the circumstances and meet the specific requirements of subsection (4)(a), (b), ((~~and/~~))or (c) of this section. Ecology or the local air authority may require the request to be submitted on a form or in a format provided by ecology or the local air authority.

(b) Ecology or local air authority evaluates the request for a waiver.

Upon receiving a request for a waiver, ecology or the local air authority will determine if the necessary documents and information provided is complete enough to evaluate the request. If incomplete, ecology or local air authority will advise the farmer and suspend further evaluation until the request for a waiver is complete. The documents and information identified as necessary to complete the request must be delivered to ecology or the local air authority at least thirty days ((~~prior to~~)) before burning. Once a request for a waiver is deemed complete, ecology or the local air authority will evaluate the request and decide whether the burning waiver is appropriate. As part of the evaluation, ecology or the local air may conduct an on-site inspection.

If ecology or local air authority denies a request for a waiver, the reasons will be provided to the farmer in writing. If approved, ecology or the local air authority will notify the farmer by convenient means. Ecology will also notify the appropriate delegated authority.

(c) The farmer applies for an agricultural burning permit.

If ecology or local air authority approves a request for a waiver, the farmer must complete a permit application and pay the fee as described in WAC 173-430-040. A delegated authority must receive written authorization from ecology that a waiver has been approved ((~~prior to~~)) before processing a permit application.

AMENDATORY SECTION (Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-050 Best management practices. (1) The ((~~Ag~~)) task force must identify best management practices for agricultural burning that are economically feasible and socially acceptable. Practical ((~~alterative~~)) alternative production methods and controls which would reduce or eliminate agricultural burning must be used when reasonably available.

(2) The ((~~Ag~~)) task force may establish an agricultural burning general best management practice and crop-specific best management practices as appropriate. The ((~~Ag~~)) task force will work in conjunction with conservation districts and extension agents or other local entities in developing best management practices. The ((~~Ag~~)) task force may review and approve crop-specific best management practices which have been developed or recommended by an individual or group.

(3) Approved best management practices information will be available from permitting authorities. The ((~~Ag~~)) task force, as it deems necessary, will hold public workshops on best management practices that have changed or are new and will periodically review the best management practices starting three years after approval.

(4) The ((~~Ag~~)) task force will clarify best management practices and make interpretative decisions as needed, considering all authoritative sources on the subject.

(a) An individual or group may request a best management practice clarification from the task force.

(b) The chair of the ((~~Ag~~)) task force may direct the questioned practice to a subgroup of task force members, provided that agricultural, research, and regulatory interests are included and all task force members are notified, or may direct it to the whole ((~~Ag~~)) task force.

(5) The ((~~Ag~~)) task force will ((~~modify~~)) change best management practices as necessary to incorporate the latest research.

AMENDATORY SECTION (Amending Order 04-10, filed 7/26/06, effective 8/26/06)

WAC 173-430-060 Research into alternatives to agricultural burning. (1) ((~~The department shall~~)) Ecology will administer the research portion of the permit fee to carry out the recommendations of the ((~~Ag~~)) task force. In carrying out the recommendations, ((~~the department~~)) ecology may conduct, cause to be conducted, or approve of a study or studies to explore and test economical and practical alternative practices to agricultural burning. To conduct ((~~any such~~)) the study, ((~~the department~~)) ecology may contract with public or private entities. Any approved study ((~~shall~~)) must provide for the identification of ((~~such~~)) the alternatives as soon as possible.

(2) No less than every two years, the ((~~Ag~~)) task force will review research needs and submitted proposals and make its recommendations to ((~~the department~~)) ecology.

AMENDATORY SECTION (Amending Order 04-10, filed 7/26/06, effective 8/26/06)

WAC 173-430-070 General agricultural burning permit conditions and criteria. Permit decisions including the issuance, denial, or conditioning must be based on consideration of air quality conditions in the area affected by the proposed burning, the time of year, meteorological conditions, the size and duration of the proposed burning activity, the type and amount of vegetative material to be burned, the applicant's need to carry out ((~~such~~)) the burning, existence of extreme burning conditions, risk of escape onto property owned by another, and the public's interest in the environment.

(1) Permits must include the following general conditions:

(a) Do not burn at night unless it is specified as a best management practice;

(b) Comply with all fire safety ((~~regulations~~)) rules of the local fire protection agency including any no-burn directives it may issue;

(c) Call the local air authority burning information line (if there is one) before lighting the fire;

(d) Burn only during times specified by the permitting authority;

(e) Burn when wind takes the smoke away from roads, homes, population centers, or other public areas, to the greatest extent possible;

(f) Do not burn when adverse meteorological conditions exist;

(g) Burn only natural vegetation;

(h) Do not burn or add fuel during any stage of an air pollution episode or local air quality burning ban;

(i) Attend the fire at all times;

(j) Submit a postburn report to the permitting authority.

(2) If the permitting authority determines a specific situation will cause a nuisance under chapter 173-400 WAC or RCW 70.94.640, agricultural burning will not be allowed.

AMENDATORY SECTION (Amending Order 04-10, filed 7/26/06, effective 8/26/06)

WAC 173-430-080 Responsibilities of a permitting authority. (1) The permitting authority is ecology or its delegate or a local air authority with jurisdiction or its delegate. The permitting authority must establish and administer an agricultural burning permit system. The minimum responsibilities are described in this section.

(2) The permitting authority must act on a complete application (as determined by ecology or a local air authority with jurisdiction) within seven days of receipt.

(a) Local air authorities are required to use application templates and permit templates supplied by ecology. Ecology delegated authorities are required to use applications and permits supplied by ecology.

(b) A map ((~~is required to~~)) must accompany all permit applications.

(i) The map must accurately depict the topography of the area where the requested burn would take place and include roads, and landmarks((~~, etc~~)).

(ii) The map must accurately show affected acreage to be burned.

(iii) The map must show the position of the field within each section the field occupies, down to the 1/4 - 1/4 section. All four border lines of each section ((~~shall~~)) must be outlined with the section number, township, and range clearly marked.

(c) The permitting authority must evaluate the application and approve or deny all or part of it.

(d) The permitting authority must evaluate the application to determine if the requested burning is within the general or crop-specific best management practices.

(e) If the application is denied, the reason must be stated.

(3) Permitting authorities must issue permits where appropriate on complete applications. Delegated permitting authorities may issue permits when agreed to as part of the delegation order.

(4) Permitting authorities must determine day-to-day burning restrictions near populated areas and arrange for dissemination of the results. Delegated permitting authorities must arrange for assisting in dissemination of results.

(5) The permitting authority or its delegate is responsible for responding to agricultural burning complaints.

(6) The permitting authority must collect the fee, determine the local administration portion of the fee, and issue refunds.

(a) Permitting authorities must issue a permit fee refund for permitted acres not burned on confirmation by the permitting authority. The refund request deadline must be included on the permits.

(b) Local air authorities and delegated permitting authorities must formally adopt the local administration portion of the fee through rule, regulation, ordinance, or resolution.

(7) Delegated permitting authorities must provide ecology with copies of all permits and supporting documentation and transfer the research and ((~~ecology administration~~)) smoke management administration portion of the fee to ((~~the department~~)) ecology.

(a) Local air authorities and delegated permitting authorities must transfer funds twice a year by July 15 and January 15.

(b) Local air authorities and delegated permitting authorities must provide ecology copies of all permits, applications with supporting documentation, maps, and postburn reports. All spring (January-June) permits need to be provided by July 15th and all fall (July-December) permits by January 15th.

(c) ((~~The department~~)) Ecology must deposit all agricultural burning permit fees in the air pollution control account. Permitting authorities may deduct the local administration portion before forwarding the remainder to ((~~the department~~)) ecology.

(8) The permitting authority must coordinate compliance. Violations are subject to the remedies of chapter 70.94 RCW, Washington Clean Air Act.

(9) The permitting authority or its delegate must require a postburn report for all permits.

(10) The permitting authority or its delegate must ((~~utilize~~)) use the web-based data base for issuing all agricultural burning permits.

(a) Local air authorities and its delegates must make arrangements with ecology to enter information into the web-based data base.

(b) Ecology-delegated permitting authorities must attend a minimum of one data base training per calendar year or as provided by ecology.

AMENDATORY SECTION (Amending Order 04-10, filed 7/26/06, effective 8/26/06)

WAC 173-430-090 Receiving delegation—Counties, conservation districts, and fire protection agencies. (1) The permitting authority is ecology or its delegate or a local air authority with jurisdiction or its delegate. The permitting authority is responsible for administering the agricultural burning permit program. The agricultural burning permit program may be delegated to conservation districts, counties, or fire protection agencies.

(2) When ecology or a local air authority with jurisdiction finds that a county, fire protection agency or conservation district is capable of administering the permit program and desires to do so, it may delegate by administrative order the administration ((~~and/~~)), or enforcement authority of the program, or both. The delegated permitting authority must, at a minimum, meet all of the following criteria:

(a) Demonstrating that the responsibilities listed under permitting authority responsibilities section can be fulfilled;

(b) Employing, contracting with, or otherwise accessing someone educated and trained in agronomics;

(c) Providing a copy of the ordinance adopting the local administration portion of the fee;

(d) Providing a copy of agreements between counties, fire districts, and conservation districts when more than one agency will have responsibilities for the agricultural burning program; and

(e) Agreeing to periodic audits and performance reviews.

(3) Delegation may be withdrawn if ((~~the department~~)) ecology or the local air authority with jurisdiction finds that the agricultural burning program is not effectively being administered ((~~and/~~))or enforced. Before withdrawing delegation, the delegated agency ((~~shall~~)) must be given a written statement of the deficiencies in the program and a compliance schedule to correct program deficiencies. If the delegated agency fails to correct the deficiencies according to the compliance schedule, then ((~~the department~~)) ecology or the local air authority may withdraw delegation.

(4) Permitting authorities must work through agreement with counties (if the county is not the permitting authority) and cities to provide convenient methods for evaluating applications, issuing permits and granting permission to burn.

Once a delegation order has been issued, ecology or the local air authority with jurisdiction must approve of any changes to the agreement ((~~prior to~~)) before implementation.

AMENDATORY SECTION (Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-100 Severability. The provisions of this regulation are severable. If any provision is held invalid, the application of ((~~such~~)) the provision to other circumstances and the remainder of the regulation will not be affected.

WSR 10-15-075
PROPOSED RULES
GAMBLING COMMISSION
[Filed July 19, 2010, 8:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-12-093.

Title of Rule and Other Identifying Information: WAC 230-15-189 House-banked and Class F card game licensee pilot program on wagering limits for Texas Hold'em poker.

Hearing Location(s): State Investment Board, 2100 Evergreen Park Drive S.W., Olympia, WA 98504, on September 9 or 10, 2010, at 9:00 a.m.

Date of Intended Adoption: September 9 or 10, 2010.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail SusanA@wsgc.wa.gov, fax (360) 486-3625, by September 1, 2010.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by September 1, 2010, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This filing would create a pilot program to test the regulatory and economic impacts of increasing the wager limits from $40 to $100 for Texas Hold'em poker at house-banked and Class F card rooms.

The pilot program will help determine whether there is a demand for higher wagering limits for Texas Hold'em poker. The pilot program will last eighteen months. House-banked and Class F card rooms that participate in the pilot program will document and retain certain information for evaluation at the end of the program. At the end of the pilot program, the commission will evaluate the information and determine whether a wager increase should be made permanent.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Texas Hold'em Work Group, consisting of representatives from the gambling commission, the Recreational Gaming Association, the card room industry, and several other stakeholder groups, private and governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the proposed rule change does not impose more than minor costs, as defined in chapter 19.85 RCW, to licensees.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

July 19, 2010
Susan Arland
Rules Coordinator

Alternative #2

NEW SECTION

WAC 230-15-189 House-banked and Class F card game licensee pilot program on wagering limits for Texas Hold'em poker. The commission finds it to be in the public's interest to conduct a pilot program to test the regulatory and economic impact of increasing wagering limits for the game of Texas Hold'em poker to one hundred dollars.

(1) The pilot program will commence October 11, 2010, and conclude on March 31, 2012. House-banked or Class F card game licensees may voluntarily request to participate in the pilot program by submitting a written request to the director or his designee. Staff will report results of the pilot program along with their recommendations at the November 2012 commission meeting.

(2) House-banked or Class F card game licensees must document, retain and provide the following information, and such further information the commission may request, in the format we prescribe during the pilot program:

(a) Daily food and beverage sales; and

(b) The number of customers requesting to be self-barred; and

(c) All incidents of suspected cheating occurring at tables offering the higher wager limits.

(3) In the event a licensee fails to attempt to comply with the requirements of the pilot program, the director shall have the authority to remove that licensee from participation in the pilot program. Upon removal from the pilot program, the licensee will return to the wagering limits authorized in WAC 230-15-135. Removal from the pilot program shall not be subject to review or appeal.

WSR 10-15-076
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed July 19, 2010, 8:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-09-083.

Title of Rule and Other Identifying Information: Chapter 16-160 WAC, Registration of materials for organic food production.

Hearing Location(s): Natural Resources Building, 2nd Floor, Room 259, 1111 Washington Street, Olympia, WA 98504-2560, on August 25, 2010, at 2:30 p.m.

Date of Intended Adoption: September 8, 2010.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARules

Comments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., August 25, 2010.

Assistance for Persons with Disabilities: Contact Julie Carlson by August 19, 2010, TTY (800) 833-6388 or (360) 902-1880.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the rule is to update chapter 16-160 WAC pertaining to the registration of materials for use in organic food production and processing. The organic food program operates a registration program for brand name material inputs that comply with the United States Department of Agriculture national organic standards. This list is used by certified organic producers and processors to assist in ensuring the material inputs that are used will not jeopardize their certification.

In January 2010, the department sought legislative approval for changes to chapter 15.86 RCW to clarify the authority of the program to operate the brand name registration program. The resulting changes to chapter 16-160 WAC are needed to bring statute and rule into alignment. The changes to chapter 16-160 WAC includes clarifying application requirements and outlining inspection requirements and record-keeping requirements.

Reasons Supporting Proposal: The brand name material registration program continues to grow in the number of applicants seeking approval and listing on the brand name material list. Currently, the list consists of approximately six hundred products, with over two hundred companies applying. The rule will ensure that the applications are complete and that the inspection and record-keeping requirements are clear to applicants. The result will be a list of material inputs that comply with organic standards and continued compliance of certified organic operations.

Statutory Authority for Adoption: Chapter 15.86 RCW.

Statute Being Implemented: Chapter 15.86 RCW.

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

Name of Proponent: Washington department of agriculture, (WSDA) organic food program, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Marty Beagle, Olympia, (360) 902-1924.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Fees are in statute and have not been changed as a result of this rule change. Participation in the registration program is voluntary and not required in order to sell or represent a material input as "organic" or as "allowed in organic production."

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i). RCW 34.05.328 regulates "significant legislative rules" and RCW 34.05.328 (5)(a)(i) lists the specific state agencies that are considered "significant legislative rule agencies." WSDA is not listed, therefore, we do not consider ourselves to be a "significant legislative rule agency." In addition, section 309 (for the department of agriculture), chapter 372, Law of 2006, provide that: (2) Fees and assessments approved by the department in the 2005-2007 biennium are authorized to exceed the fiscal growth factor under RCW 43.135.055.

July 19, 2010
Jerry Buendel
Assistant Director

AMENDATORY SECTION (Amending WSR 03-03-045, filed 1/10/03, effective 2/10/03)

WAC 16-160-010 ((~~What is the~~)) Purpose of this ((~~rule?~~)) chapter. This chapter specifies the ((~~review~~)) process ((~~and criteria~~)) for registering ((~~brand name~~)) materials ((~~used~~)) approved for use in organic ((~~food~~)) production, processing and handling on the department's brand name materials list. This chapter is promulgated pursuant to ((~~RCW 15.86.060 in which the director is authorized to adopt rules for the proper administration of chapter 15.86 RCW and RCW 15.86.070 in which the director is authorized to adopt rules governing the certification of producers of organic food~~)) chapter 109, Laws of 2010 to implement the brand name materials list.

AMENDATORY SECTION (Amending WSR 03-03-045, filed 1/10/03, effective 2/10/03)

WAC 16-160-020 Definitions. As used in this chapter:

(((~~(1)~~))) "Animal manure" means ((~~a material composed of excreta, with or without bedding materials and/or animal drugs and collected from poultry, ruminants or other animals except humans.~~

~~(2) "Applicant" means the person who submits an application to register a material pursuant to the provisions of this chapter.~~

~~(3) "Brand name material" means any material that is supplied, distributed or manufactured by a person.~~

~~(4)~~)) feces, urine, other excrement, and bedding produced by livestock that has not been composted.

"Authorized representative" means either the registrant or a person authorized by the registrant to act on the registrant's behalf and bind the registrant for purposes of this chapter and registration on the brand materials list.

"Compost" means ((~~a material produced from a controlled process in which organic materials are digested aerobically or anaerobically by microbial action~~)) the product of a managed process through which microorganisms break down plant and animal materials into more available forms suitable for application to the soil.

(((~~(5)~~))) "Crop production aid" means any substance, material, structure, or device((~~,~~)) that is used to aid a producer of an agricultural product except for fertilizers and pesticides.

(((~~(6)~~))) "Department" means the department of agriculture of the state of Washington.

(((~~(7)~~))) "Director" means the director of the department of agriculture or ((~~his or her duly authorized representative~~)) the director's designee.

(((~~(8) "Distribute" means to offer for sale, hold for sale, sell, barter, deliver, or supply materials in this state.~~

~~(9)~~))) "Fertilizer" means ((~~any~~)) a single or blended substance containing one or more recognized plant nutrients which is used primarily for its plant nutrient content and

which is designed for use or claimed to have value in promoting plant growth.

(((~~(10)~~))) "Label" means ((~~the~~)) a display of written, printed, or graphic ((~~matter~~)) material on((~~, or attached to, the material or its~~)) the immediate container of an agricultural product or any such material affixed to any agricultural product or affixed to a bulk container containing an agricultural product, except for package liners or a display of written, printed, or graphic material which contains only information about the weight of the product.

(((~~(11)~~))) "Labeling" includes all written, printed, or graphic ((~~matter, upon or accompanying a material, or advertisement, brochures, posters, television, and radio announcements used in promoting the distribution or sale of the~~)) material accompanying an agricultural product at any time or written, printed, or graphical material about the agricultural product displayed at retail stores about the product.

(((~~(12)~~))) "Livestock production aid" means any substance, material, structure, or device((~~,~~)) that is used to aid a producer in the production of livestock (((~~e.g.,~~))) such as parasiticides, medicines, feed additives((~~)~~)).

(((~~(13) "Material" means any substance or mixture of substances that is intended to be used in agricultural production, processing or handling.~~

(~~14~~))) "Manufacturer" means a person that compounds, produces, granulates, mixes, blends, repackages, or otherwise alters the composition of materials.

"Material" means any substance or mixture of substances that is intended to be used in agricultural production, processing, or handling.

"National Organic Program" means the program administered by the United States Department of Agriculture pursuant to 7 C.F.R. Part 205, which implements the federal Organic Food Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.).

"Organic waste-derived material" means grass clippings, leaves, weeds, bark, plantings, prunings, and other vegetative wastes, uncontaminated wood waste from logging and milling operations, food wastes, food processing wastes, and materials derived from these wastes through composting. "Organic waste-derived material" does not include products that include biosolids as defined in chapter ((~~70.95~~)) 70.95J RCW.

(((~~(15)~~))) "Person" means any ((~~individual, partnership, association, corporation, or organized group of persons whether or not incorporated~~)) natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors.

(((~~(16)~~))) "Pesticide" means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mollusk, fungus, weed, and any other form of plant or animal life or virus (((~~(~~))), except virus on or in living man or other animal((~~)~~))), which is normally considered to be a pest or which the director may declare to be a pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and

(c) Any substance or mixture of substances intended to be used as a spray adjuvant((~~; and~~

(~~d) Any other substances intended for such use as may be named by the director by regulation~~)).

(((~~(17)~~))) "Post-harvest material" means any substance, material, structure, or device((~~,~~)) that is used in the post-harvest handling of agricultural products.

(((~~(18)~~))) "Processing aid" means ((~~any material used in processing that does not become an ingredient in the food product (e.g., enzymes, boiler water additives, pressing aids, and filtering aids)~~))) a substance that is added to a food:

(a) During processing, but is removed in some manner from the food before it is packaged in its finished form;

(b) During processing, is converted into constituents normally present in the food, and does not significantly increase the amount of the constituents naturally found in the food; and

(c) For its technical or functional effect in the processing but is present in the finished food at insignificant levels and does not have any technical or functional effect in that food.

(((~~(19) "Registered material" means any material that has applied for registration under this chapter, has met the criteria for approval and has been issued written approval by the department.~~

(~~20~~))) "Registrant" means the person registering ((~~any~~)) a material ((~~pursuant to~~)) on the brand name materials list under the provisions of this chapter.

(((~~(21)~~))) "Soil amendment" means any substance that is intended to improve the physical characteristics of the soil, except for fertilizers and pesticides.

(((~~(22)~~))) "Spray adjuvant" means ((~~any wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to its application or to its effect, and which is in a package or container separate from that of the pesticide with which it is to be used~~)) any product intended to be used with a pesticide as an aid to the application or to the effect of the pesticide and that is in a package or container separate from the pesticide. Spray adjuvant includes, but is not limited to, wetting agents, spreading agents, deposit builders, adhesives, emulsifying agents, deflocculating agents, and water modifiers or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to its application or to its effect. Spray adjuvant does not include products that are only intended to mark the location where a pesticide is applied.

"USDA" means the United States Department of Agriculture.

NEW SECTION

WAC 16-160-120 Applications. (1) Registration of a material on the brand name materials list is voluntary. While registration is not required for a material to be used or sold in this state, registration is necessary for a material to be included on the brand name materials list.

(2) Registration of a material on the brand name materials list under this chapter does not guarantee acceptance for use in organic production, processing, or handling by organic certifying agents other than the department. The department

is not liable for any losses or damage that occurs as a result of use of a material registered on the brand name materials list.

NEW SECTION

WAC 16-160-130 General application requirements. (1) Manufacturers of materials used in organic production, processing or handling may submit an application for registration on the brand name material list to the department.

(2) Manufacturers may submit applications to the department at:

Washington State Department of Agriculture
Organic Food Program
P.O. Box 42560
Olympia, WA 98504-2560.

These forms may also be found on the department's web site at: http://agr.wa.gov/foodanimal/organic

(3) Applications for registration will not be approved unless the applicant demonstrates that the material meets the requirements and standards of the National Organic Program and is approved for use in organic production, processing, or handling in accordance with the National Organic Program. Specifically, the material may not be a material prohibited for the use in the production or handling of organic products by 7 C.F.R. Section 205.105, and may not be otherwise prohibited for use in organic production and handling by the National Organic Program.

(4) All registrations expire on October 31st of the registration year.

(5) Requests for expedited review must be submitted on a form provided by the department. If approved, expedited review is billed as provided under WAC 16-160-200.

NEW SECTION

WAC 16-160-140 Initial application requirements. (1) Applications must be submitted on the form provided by the department, and must include:

(a) Material registrant agreement in which the registrant agrees to comply with chapter 16-160 WAC.

(b) The name and address of the registrant.

(c) Manufacturer information:

(i) Name and address of the manufacturer;

(ii) Contact information, including the name and phone number of the authorized representative of the registrant; and

(iii) List of all material manufactured at the same facility as the registered material.

(d) The brand name that the material is sold under.

(e) A copy of the label or bill of lading accompanying the material and a statement of all claims made for it, including directions and precautions for use.

(f) The complete formula or any alternate formulations for the material, including active and inert ingredients:

(i) Supplier of each ingredient;

(ii) Percentage of ingredient in the final formula; and

(iii) Purpose of each ingredient in the formula.

(g) Ingredient information for each ingredient listed in the formula (including alternate formulas) sufficient to demonstrate compliance with the standards of the National Organic Program:

(i) Manufacturing process; and

(ii) Formulation, including active and inert ingredients.

(h) A description of the manufacturing process for the material, including all substances used for the extraction and synthesis process, if appropriate. If the manufacturing facility manufactures materials other than the material listed in the application, the application must include a plan to prevent the contamination or commingling of materials allowed or prohibited in organic agriculture.

(i) A flow chart, indicating movement of material from incoming ingredient to outgoing final material. The flow chart may include, but is not limited to:

(i) Storage facilities;

(ii) Equipment location; and

(iii) Shipping facilities.

(j) The intended use of the material.

(k) The required fee for registration.

(l) Signature by authorized representative.

(m) The department may request additional information related to the items above as necessary to demonstrate that the material meets the standards of the National Organic Program.

(2) Applications for fertilizers and pesticides must submit verification of a valid registration from the WSDA pesticide management division.

(3) In addition to the information required in this section, a registrant who is packaging or distributing a material manufactured by another person or manufacturer or are otherwise not responsible for the processing or production of the final product must submit a statement from the manufacturer of the material granting the department access to the manufacturing facility and authorizing inspections in accordance with WAC 16-160-180.

NEW SECTION

WAC 16-160-150 Renewal application requirements. (1) Renewal applications must be submitted on the form provided by the department, and must include the following:

(a) Material registrant agreement in which the registrant agrees to comply with chapter 16-160 WAC;

(b) Name(s) of the material(s) seeking renewal;

(c) Name and address of the manufacturing facility(ies) for each registered material;

(d) Notification of changes to the original application;

(e) Signature of authorized representative; and

(f) The required fee for renewal. Renewal applications postmarked after October 31st must include the appropriate late fee as listed under WAC 16-160-200.

(2) Registrants who package or distribute a material manufactured by another person or manufacturer or are otherwise not responsible for the processing or production of the final product must annually submit a statement from the manufacturer of the material granting the department access to the manufacturing facility and authorizing inspections in accordance with WAC 16-160-180.

(3) Full disclosure of the complete formula of the material, including active and inert ingredients, is required every five years.

NEW SECTION

WAC 16-160-160 Updating an application. If any changes to the information provided in an initial or renewal application occurs at any time after the application is submitted, the registrant must immediately submit the corrected information to the department for review. This information includes, but is not limited to, changes in material formulation, ingredient suppliers, manufacturing facilities or processes, labels or other production or marketing processes. The corrected information must be provided in writing. Failure by the registrant to provide correction to the information provided in an application may result in suspension or revocation of the registration.

NEW SECTION

WAC 16-160-170 Confidential information. Any information provided to the department under this chapter that the registrant desires to claim as exempt from disclosure under the provisions of chapter 42.56 RCW, the Public Records Act, or as a trade secret under chapter 19.108 RCW, the Uniform Trade Secrets Act, or other statute must be clearly designated as confidential. However, the determination of whether the information is exempt from disclosure will be based solely upon chapter 42.56 RCW or other applicable law.

NEW SECTION

WAC 16-160-180 Inspections. (1) By applying for registration on the brand name materials list, the registrant expressly grants to jurisdiction of the state of Washington in all matters related to the registration.

(2) By applying for registration on the brand name materials list, the registrant expressly grants the department or other organic certifying agent or inspection agent approved by the National Organic Program the right to enter the registrant's premises during normal business hours or at other reasonable times to:

(a) Inspect the portion of the premises where the materials, inputs or ingredients are stored, produced, manufactured, packaged or labeled;

(b) Inspect records related to the sales, storage, production, manufacture, packaging or labeling of the material, inputs or ingredients; and

(c) Obtain samples of materials, inputs or ingredients.

(3) Inspections may be conducted as a condition of ongoing compliance, after receiving an initial or a renewal application, notification of a change to an application, upon receipt of a complaint, or as required by the National Organic Program. Inspections may be announced or unannounced.

(4) Registrants who package or distribute a material manufactured by another person or manufacturer or are otherwise not responsible for the processing or production of the final product must annually submit a statement from the manufacturer of the material granting the department access to the manufacturing facility and authorizing inspections. The signed consent must be on a form provided by the department.

(5) Should the registrant or manufacturer refuse to allow inspection of the premises or records or fail to provide samples, the registration on the brand name materials list is canceled as provided under WAC 16-160-220. The department shall deny applications for registration where the registrant refuses to allow the inspection of the premises or records, fails to provide samples as provided in this section, or fails to provide the department with the consent described in subsection (4) of this section.

(6) Inspections must be documented on a form approved by the department. Inspections conducted by an inspection body other than the department will be accepted when a review determines that the inspection document is sufficient to demonstrate compliance with the standards of the National Organic Program.

NEW SECTION

WAC 16-160-190 Recordkeeping requirements. (1) Registrants must maintain records sufficient to verify that the materials are approved for use in organic production, processing, or handling and comply with the standards of the National Organic Program. These records may include:

(a) Records pertaining to incoming raw materials:
(i) Invoices/bills of lading;
(ii) Transportation documentation;
(iii) Material safety data sheets;
(iv) Storage documentation.
(b) Production records:
(i) Material formulations;
(ii) Dates of production;
(iii) Amount of ingredients used in each batch;
(iv) Amount of final materials;
(v) Sampling and/or laboratory analyses;
(vi) Lot identification and tracking;
(vii) Other records maintained during manufacturing.
(c) Finished material records:
(i) Packaging documentation;
(ii) Sales documentation;
• Purchase orders;
• Receipts;
• Shipping documents;
(iii) Storage documentation.
(2) Records shall be maintained for six years.

NEW SECTION

WAC 16-160-200 Fees. The following fees apply to applicants and registrants to the brand name materials list.

(1) **Initial material registration:**

(a) The application fee for initial registration of a pesticide, spray adjuvant, processing aid, livestock production aid or post-harvest material is five hundred dollars per material.

(b) The application fee for initial registration of a fertilizer, soil amendment, organic waste derived material, compost, animal manure or crop production aid is four hundred dollars per material.

(2) **Renewal registration:** The application fee for renewing a registration for a pesticide, spray adjuvant, processing aid, livestock production aid or post-harvest material is three hundred dollars per material. The application fee for

renewing a registration for a fertilizer, soil amendment, organic waste derived material, compost, animal manure or crop production aid is two hundred dollars per material.

(3) **Late fees:** Renewal applications postmarked after October 31st must include a late fee in addition to the renewal fee. Renewal applications received after February 2nd will not be accepted.

If your application is postmarked after October 31st but before:	Then the late fee is:
December 1	$100
January 1	$200
February 1	$300

(4) **Inspections:** Inspections conducted by the department, including report writing, will be billed at forty dollars per hour plus travel costs and mileage which shall be charged at the rate established by the state office of financial management. Fees assessed for inspections conducted by third-party inspection agencies are established by that agency. Registrants may contact the inspection agency to determine the applicable fee for those inspections.

(5) **Samples:** Chemical analysis of samples, if required for registration or renewal, or obtained during an inspection, will be charged to the applicant at a rate established by the department of agriculture or at the cost for analyses performed by another laboratory.

(6) **Expedited evaluation fees:** Requests for expedited reviews may be submitted and, if approved, are billed at the rate of forty dollars per hour.

NEW SECTION

WAC 16-160-210 Labels and logos. A person whose material is registered under this chapter may use the words "approved material under Washington state department of agriculture organic food program" and may use the logo specified in this section in the labeling of the material. Registered materials are not certified as organic by the department and are prohibited from making claims indicating products are "certified organic" or similar term. Materials that are not registered under this chapter are prohibited from using the statement or the logo in this section in the labeling of the material. In addition to the other limitations expressed in this chapter and chapter 15.86 RCW, registration does not imply the Washington department of agriculture endorses the use of the product, does not make any guarantee that the material performs as represented by the registrant, and does not guarantee acceptance for use in organic production by certifying agents other than the department.

NEW SECTION

WAC 16-160-220 Suspension, revocation, cancellation, and denial of registrations. (1) Registrations on the brand name materials list, and applications for registration, are governed by chapter 34.05 RCW. The director may deny, suspend, cancel, or revoke a registration on the brand name materials list if the director determines that a registrant has failed to meet the registration criteria established under chapter 15.86 RCW or chapter 16-160 WAC, or violated any other provision under chapter 15.86 RCW or chapter 16-160 WAC.

(2) Application or registrations will be revoked, canceled, or denied if a material fails to meet the standards for approval or is no longer approved for use in organic production, processing, or handling by the National Organic Program.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-160-030	Do I need to register my brand name material with the organic food program?
WAC 16-160-035	Brand name materials list.
WAC 16-160-040	How do I apply for registration?
WAC 16-160-050	When do registrations expire?
WAC 16-160-060	What criteria are used to determine if a brand name material is approved?
WAC 16-160-070	Application fees.
WAC 16-160-080	Inspections.

WAC 16-160-090	Denial or revocation of a registration.
WAC 16-160-100	Labeling of registered brand name materials and use of organic logo.
WAC 16-160-110	Organic material registration logo.

WSR 10-15-090
PROPOSED RULES
HEALTH CARE AUTHORITY

[Order 10-01—Filed July 19, 2010, 4:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-12-045.

Title of Rule and Other Identifying Information: Chapter 182-04 WAC, Public access to information and records.

Hearing Location(s): Health Care Authority (HCA), 676 Woodland Square Loop S.E., The Sue Crystal Center, Olympia, WA, on August 26, 2010, at 3:00 p.m.

Date of Intended Adoption: August 27, 2010.

Submit Written Comments to: Jason Siems, HCA Rules Coordinator, 676 Woodland Square Loop S.E., P.O. Box 42700, Olympia, WA 98504-2700, e-mail Jason.siems@hca.wa.gov, fax (360) 923-2606, by August 26, 2010.

Assistance for Persons with Disabilities: Contact Nikki Johnson by August 19, 2010, TTY (888) 923-5622 or (360) 923-2805.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendment of the rules is needed to reflect changes in state law, technology and HCA processes.

Statutory Authority for Adoption: RCW 41.05.160, 42.56.040, and 70.02.050.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jason Siems, 676 Woodland Square Loop, Lacey, WA, (360) 923-2720.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee has not requested the filing of a small business economic impact statement, and there will be no costs to small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

July 19, 2010
Jason Siems
Rules Coordinator

AMENDATORY SECTION (Amending WSR 97-21-125, filed 10/21/97, effective 11/21/97)

WAC 182-04-010 Purpose. The purpose of this chapter shall be to insure compliance by the Washington state health care authority (HCA) with the provisions of chapter ((~~42.17~~)) 42.56 RCW dealing with public records.

AMENDATORY SECTION (Amending WSR 97-21-125, filed 10/21/97, effective 11/21/97)

WAC 182-04-015 Definitions. The following definitions shall apply:

(1) "HCA" means the Washington state health care authority, created pursuant to chapter 41.05 RCW.

(2) "Public record" is defined in RCW 42.56.010. Except as otherwise provided by law, public records include((~~s~~)) any ((~~writing~~)) written or recorded communication containing information relating to the conduct of ((~~government~~)) the HCA or the performance of any governmental ((~~agency or the performance of any governmental~~)) or proprietary ((~~information~~)) function prepared, owned, used, or retained by the HCA.

(3) "Writing" ((~~means all means of recording any form of communication or representation as defined in RCW 42.17.020(28)~~)) is defined in RCW 42.56.010. It includes handwriting, typewriting, printing, photostatting, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

NEW SECTION

WAC 182-04-020 Whom should I contact about a public records request? The HCA public records officer is in charge of responding to all records requests made to the HCA. The public records officer is responsible for overseeing the release of public records and coordinating HCA public disclosure staff.

AMENDATORY SECTION (Amending WSR 97-21-125, filed 10/21/97, effective 11/21/97)

WAC 182-04-025 How will the HCA respond to my public records((~~.~~)) request? (1) Except as provided by law, all public records of the HCA as defined in WAC 182-04-015(2) ((~~shall~~)) will be made available upon public request for inspection and copying ((~~pursuant to these rules, except however as provided by law~~)).

(2) ((~~The public disclosure officer, or designee, shall respond promptly to requests for disclosure.~~)) Within five business days after receiving a request, the HCA public disclosure officer, or designee ((~~shall respond by~~)) will:

(a) ((~~Providing~~)) Provide the record(s);

(b) ((~~Acknowledging the~~)) Acknowledge your request and ((~~providing~~)) give you a reasonable estimate of ((~~the time it will take to respond to the request~~)) how long the HCA will need to provide the records. If the request is not clear, the public disclosure officer may ask you for more information (see WAC 182-04-027). If you fail to clarify the request, the public disclosure officer need not respond to it; or

(c) ((~~Denying~~)) Deny all or part of the public record request in writing with the reason(s) for the denial (see WAC 182-04-050 and 182-04-053).

(3) ((~~In acknowledging receipt of a public record request that is unclear, the public disclosure officer may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the public disclosure officer need not respond to it.~~)) At his or her discretion, the public records officer may send the requested records to you by e-mail, fax, or regular mail. The records may be delivered on computer or compact disks, or by use of other methods of transmittal or storage.

NEW SECTION

WAC 182-04-027 Why might the HCA need to extend the time to respond to a public record request? The HCA may need to extend the time to respond to a public record request to:

(1) Locate and gather the information requested;

(2) Notify an individual or organization affected by the request;

(3) Determine whether the information requested is exempt from disclosure and whether all or part of the public record requested can be released; or

(4) Contact you to clarify the intent, scope or specifics of the request. If you fail to clarify the request, the HCA may not have to respond to your request.

NEW SECTION

WAC 182-04-029 What records can I request and/or copy? You may inspect or get copies of all public records unless they are exempted by chapter 42.56, 19.183 or 70.02 RCW, or other applicable law.

AMENDATORY SECTION (Amending WSR 97-21-125, filed 10/21/97, effective 11/21/97)

WAC 182-04-035 ((~~Office hours.~~)) When can I inspect or obtain copies of documents? ((~~Public records shall be made available upon request only during working hours of the HCA. For the purpose of this chapter, the working hours shall be from 9:00 a.m. until noon, and from 1:00 p.m. until 4:00 p.m., Monday through Friday, excluding legal holidays.~~)) You can inspect public records at the HCA in Thurston County from 9:00 a.m. until noon, and from 1:00 p.m. until 4:00 p.m., Monday through Friday. Records are not available on legal holidays or when the HCA offices are closed for other reasons such as inclement weather or emergencies. The HCA reserves the right to restrict your ability to examine public records when the HCA determines it is necessary to preserve public records or prevent interference with the performance of HCA duties. This does not prevent the HCA from providing you with copies of the public records or limit the duty of the HCA to provide you with copies of the public records.

AMENDATORY SECTION (Amending WSR 97-21-125, filed 10/21/97, effective 11/21/97)

WAC 182-04-040 ((~~Request for~~)) How do I make a public record((~~s.~~)) request? In accordance with the requirements of chapter ((~~42.17~~)) 42.56 RCW that agencies prevent unreasonable invasion of privacy, and to protect public records from damage or disorganization, and to prevent excessive interference with essential functions of the agency, public records may be inspected ((~~or copied~~)), or copies of such records may be obtained by the public, ((~~upon compliance with~~)) by using the following procedures:

(1) ((~~A request shall be made in writing or upon the form prescribed in WAC 182-04-070, which shall be available at the HCA. The form shall be presented to the public disclosure officer, or to any member of the agency's staff, if the public disclosure officer is not available, at the office of the agency during customary office hours.~~)) Public record requests should be made in writing. The HCA accepts written public record requests made in person or sent by e-mail, fax, or mail. To assist members of the public to make a formal request, forms are available on the HCA web site or by contacting the public records officer. A request need merely identify with reasonable certainty the record sought to be disclosed. ((~~If the matter requested is referred to within the current index maintained by the public disclosure officer, a reference to the requested record as it is described in such current index is desirable.~~))

(2) If the HCA form is not used, the public record request should be in writing and include all of the following information:

(a) The name and contact information of the person requesting the record;

(b) The calendar date on which the request was made;

(c) A statement that the requested records are not to be used for commercial purposes; and

(d) A detailed description of the record requested sufficient to make it identifiable.

(3) In all cases in which a member of the public is making a request, ((~~it shall be the obligation of~~)) the public disclosure officer or staff member ((~~to~~)) will assist ((~~the member of the public in~~)) to appropriately ((~~identifying~~)) identify the public record requested, if necessary.

(((~~(3) When the law makes a record disclosable to a specific person, a requestor may be required to provide personal identification.~~))

AMENDATORY SECTION (Amending WSR 97-21-125, filed 10/21/97, effective 11/21/97)

WAC 182-04-041 Preserving requested records. If a public record request is made at a time when such record exists but is scheduled for destruction in the near future, the public disclosure officer ((~~shall~~)) will retain possession of the record, and ((~~may~~)) will not destroy or erase the record until the request is resolved.

AMENDATORY SECTION (Amending WSR 97-21-125, filed 10/21/97, effective 11/21/97)

WAC 182-04-045 Copying costs. (1) No fee ((~~shall be~~)) is charged for the inspection of public records.

(2) The ((~~agency shall~~)) HCA collects the following fees to reimburse the ((~~agency~~)) HCA for its actual costs incident to providing copies of public records:

(a) Fifteen cents per page for black and white photocopies((~~, plus sales tax~~)); and

(b) The cost of postage, if any.

(3) Copies of some records may be provided electronically or on disk to the requestor at no charge.

(4) The public disclosure officer is authorized to waive the foregoing costs. ((~~Factors considered in deciding whether to waive costs include, but are not limited to: Providing the copy will facilitate administering the program, and/or the expense of processing the payment exceeds the copying and postage cost.~~))

AMENDATORY SECTION (Amending WSR 97-21-125, filed 10/21/97, effective 11/21/97)

WAC 182-04-050 ((~~Exemptions.~~)) What happens if the record I requested is exempt from disclosure? (((~~(1) The HCA reserves the right to determine whether a public record requested in accordance with the procedures outlined in WAC 182-04-040 is exempted under statutory provisions.~~

~~(2) Pursuant to RCW 42.17.260, the HCA reserves the right to delete identifying details when it makes available or publishes any public record, in any case where there is reason to believe that disclosure of such details would be an invasion of personal privacy or vital governmental interest protected by chapter 42.17 RCW. The public disclosure officer will fully justify such deletion in writing in such a way so that the nature of the deleted information is made known.~~

~~(3) If disclosure is denied, the requestor is entitled to a written explanation of the denial which cites the relevant exemption and an explanation of how it applies to the record being denied.~~)) Certain records that you wish to review or copy are exempt from disclosure because of federal or state laws. If a record is exempt from disclosure, you will be informed in writing of the reasons why the HCA is withholding the record.

AMENDATORY SECTION (Amending WSR 97-21-125, filed 10/21/97, effective 11/21/97)

WAC 182-04-055 Will the HCA review ((~~of~~)) the denial((~~s~~)) of ((~~public records~~)) my request((~~,~~))? (((~~(1) Any person who objects to the denial of request for public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public disclosure officer or other staff member which constituted or accompanied the denial.~~

~~(2)~~)) If the HCA denies your public record request, you may ask the HCA to review the denial. To request a review, you must make your request in writing.

Following receipt of a written request for review of a decision denying a public record request, the disclosure officer ((~~shall immediately~~)) will consider the matter and either affirm or reverse ((~~such~~)) the denial. ((~~Such review shall be deemed completed at the end of the second business day following the receipt by the disclosure officer of the request for review.~~)) This shall constitute final ((~~agency~~)) HCA action for the purposes of judicial review, pursuant to RCW ((~~42.17.320~~)) 42.56.520.

AMENDATORY SECTION (Amending WSR 97-21-125, filed 10/21/97, effective 11/21/97)

WAC 182-04-060 Protection of public records. Following are guidelines which shall be adhered to by any person inspecting such public records:

(1) Inspection of any public records shall be conducted only during working hours as specified in WAC 182-04-035 ((~~with~~)) in the presence of an HCA employee;

(2) ((~~No public record shall be removed from the main office without the approval of the public disclosure officer or his/her designee;~~)) Original records cannot be removed from the HCA building. The HCA has a duty to protect public records (see RCW 42.56.100);

(3) Public records shall not be marked, torn, or otherwise damaged;

(4) Public records must be maintained as they are in file or in a chronological order, and shall not be dismantled except for purposes of copying and then only by an HCA employee;

(5) Access to file cabinets and other places where public records are kept is restricted((~~, and shall be used by employees of the HCA~~)).

AMENDATORY SECTION (Amending WSR 98-17-063, filed 8/17/98, effective 9/17/98)

WAC 182-04-070 Request for inspection of records. The HCA hereby adopts for use by all persons requesting inspection and/or copying of its records, the form set out below, entitled "Request for Inspection of Records."

The information requested in Blocks 4 through 6 is not mandatory, however, the completion of these blocks will enable this office to expedite your request and contact you should the record you seek not be immediately available.

1. Name	4. Phone Number
2. Address	5. Representing (if applicable)
3. Zip Code	6. If urgent - date needed

Below please state what record(s) you wish to inspect and be as specific as possible. If you are uncertain as to the type or identification of specific record or records we will assist you.

I certify that the information requested from the above record(s) will not be part of a list of individuals to be used for commercial purposes.

(Signed) . . . . . .

Date . . . . . .

Return the request for inspection of records to:

Public Disclosure Office
Health Care Authority
676 Woodland Square Loop S.E.
Post Office Box ((~~42705~~)) 42700
Olympia, Washington ((~~98504-2705~~)) 98504-2700

WSR 10-15-104
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed July 20, 2010, 4:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-11-101.

Title of Rule and Other Identifying Information: What law controls a claim if a statute is amended after the date of the criminal act?

Hearing Location(s): 7273 Linderson Way S.W., Room S117, Tumwater, WA 98501, on August 27, 2010, at 2 p.m.

Date of Intended Adoption: September 21, 2010.

Submit Written Comments to: Cletus Nnanabu, P.O. Box 44520, Olympia, WA 98504-4520, e-mail nnan235@lni.wa.gov, fax (360) 902-5333, by August 27, 2010.

Assistance for Persons with Disabilities: Contact Victoria Jones by August 12, 2010, TTY (360) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: E2SSB 6504 (chapter 122, Laws of 2010) reduced benefits for eligible victims of crimes under chapter 7.68 RCW. Amending WAC 296-30-900 changes and clarifies the date of eligibility in accordance with E2SSB 6504. The amendment will allow for the sunset date of July 1, 2015, provided in the legislation, to eliminate the need for further rule making.

Statutory Authority for Adoption: RCW 7.68.030.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Cletus Nnanabu, Program Manager, Tumwater, Washington, (360) 902-5340.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Amendment is a compliance issue with E2SSB 6504 (chapter 122, Laws of 2010) and will have no impact on small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Cletus Nnanabu, Program Manager, P.O. Box 44520, Olympia, WA 98504-4520, phone (360) 902-5340, fax (360) 902-5333, e-mail nnan235@lni.wa.gov.

July 20, 2010
Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 99-07-004, filed 3/4/99, effective 4/4/99)

WAC 296-30-900 What law controls a claim if a statute is amended after the date of the criminal act? The statute in effect when the criminal act occurred is the controlling law, except as provided in chapter 122, Laws of 2010 (E2SSB 6504). The act occurs when the perpetrator commits the criminal conduct.

For those crime victims who apply for benefits after April 1, 2010, the law in effect at the time the application is received by the department is the controlling law.

WSR 10-15-109
PROPOSED RULES
WASHINGTON STATE UNIVERSITY

[Filed July 21, 2010, 8:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-09-079.

Title of Rule and Other Identifying Information: The university is updating the rules regarding providing students with choices for purchasing course materials.

Hearing Location(s): Lighty 401, WSU Pullman, Pullman, Washington, on August 27, 2010, at 4:00 p.m.

Date of Intended Adoption: October 8, 2010.

Submit Written Comments to: Ralph Jenks, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, e-mail jenks@wsu.edu, fax (509) 335-3969, by August 27, 2010.

Assistance for Persons with Disabilities: Contact Deborah Bartlett, (509) 335-2005, by August 25, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The university is updating the requirements and responsibilities regarding providing students with choices for purchasing course materials in accordance with recently amended RCW 28B.10.590.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: Washington State University, public.

Name of Agency Personnel Responsible for Drafting: Ken Vreeland, Special Assistant to the Provost and Executive Vice-President, French Administration 436, Pullman, Washington 99164-1046, (509) 335-5581; Implementation and Enforcement: Warwick Bayly, Provost and Executive Vice-President, French Administration 436, Pullman, Washington 99164-1046, (509) 335-5581.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule has no impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider this rule to be a significant legislative rule.

July 21, 2010
Ralph T. Jenks, Director
Procedures, Records, and Forms
and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-24-027, filed 11/24/08, effective 12/25/08)

WAC 504-43-030 Providing cost savings to students for course materials. (1) The affiliated bookstores for Washington State University (WSU) are incorporated as the students book corporation. The students book corporation is responsible for the following:

(a) Providing students the option of purchasing course materials that are unbundled whenever possible;

(b) Disclosing to faculty and students the retail costs of textbooks on a per book and per course basis and making such information publicly available;

(c) Disclosing publicly, when such information is available, how new editions vary from previous editions; ((~~and~~))

(d) Actively promoting and publicizing book buy-back programs; and

(e) Disclosing to students information on required course materials including, but not limited to, title, authors, edition, price, and International Standard Book Number (ISBN) at least four weeks before the start of the class for which the materials are required. The chief academic officer may waive the disclosure requirement provided in this subsection (1)(e), on a case-by-case basis, if students may reasonably expect that nearly all information regarding course materials is available four weeks before the start of the class for which the materials are required. The requirement provided in this subsection (1)(e) does not apply if the faculty member using the course materials is hired four weeks or less before the start of class.

(2) To provide cost savings to students for course materials when educational content is comparable as determined by faculty, WSU faculty and staff members are encouraged to:

(a) Consider adopting the least expensive edition of course materials available ((~~when educational content is comparable~~));

(b) Consider adopting free, open textbooks when available;

(c) Work closely with ((~~publishers and the students book corporation to create bundles and packages if they provide a cost savings to students~~)) university librarians to put together collections of free on-line web and library resources.

WSR 10-15-110
PROPOSED RULES
WASHINGTON STATE UNIVERSITY
[Filed July 21, 2010, 8:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-11-091.

Title of Rule and Other Identifying Information: The university is updating the health and safety regulations for university property, chapter 504-36 WAC.

Hearing Location(s): Lighty 403, WSU Pullman, Pullman, Washington, on August 30, 2010, at 4:00 p.m.

Date of Intended Adoption: October 8, 2010.

Submit Written Comments to: Ralph Jenks, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, e-mail jenks@wsu.edu, fax (509) 335-3969, by August 30, 2010.

Assistance for Persons with Disabilities: Contact Deborah Bartlett, (509) 335-2005, by August 27, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To protect wildlife research, the university needs the ability to further control access by dogs and other animals to certain portions of university property.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: Washington State University, public.

Name of Agency Personnel Responsible for Drafting: Rich Heath, Senior Associate Vice-President, Business and Finance, French Administration 442, Pullman, Washington 99164-1045, (509) 335-5581; Implementation and Enforcement: Roger Patterson, Vice-President for Business and Finance, French Administration 442, Pullman, Washington 99164-1045, (509) 335-5524.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule has no impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider this rule to be a significant legislative rule.

July 21, 2010
Ralph T. Jenks, Director
Procedures, Records, and Forms
and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-24-026, filed 11/24/08, effective 12/25/08)

WAC 504-36-020 Control of animals. This section governs the control of animals and pets on property owned or controlled by Washington State University.

(1) This section does not apply to animals owned by the university or under its care, custody, and/or control.

(2) Subsections (3) and (8) of this section do not apply to trained guide dogs or service animals that are being used by persons with disability.

(3) Animals are not permitted in university buildings, except in facilities that are the site of university-authorized events, such as stock shows, horse shows, parades, or demonstrations at sporting events, where the animals are participants in said events, or as allowed by university housing policies. The vice-president for business and finance, the president, the chancellor of a branch campus, or such other person as the president may designate, may waive this subsection for

guide dogs in training or service animals in training, provided that such animals are present on campus with trainers or handlers who have a demonstrated history of training such animals.

(((~~(2) Livestock and horses are not permitted on university property, except as allowed in subsection (3)(e) of this section. Other~~)) (4) Animals are not permitted on university property unless under immediate control of their keeper, except as otherwise allowed under this rule. "Keeper" includes an owner, handler, trainer, or any person responsible for the control of an animal. "Under control" means the restraint of an animal by means of a leash or other device that physically restrains the animal to the keeper's immediate proximity. An animal which is otherwise securely confined while in or upon any motor vehicle, including a trailer, is deemed to be under control.

(((~~(3)~~))) (5) The requirement that animals be under immediate control of their keeper does not apply to:

(a) A dog being exercised in any area designated by the university as leash optional;

(b) A dog undergoing training at a certified dog obedience class on the university campus and authorized by the dean of the college of veterinary medicine, the vice-president for business and finance, the president, or the president's designee;

(c) A dog while being exhibited in an organized dog show on university property;

(d) A dog trained to aid law enforcement officers while being used for law enforcement purposes or during demonstrations to illustrate the dog's capabilities; ((~~and~~))

(e) A dog trained and under the control of a university farm manager to aid farm managers while moving or handling livestock; and

(f) An animal participating in a university-authorized event, such as a stock show, horse show, parade, extension or outreach event, or demonstrations at a sporting, teaching, or agricultural event.

(((~~(4)~~))) (6) Any stray dog or other animal that is running loose on university property is subject to impound by local authorities in accordance with the municipal or county ordinances that apply to each campus.

(((~~(5)~~))) (7) The keeper of any animal must remove for disposal any fecal matter deposited by the animal on university premises before the keeper leaves the area where the matter was deposited. This requirement does not apply to an individual who, by reason of disability, is unable to comply, or to individuals bringing animals to university-authorized events where arrangements have been made for the removal of fecal matter.

(((~~(6) This section does not apply to animals owned by the university or under its care, custody, and/or control.~~

~~(7) Subsection (1) of this section does not apply to trained guide dogs or service animals that are being used by persons with disability.~~))

(8) The vice-president for business and finance, the president, the chancellor of a branch campus, or such other person as designated by the president, may designate((~~, will waive subsection (1) of this section for guide dogs in training or service animals in training, provided that such animals are present on campus with trainers or handlers who have a demonstrated history of training such animals~~)) areas on a campus otherwise open to the public as restricted from access by dogs or other animals even when under the control of their keepers for safety reasons or where the presence of dogs or other animals conflicts with the educational or research missions of the university.

WSR 10-15-111

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed July 21, 2010, 8:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-09-078.

Title of Rule and Other Identifying Information: WSU is adding rules regarding meetings conducted by the university's board of regents.

Hearing Location(s): Lighty 401, WSU Pullman, Pullman, Washington, on September 2, 2010, at 4:00 p.m.

Date of Intended Adoption: October 8, 2010.

Submit Written Comments to: Ralph Jenks, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, e-mail jenks@wsu.edu, fax (509) 335-3969, by September 2, 2010.

Assistance for Persons with Disabilities: Contact Deborah Bartlett, (509) 335-2005, by August 31, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WSU is adding rules regarding meetings conducted by the university's board of regents, in accordance with RCW 42.30.075 and 42.30.080.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: Washington State University, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Chris Hoyt, Executive Assistant to the President and Board of Regents, French Administration 422, Pullman, Washington 99164-1048, (509) 335-6615.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule has no impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider this rule to be a significant legislative rule.

July 21, 2010

Ralph T. Jenks, Director

Procedures, Records and Forms

and University Rules Coordinator

Chapter 504-07 WAC

BOARD OF REGENTS

NEW SECTION

WAC 504-07-010 Board of regents meetings. (1) Regular meetings. Regular meetings of the board of regents, including committees thereof, are held pursuant to a schedule and at locations established annually by resolution of the board. The annual meeting schedule is published in the *Washington State Register*. Meetings may be canceled or rescheduled by the president of the university, with the concurrence of the president of the board.

(2) Rescheduled regular meetings. Any regular meeting of the board or its committees may be rescheduled by publishing notice of the changed date and/or location in the *Washington State Register* at least twenty days in advance of the rescheduled meeting date. If twenty days advance notice of a rescheduled meeting is not given, the meeting is conducted as a special meeting under RCW 42.30.080.

(3) All meetings. All meetings of the board or its committees are conducted in conformance with the laws of the state of Washington governing such meetings and the bylaws of the board.

WSR 10-15-113
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed July 21, 2010, 8:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-08-009.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-450-0195 Utility allowances for Basic Food programs.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at http://www.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6094), on August 24, 2010, at 10:00 a.m.

Date of Intended Adoption: No earlier than August 25, 2010.

Submit Written Comments to: DSHS Rules Coordinator, 1115 Washington Street S.E., Olympia, WA 98504, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on August 24, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by August 10, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-450-0195 relating to the standard utility allowance (SUA) used when determining eligibility and benefit levels for Basic Food and WASHCAP.

This standard, which must be updated annually as required under Title 7 of the Code of Federal Regulations § 273.9 (d)(6)(3). Food and Nutrition Service (FNS) has approved the new standards to be used from October 1, 2010, through September 30, 2011. The same SUA standard will be made available to all households regardless of the number of persons in the household.

Reasons Supporting Proposal: The United States Department of Agriculture (USDA), FNS enforces the provisions of the federal supplemental nutrition assistance program (SNAP) as enacted in the 2008 Food and Nutrition Act and codified in the Code of Federal Regulations. As required by the federal regulations for SNAP, the department has proposed a standard utility allowance based on residential utility costs in Washington to be used when determining eligibility and benefit levels for Basic Food and WASHCAP. The USDA FNS has approved the use of this utility standard for federal fiscal year 2011 which covers October 2010 through September 2011.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and 74.08A.903.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and 74.08A.903.

Rule is necessary because of federal law, 7 C.F.R. § 273.9.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Camp, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4616.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by modifying the SUA used in determining benefits for WASHCAP and Basic Food.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to … rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

July 16, 2010
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-24-001, filed 11/18/09, effective 12/19/09)

WAC 388-450-0195 ((~~Utility allowances for Basic Food programs.~~)) Does the department use my utility costs when calculating my Basic Food or WASHCAP benefits> (1) ((~~For Basic Food, "utilities" include the following~~)) We use a standard utility allowance (SUA) of three hundred eighty-five dollars instead of your actual utility costs when we determine your assistance unit's:

(a) Monthly benefits under WAC 388-492-0070 if you receive WASHCAP; or

(b) Shelter cost income deduction under WAC 388-450-0190 for Basic Food.

(2) We considered the average cost of the following utilities to determine the value of the SUA:

(a) Heating ((~~or~~)) and cooling fuel such as electricity, oil, or gas;

(b) Electricity ((~~or gas~~));

(c) Water ((~~or~~)) and sewer;

(d) Well or septic tank installation/maintenance;

(e) Garbage/trash collection; and

(f) Telephone service.

(((~~(2)~~))) (3) The department uses the ((~~amounts below if you have utility costs separate from your rent or mortgage payment. We add your utility allowance to your rent or mortgage payment to determine your total shelter costs. We use total shelter costs to determine your Basic Food benefits~~)) SUA if you have utility costs separate from your rent or mortgage payment or if you receive a low income home energy assistance program (LIHEAP) benefit during the year.

(((~~(a) If you have heating or cooling costs or receive a low income home energy assistance program (LIHEAP) benefit during the year you get a standard utility allowance (SUA) that depends on your assistance unit's size.~~)))

((~~Assistance Unit (AU) Size~~))	((~~Utility Allowance~~))
((~~1~~))	((~~$352~~))
((~~2~~))	((~~$362~~))
((~~3~~))	((~~$373~~))
((~~4~~))	((~~$384~~))
((~~5~~))	((~~$394~~))
((~~6 or more~~))	((~~$405~~))

(((~~(b) If your AU does not qualify for the SUA and you have any two utility costs listed above, you get a limited utility allowance (LUA) of two hundred seventy-six dollars.~~

~~(c) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of forty-two dollars.~~)))

WSR 10-15-115
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed July 21, 2010, 8:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-10-074.

Title of Rule and Other Identifying Information: The community services division is proposing to amend WAC 388-444-0005 Food stamp employment and training (FS E&T) program—General requirements, 388-444-0010 Clients who are required to register for work and must participate in FS E&T, 388-444-0015 Who is not required to register for work or participate in FS E&T?, 388-444-0020 When must clients register for work but are not required to participate in the food stamp employment and training program (FS E&T)?, 388-444-0025 Payments for FS E&T related expenses, 388-444-0050 Good cause for failure to register for work or for not participating in the FS E&T program, 388-444-0055 What are the penalties for refusing or failing to comply?, and 388-444-0060 FS E&T—Unsuitable employment.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at http://www.dshs.wa.gov/msa/rpau/docket.html or by calling (360) 664-6094), on August 24, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 25, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on August 24, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by August 10, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend Basic Food work requirement rules to:

- Change the name "food stamp employment and training" program to "Basic Food employment and training" program or BF E&T;
- Convert the BF E&T program to an all-volunteer program as allowed under federal regulations;
- Expand the definition of BF E&T to include any supplemental nutrition assistance program (SNAP) E&T activities or services provided in Washington state;
- Define and clarify which Basic Food recipients are mandatory Basic Food work registrants;
- Define and clarify which Basic Food recipients can volunteer for BF E&T activities; and
- Align rules with current federal regulations on E&T requirements.

Reasons Supporting Proposal: Compliance with federal regulations is required to continue to receive federal funding.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.515, 74.08.090, 74.08A.120, and 74.08A.903.

Statute Being Implemented: RCW 74.04.005, 74.04.-050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. § 273.7.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert Thibodeau, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4634.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The pro-

posed amendments only affect DSHS clients by aligning Washington Basic Food work requirements with current federal SNAP work requirement rules and implementing the option of conducting an all-volunteer BF E&T program.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to … rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

July 15, 2010
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-04-009, filed 1/22/09, effective 2/22/09)

WAC 388-444-0005 ((~~Food stamp employment and training (FS E&T) program—General requirements.~~)) Am I required to work or look for work in order to be eligible for Basic Food? (((~~(1) To receive Basic Food some people must register for work and participate in the food stamp employment and training (FS E&T) program.~~

~~(2) We determine if you must register for work and participate in FS E&T under WAC 388-444-0010:~~

~~(a) If we require you to register for work and participate in FS E&T you are nonexempt from FS E&T.~~

~~(b) If you meet one of the conditions under WAC 388-444-0015, you are exempt from FS E&T. If you are exempt, you may choose to receive services through the FS E&T program.~~

~~(3) If you are nonexempt from FS E&T requirements,~~)) Some people must register for work to receive Basic Food.

(1) If you receive Basic Food, we register you for work if you are:

(a) Age sixteen through fifty-nine with dependents;

(b) Age sixteen or seventeen, not attending secondary school and not the head-of-household;

(c) Age fifty through fifty-nine with no dependents; or

(d) Age eighteen through forty-nine, able-bodied and with no dependents as provided in WAC 388-444-0030.

(2) Unless you are exempt from work registration under WAC 388-444-0010, we register you for work:

(a) When you apply for Basic Food benefits or are added to someone's assistance unit; and

(b) Every twelve months thereafter.

(((~~(4) If you are nonexempt, you must meet all the FS E&T program requirements in subsections (5) through (7) of this section. If you fail to meet the requirements without good cause, we disqualify you from receiving Basic Food benefits:~~

~~(a) We define good cause for not meeting FS E&T requirements under WAC 388-444-0050; and~~

~~(b) We disqualify nonexempt persons who fail to meet E&T requirements as described under WAC 388-444-0055.~~

~~(5)~~)) (3) If ((~~you are nonexempt~~)) we register you for work, you must:

(a) ((~~Report to~~)) Contact us ((~~or your FS E&T service provider and participate~~)) as required;

(b) Provide information regarding your employment status and availability for work ((~~when~~)) if we ask for it;

(c) Report to an employer ((~~when~~)) if we refer you; ((~~and~~))

(d) Not quit a job unless you have good cause under WAC 388-444-0070; and

(e) Accept a bona fide offer of suitable employment. We define unsuitable employment under WAC 388-444-0060.

(((~~(6) If you are nonexempt, you must participate in one or more of the following FS E&T activities:~~

~~(a) Job search;~~

~~(b) Paid or unpaid work;~~

~~(c) Training or work experience;~~

~~(d) General education development (GED) classes; or~~

~~(e) English as a second language (ESL) classes.~~

~~(7) If you must participate in WorkFirst under WAC 388-310-0200, you have certain requirements for the Food Stamp Employment and Training Program:~~

~~(a) Your FS E&T requirement is to fully participate in the WorkFirst activities approved in your Individual Responsibility Plan (IRP) under WAC 388-310-0500; and~~

~~(b) If your IRP includes unpaid community service or work experience, we use your TANF grant and the Basic Food benefits received by members of your TANF assistance unit to determine the maximum hours of unpaid work we include in your plan.~~

~~(8) Exempt or nonexempt FS E&T participants **will not be required** to participate more than one hundred and twenty hours per month, but exempt or nonexempt FS E&T participants may **volunteer** to participate beyond one hundred and twenty hours~~)) (4) If we register you for work, you must meet all of the requirements under subsection (3) of this section. If you do not meet these requirements, we disqualify you from receiving benefits as described in WAC 388-444-0055, unless you meet the good cause conditions as defined in WAC 388-444-0050.

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-444-0010 ((~~Clients who are required to register for work and must participate in FS E&T~~)) Who is exempt from work registration while receiving Basic Food?. ((~~The following clients are nonexempt, must register for work and are required to participate in FS E&T:~~

~~(1) Age sixteen through fifty-nine with dependents;~~

~~(2) Age sixteen or seventeen, not attending secondary school and not the head-of-household;~~

~~(3) Age fifty through fifty-nine with no dependents.~~

~~(4) Age eighteen to fifty, able-bodied and with no dependents as provided in WAC 388-444-0030~~)) If you receive Basic Food, you are exempt from work requirements in chapter 388-444 WAC if you meet any of the following conditions:

(1) You are age sixteen or seventeen, not the head-of-household, and:

(a) Attend school such as high school or GED programs; or

(b) Are enrolled at least half time (using the institutions definition) in an employment and training program under:

(i) The Workforce Investment Act (WIA);

(ii) Section 236 of the Trade Act of 1974; or

(iii) Another state or local employment and training program.

(2) You are a student age eighteen or older enrolled at least half time as defined by the institution in:

(a) Any accredited school;

(b) A training program; or

(c) An institution of higher education. If you are enrolled in higher education, you must meet the requirements under WAC 388-482-0005 to be eligible for Basic Food benefits.

(3) You are an employed or self-employed person working thirty hours or more per week, or receiving weekly earnings equal to the federal minimum wage multiplied by thirty;

(4) You are complying with the work requirements of an employment and training program under temporary assistance for needy families (TANF);

(5) You receive unemployment compensation (UC) benefits or have an application pending for UC benefits;

(6) You are responsive to care for:

(a) A dependent child under age six; or

(b) Someone who is incapacitated.

(7) We determine that you are physically or mentally unable to work; or

(8) You regularly participate in a drug addiction or alcoholic treatment and rehabilitation program.

AMENDATORY SECTION (Amending WSR 06-24-026, filed 11/29/06, effective 1/1/07)

WAC 388-444-0015 ((~~Who is not required to register for work or participate in FS E&T~~)) How can the Basic Food employment and training (BF E&T) program help me find work? ((~~Some people do not have to register for work or participate in the Food Stamp Employment and Training Program (FS E&T). These people are exempt from FS E&T.~~

~~(1) You are exempt from FS E&T requirements in chapter 388-444 WAC if you meet any of the following conditions:~~

~~(a) You are age sixteen or seventeen, not the head-of-household, and:~~

~~(i) Attend school such as high school or GED programs; or~~

~~(ii) Are enrolled at least half time (using the institutions definition) in an employment and training program under:~~

~~(A) The Workforce Investment Act (WIA);~~

~~(B) Section 236 of the Trade Act of 1974; or~~

~~(C) Another state or local employment and training program.~~

~~(b) You are a student age eighteen or older enrolled at least half time as defined by the institution in:~~

~~(i) Any accredited school;~~

~~(ii) A training program; or~~

~~(iii) An institution of higher education. If you are enrolled in higher education, you meet the requirements under WAC 388-482-0005 to be eligible for Basic Food benefits.~~

~~(c) you are an employed or self-employed person working thirty hours or more per week, or receiving weekly earnings equal to the federal minimum wage multiplied by thirty.~~

~~(d) You receive unemployment compensation (UC) benefits or have an application pending for UC benefits;~~

~~(e) You are responsible to care for:~~

~~(i) A dependent child under age six; or~~

~~(ii) Someone who is incapacitated.~~

~~(f) We determine that you are physically or mentally unable to work; or~~

~~(g) You regularly participate in a drug addiction or alcoholic treatment and rehabilitation program.~~

~~(2) If you are exempt, you may choose to receive services through the FS E&T program~~)) The Basic Food employment and training (BF E&T) program is the name for Washington's voluntary supplemental nutrition program (SNAP) employment and training program.

(1) If you receive federally-funded Basic Food benefits, you may choose to receive services through the BF E&T program in one or more of the following activities, if we currently provide the service in the county where you live:

(a) Job search;

(b) Paid or unpaid work;

(c) Training or work experience;

(d) General education development (GED) classes; or

(e) English as a second language (ESL) classes.

(2) If you are eligible to participate in a BF E&T activity, there is no limit to the number of hours you can participate.

(3) If you receive benefits under the state-funded food assistance program (FAP), you are not eligible to participate in BF E&T.

AMENDATORY SECTION (Amending WSR 07-21-075, filed 10/16/07, effective 11/16/07)

WAC 388-444-0025 ((~~Payments for FS E&T related expenses.~~)) What expenses will the department pay to help me participate in BF E&T? (1) ((~~Some of a client's actual expenses needed to participate in the FS E&T program may be paid by the department. Allowable expenses are~~)) The department pays certain actual expenses needed for you to participate in the BF E&T program. We will pay for the following expenses:

(a) Transportation related costs; and

(b) Dependent care costs for each dependent through twelve years of age.

(2) ((~~Dependent care payments are not paid~~)) We do not pay your dependent care costs if:

(a) The child is thirteen years of age or older unless ((~~the child is~~)) they are:

(i) Physically and/or mentally ((~~incapable of self-care~~)) unable to care for themselves; or

(ii) Under court order requiring adult supervision; or

(b) Any member in the food assistance unit provides the dependent care.

(3) ((~~Dependent care payments paid by the department cannot be claimed as an expense and used in calculating the dependent care deduction as provided in~~)) We do not use the cost of dependent care the department pays for as an income deduction for your household's dependent care costs under WAC 388-450-0185.

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-444-0050 ((~~Good cause for failure to register for work or for not participating in the FS E&T program.~~)) What is good cause for failing to meet Basic Food work requirements? (1) ((~~A nonexempt client may have good cause for refusing or failing to register for work or to participate in the FS E&T program~~)) If we have registered you to work, you may have a good reason (good cause) for refusing or failing to meet work requirements under WAC 388-444-0005.

(2) Good cause reasons include, but are not limited to:

(a) ((~~Illness of the client~~)) You were injured or ill;

(b) ((~~Illness of another household member requiring the help of the client~~)) A household member who needs your help was injured or ill;

(c) A household emergency;

(d) The unavailability of transportation; or

(e) Lack of adequate dependent care for children six through twelve years of age.

(3) ((~~A client who is determined by the department to lack good cause for failing or refusing to participate in FS E&T is disqualified and is not eligible to receive food assistance~~)) If we determine that you do not have good cause for failing or refusing to meet the work requirements under WAC 388-444-0005, you will be disqualified from receiving Basic Food as described under WAC 388-444-0055.

AMENDATORY SECTION (Amending WSR 04-05-010, filed 2/6/04, effective 3/8/04)

WAC 388-444-0055 What are the penalties ((~~for refusing or failing to comply~~)) if I refuse or fail to meet Basic Food work requirements? (1) If we register you ((~~are nonexempt~~)) for work you must ((~~follow the food assistance~~)) meet the work requirements ((~~as defined in~~)) under WAC 388-444-0005 or 388-444-0030 unless you have good cause as defined in WAC 388-444-0050. If you do not follow these rules, you will become an ineligible assistance unit member as ((~~provided in WAC 388-450-0140~~)) described under WAC 388-408-0035. The remaining members of the assistance unit continue to be eligible for ((~~food assistance~~)) Basic Food.

(2) If you do not ((~~follow these rules unless you have good cause~~)) meet work requirements and we find that you did not have good cause, you cannot receive ((~~food assistance~~)) Basic Food for the following periods of time and until you ((~~comply with~~)) meet program requirements:

(a) For the first failure ((~~to comply~~)), one month;

(b) For the second failure ((~~to comply~~)), three months; and

(c) For the third or subsequent failure ((~~to comply~~)), six months.

(3) If you become exempt under WAC ((~~388-444-0015~~)) 388-444-0010 and are otherwise eligible, you may begin to receive food assistance.

(4) If ((~~you are nonexempt and~~)) you do not comply with the work requirements of the following programs, you cannot receive ((~~food assistance~~)) Basic Food unless you meet one of the conditions described under WAC 388-444-0010 except subsections (1)(d) or (1)(e):

(a) WorkFirst;

(b) Unemployment compensation;

(c) The refugee cash assistance program.

(5) Within ten days after learning of your refusal to participate in your program, the financial worker will send you a notice that your ((~~food assistance~~)) Basic Food benefits will end unless you comply with your program requirements.

(6) If you do not comply within ten days, you will be issued a notice disqualifying you from receiving ((~~food assistance~~)) Basic Food until you comply with your program, or until you meet the ((~~FS E&T~~)) work registration disqualification requirements in subsection (2) of this section.

(7) After the penalty period in subsection (2) of this section is over, and you ((~~have complied with your program~~)) meet work requirements((~~,~~)) and you are otherwise eligible, you may receive ((~~food assistance~~)) Basic Food:

(a) If you are alone in the assistance unit and apply to reestablish eligibility; or

(b) If you are a member of an assistance unit, you may resume receiving ((~~food assistance~~)) Basic Food.

(8) During the penalty period, if you begin to participate in one of the programs listed in subsection (4)(a) through (c) and that penalty is removed, the ((~~FS E&T~~)) work registration disqualification also ends. If you are otherwise eligible, you may begin to receive ((~~food assistance~~)) Basic Food.

((~~(9) You have a right to a fair hearing as provided in chapter 388-02 WAC.~~))

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-444-0060 ((~~FS E&T~~)) What is unsuitable employment for Basic Food work requirements. ((~~Nonexempt clients participating in FS E&T~~)) If we register you for work, you must accept a bona fide offer of suitable employment in order to be eligible for Basic Food. We consider employment ((~~is considered~~)) unsuitable when:

(1) The wage offered is less than the federal or state minimum wage, whichever is highest;

(2) The job offered is on a piece-rate basis and the average hourly yield expected is less than the federal or state minimum wage, whichever is highest;

(3) The employee, as a condition of employment, ((~~is required to~~)) must join, resign from, or is barred from joining any legitimate labor union;

(4) The work offered is at a site subject to strike or lockout at the time of offer unless:

(a) The strike is enjoined under the Taft-Hartley Act; or

(b) An injunction is issued under section 10 of the Railway Labor Act.

(5) The employment has an unreasonable degree of risk to health and safety ((~~is unreasonable~~));

(6) ((~~The client is~~)) You are physically or mentally unable to perform the job as documented by medical evidence or reliable information from other sources;

(7) The employment offered within the first thirty days of Basic Food work registration ((~~for FS E&T~~)) is not in ((~~the client's~~)) your major field of experience;

(8) The distance from ((~~the client's~~)) your home to the job is unreasonable considering the wage, time and cost of commute:

(a) The job is not suitable when daily commuting time exceeds two hours per day, not including transporting a child to and from child care; and

(b) The job is not suitable when the distance to the job prohibits walking and public or private transportation is not available.

(9) The working hours or nature of the job interferes with ((~~the client's~~)) your religious observances, convictions, or beliefs.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-444-0020	When must clients register for work but are not required to participate in the food stamp employment and training program (FS E&T)?

WSR 10-15-118
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed July 21, 2010, 9:12 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 246-03-140 SEPA committee.

Hearing Location(s): Department of Health, Town Center 1, Room 163, 101 Israel Road S.E., Tumwater, WA 98501, on August 25, 2010, at 2:00 p.m.

Date of Intended Adoption: August 26, 2010.

Submit Written Comments to: Vicki M. Bouvier, Department of Health, P.O. Box 47820, Olympia, WA 98504-7820, web site http://www3.doh.wa.gov/policyreview/, fax (360) 236-2250, by August 25, 2010.

Assistance for Persons with Disabilities: Contact Vicki M. Bouvier by August 18, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule is to update the department of health (department) process for designating the responsible official for major State Environmental Policy Act (SEPA) actions for which the department is the lead agency when the responsible official has not already been identified in chapter 246-03 WAC, State Environmental Policy Act—Guidelines.

Reasons Supporting Proposal: This rule is necessary to clearly identify the department process for designating the responsible official for major SEPA actions for which the department is the lead agency when not already identified in chapter 246-03 WAC, State Environmental Policy Act—Guidelines, as required by WAC 197-11-906 Content and consistency of agency procedures and 197-11-910 Designation of responsible official.

Statutory Authority for Adoption: RCW 43.21C.120, 43.70.040.

Statute Being Implemented: RCW 43.21C.120.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Vicki M. Bouvier, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3011; Implementation and Enforcement: Gregg Grunenfelder, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(b), a small business economic impact statement is not required for proposed rules that relate only to internal governmental operations and that are not subject to violation by a nongovernmental party.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(ii) exempts rules that relate only to internal governmental operations that are not subject to violation by a nongovernment party.

July 21, 2010
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending Order 122, filed 12/27/90, effective 1/31/91)

WAC 246-03-010 Definitions. In addition to the definitions contained in WAC 197-11-700 through 197-11-799, the following terms shall have the listed meanings throughout this chapter unless clearly indicated otherwise:

(1) "Acting agency" means an agency with jurisdiction which has received an application for a license, or which is proposing an action.

(2) "Agency guidelines" ((~~shall~~)) means chapter 246-03 WAC.

(3) "Department" ((~~shall~~)) means the department of health.

(4) "Environmental report" ((~~shall~~)) means a document prepared by the applicant, when required by the department, for use in the preparation of a draft EIS.

(5) "Licensing" means the agency process in granting, renewing or modifying a license.

(6) "Private applicant" means any person or entity, other than an agency as defined in this section, applying for a license from an agency.

(7) "Secretary" ((~~shall~~)) means the secretary of the department of health or the secretary's designee.

((~~SEPA committee means the departmental committee which oversees the department's SEPA activities. The committee's composition and responsibilities are outlined in WAC 246-03-140.~~))

(8) "SEPA guidelines" ((~~shall~~)) means chapter 197-11 WAC.

AMENDATORY SECTION (Amending Order 224, filed 12/23/91, effective 1/23/92)

WAC 246-03-140 ((~~SEPA committee.~~)) Designation of a responsible official. (((~~(1) There is hereby created a SEPA committee to oversee the department's SEPA activities.~~

~~(2) The SEPA committee shall be composed of:~~

~~(a) One representative from the division of drinking water, environmental health programs;~~

~~(b) One representative from the facility licensing and certification section;~~

~~(c) One capital programs representative from the comptroller's office, management services division; and~~

~~(d) One representative from the division of radiation protection, environmental health programs.~~

~~(3) A representative from the office of the attorney general will provide legal support to the committee.~~

~~(4) The SEPA committee shall:~~

~~(a) Oversee the department's SEPA activities to ensure compliance with these agency guidelines, the state SEPA guidelines, and the policies and goals set forth in the State Environmental Policy Act;~~

~~(b) Oversee the future revision of these agency guidelines so as to reflect:~~

~~(i) Future amendment of SEPA or the state SEPA guidelines;~~

~~(ii) The creation of new department programs.~~

~~(c)~~))) The secretary shall designate the responsible official for any major action for which the department is lead agency when such designation has not occurred elsewhere in these agency guidelines.

WSR 10-15-120
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed July 21, 2010, 9:43 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Title 246 WAC, fee increases for the following health professions licensed by the department of health: WAC 246-834-990 Acupuncture, 246-817-990 Dentist, 246-817-99005 Dental assistant, 246-812-990 Denturist, 246-809-990 Mental health counselor and social worker, 246-834-990 Midwifery, 246-840-990 Nursing, 246-841-990 Nursing assistant, 246-851-990 Optometry, 246-926-990 Radiologic technologist and x-ray technician, 246-927-990 Recreational therapy, and 246-928-990 Respiratory care. The proposed rules also add an inactive status fee for dentists.

Hearing Location(s): 310 Israel Road S.E., Room 152, Tumwater, WA 98501, on August 24, 2010, at 9:00 a.m.

Date of Intended Adoption: August 24, 2010.

Submit Written Comments to: Dianna Staley, P.O. Box 47860, Olympia, WA 98504-7860, web site http://www3.doh.wa.gov/policyreview/, fax (360) 236-4626, by August 24, 2010.

Assistance for Persons with Disabilities: Contact Dianna Staley by August 17, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules establish or increase fees for the named health care professions as approved by the legislature in the budget (ESSB 6444) during the 2010 session. The proposed rules raise fees to a level necessary to administer each profession. The proposed rules also establish an inactive status fee for dentists.

Reasons Supporting Proposal: RCW 43.70.250 requires that each profession is self-supporting and directs the department to collect fees to pay the costs to regulate each health care profession. The costs to regulate and administer health care professions is about $31 million each year. Changes in administrative and regulatory activities based upon credentialing, legislation, court cases, and disciplinary actions makes it necessary for the department to increase fees. These fees are critical to maintain the current levels of service, meet the costs of conducting business, and to promote patient safety.

Statutory Authority for Adoption: RCW 43.70.250, 43.70.110.

Statute Being Implemented: RCW 43.70.110.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Dianna Staley, 310 Israel Road S.E., Tumwater, WA, (360) 236-4997; Implementation and Enforcement: Shannon Beigert, 310 Israel Road S.E., Tumwater, WA, (360) 236-4604.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

July 21, 2010
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

WAC 246-802-990 ((~~Acupuncture~~)) East Asian medicine practitioner fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to prac-

titioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
License application	$((~~50.00~~)) 100.00
License renewal	((~~90.00~~)) 196.00
Inactive license renewal	50.00
Late renewal penalty	((~~50.00~~)) 105.00
Expired license reissuance	50.00
Expired inactive license reissuance	50.00
Duplicate license	15.00
Certification of license	25.00
((~~Acupuncture~~)) East Asian medicine training program application	500.00
UW library access fee	9.00

AMENDATORY SECTION (Amending WSR 09-15-039, filed 7/8/09, effective 7/8/09)

WAC 246-809-990 Licensed counselor, and associate—Fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) Associate licenses are valid for one year and must be renewed every year on the date of issuance. The associate license may be renewed no more than four times.

Title		Fee
(3)	The following nonrefundable fees will be charged for licensed marriage and family therapist:	
	Application	$150.00
	Initial license	75.00
	Renewal	140.00
	Late renewal penalty	70.00
	Expired license reissuance	85.00
	Duplicate license	10.00
	Certification of license	10.00
(4)	The following nonrefundable fees will be charged for licensed mental health counselor:	
	Application	((~~125.00~~)) 140.00
	Initial license	125.00
	Renewal	((~~75.00~~)) 138.00
	Late renewal penalty	((~~50.00~~)) 60.00
	Expired license reissuance	65.00
	Duplicate license	10.00
	Certification of license	10.00
	UW library access fee	25.00
(5)	The following nonrefundable fees will be charged for licensed advanced social worker and licensed independent clinical social worker:	
	Application	125.00
	Initial license	125.00
	Renewal	((~~105.00~~)) 126.00
	Late renewal penalty	((~~52.50~~)) 63.00
	Expired license reissuance	72.50
	Duplicate license	10.00
	Certification of license	10.00
	UW library access fee	25.00
(6)	The following nonrefundable fees will be charged for licensed marriage and family therapy associates:	
	Application	50.00
	Renewal	40.00
	Late renewal penalty	40.00
	Expired license reissuance	40.00
	Duplicate license	15.00
	Certification of license	15.00
(7)	The following nonrefundable fees will be charged for licensed mental health counselor associates:	
	Application	50.00
	Renewal	40.00
	Late renewal penalty	40.00
	Expired license reissuance	40.00
	Duplicate license	15.00
	Certification of license	15.00
(8)	The following nonrefundable fees will be charged for licensed advanced social worker associates and licensed independent clinical social worker associates:	
	Application	50.00
	Renewal	40.00
	Late renewal penalty	40.00
	Expired license reissuance	40.00
	Duplicate license	15.00
	Certification of license	15.00

AMENDATORY SECTION (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

WAC 246-812-990 Denturist fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The

secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	$((~~1,450.00~~)) 1,500.00
Examination	1,500.00
Reexamination, written	500.00
Reexamination, practical	500.00
License renewal	((~~1,600.00~~)) 1,855.00
Late renewal penalty	300.00
Expired license reissuance	300.00
Inactive license renewal	750.00
Expired inactive license reissuance	300.00
Duplicate license	15.00
Certification of license	25.00
Multiple location licenses	50.00

AMENDATORY SECTION (Amending WSR 08-16-008, filed 7/24/08, effective 7/25/08)

WAC 246-817-990 Dentist fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except faculty and resident licenses. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) Faculty and resident licenses must be renewed every year on July 1 as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(3) The following nonrefundable fees will be charged:

Title of Fee	Fee
Original application by examination*	
Initial application	$700.00
Original application - Without examination	
Initial application	700.00
Initial license	700.00
Faculty license application	560.00
Resident license application	115.00
License renewal:	
Renewal	((~~375.00~~)) 551.00
Surcharge - impaired dentist	25.00
Late renewal penalty	((~~200.00~~)) 288.00
Expired license reissuance	300.00
Inactive renewal	125.00
Inactive late renewal penalty	50.00
Duplicate license	15.00
Certification of license	25.00
Anesthesia permit	
Initial application	150.00
Renewal - (three-year renewal cycle)	150.00
Late renewal penalty	75.00
Expired permit reissuance	50.00
On-site inspection fee	To be determined by future rule adoption.

* In addition to the initial application fee above, applicants for licensure via examination will be required to submit a separate application and examination fee directly to the dental testing agency accepted by the dental quality assurance commission.

AMENDATORY SECTION (Amending WSR 08-13-069, filed 6/13/08, effective 7/1/08)

WAC 246-817-99005 Dental assistant and expanded function dental auxiliary fees and renewal cycle. (1) Credentials must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except faculty and resident licenses. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged for dental assistant and expanded function dental auxiliary:

Title of Fee - Dental Professionals	Fee
Registered dental assistant application	$40.00

Title of Fee - Dental Professionals	Fee
Registered dental assistant renewal	((~~20.00~~)) 21.00
Registered dental assistant late	((~~20.00~~)) 21.00
Registered dental assistant expired reactivation	20.00
Licensed expanded function dental auxiliary application	175.00
Licensed expanded function dental auxiliary renewal	160.00
Licensed expanded function dental auxiliary late	80.00
Licensed expanded function dental auxiliary expired reactivation	50.00
Duplicate	15.00
Verification	25.00

AMENDATORY SECTION (Amending WSR 06-13-012, filed 6/9/06, effective 7/1/06)

WAC 246-834-990 Midwifery fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following fees are nonrefundable:

Title of Fee	Fee
Initial application	$ ((~~450.00~~)) 500.00
National examination administration (initial/retake)	103.00
State examination (initial/retake)	((~~154.50~~)) 155.00
Renewal	((~~450.00~~)) 500.00
Late renewal penalty	((~~225.00~~)) 250.00
Duplicate license	25.00
Certification of license	25.00
Application fee—Midwife-in-training program	978.75
Expired license reissuance	300.00

AMENDATORY SECTION (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

WAC 246-840-990 Fees and renewal cycle. (1) Applicants for a practical nurse license must pay the application fee and the nursing center surcharge fee when applying for a license. Licenses for practical nurse must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. Practical nurses must pay the renewal fee and the nursing center surcharge fee when renewing licenses.

(2) Applicants for a registered nurse license must pay the application fee, the RN UW library fee, and the nursing center surcharge fee when applying for a license. Licenses for registered nurse must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. Registered nurses must pay the renewal fee, the RN UW library fee, and the nursing center surcharge fee when renewing licenses.

(3) Licenses for advanced registered nurse must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(4) Registrations for nursing technicians must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The renewal must be accompanied by an attestation as described in RCW 18.79.370. This attestation will include the nursing technician's anticipated graduation date. If the anticipated graduation date is within one year, the registration will expire thirty days after the anticipated graduation date. The expiration date may be extended to sixty days after graduation if the nursing technician can show good cause as defined in WAC 246-840-010(15).

(5) The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(6) The following nonrefundable fees shall be charged by the health professions quality assurance division of the department of health. Persons who hold an RN and an LPN license shall be charged separate fees for each license. Persons who are licensed as an advanced registered nurse practitioner in more than one specialty will be charged a fee for each specialty:

RN/LPN fees:

Title of Fee	Fee
RN application (initial or endorsement)	$((~~65.00~~)) 67.00
LPN application (initial or endorsement)	((~~85.00~~)) 87.00
RN license renewal	((~~50.00~~)) 76.00
LPN license renewal	((~~65.00~~)) 91.00
Late renewal penalty	50.00
Expired license reissuance	70.00
Inactive renewal	40.00

Title of Fee	Fee
Expired inactive license reissuance	40.00
Inactive late renewal penalty	30.00
Duplicate license	20.00
Verification of licensure/education (written)	25.00
Nursing center surcharge	5.00
RN UW library fee	20.00

Advanced registered nurse fees:

Title of Fee	Fee
ARNP application with or without prescriptive authority (per specialty)	$ ((~~85.00~~)) 92.00
ARNP renewal with or without prescriptive authority (per specialty)	((~~65.00~~)) 96.00
ARNP late renewal penalty (per specialty)	50.00
ARNP duplicate license (per specialty)	20.00
ARNP written verification of license (per specialty)	25.00

Nurse technologist fees:

Title of Fee	Fee
Application fee registration	$((~~130.00~~)) 92.00
Renewal of registration	((~~90.00~~)) 126.00
Duplicate registration	15.00
Registration late renewal penalty	50.00

AMENDATORY SECTION (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

WAC 246-841-990 Nursing assistant—Fees and renewal cycle. (1) Certificates and registrations must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged for registrations:

Title of Fee	Fee
Application - registration	$((~~30.00~~)) 48.00
Renewal of registration	((~~40.00~~)) 53.00
Duplicate registration	10.00
Registration late penalty	((~~40.00~~)) 53.00
Expired registration reissuance	((~~40.00~~)) 52.00

(3) The following nonrefundable fees will be charged for certifications:

Title of Fee	Fee
Application for certification	((~~30.00~~)) 48.00
Certification renewal	((~~40.00~~)) 53.00
Duplicate certification	10.00
Certification late penalty	((~~40.00~~)) 53.00
Expired certification reissuance	((~~40.00~~)) 52.00

AMENDATORY SECTION (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

WAC 246-851-990 Optometry fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	$175.00
Out-of-state seminar	100.00
License renewal	((~~150.00~~)) 199.00
Late renewal penalty	((~~75.00~~)) 100.00
Expired license reissuance	75.00
Inactive license renewal	75.00
Duplicate license	15.00
Certification of license	25.00
UW library fee	25.00

AMENDATORY SECTION (Amending WSR 10-10-043, filed 4/27/10, effective 5/28/10)

WAC 246-926-990 Radiologist assistants; diagnostic, therapeutic, and nuclear medicine radiologic technologists; X-ray technicians—Certification and registration fees and renewal cycle. (1) Certificates and registrations must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

Title of Fee	Fee
(2) The following nonrefundable fees will be charged for certified diagnostic, therapeutic, and nuclear medicine radiologic technologists:	
Application	$150.00
Renewal	((~~70.00~~)) 105.00
Late renewal penalty	50.00
Expired certificate reissuance	80.00
Certification of registration or certificate	15.00
Duplicate registration or certificate	15.00
(3) The following nonrefundable fees will be charged for registered X-ray technicians:	
Application	((~~75.00~~)) 105.00
Renewal	((~~75.00~~)) 103.00
Late renewal penalty	50.00
Expired reissuance	50.00
Certification of registration or certificate	15.00
Duplicate registration or certificate	15.00
(4) The following nonrefundable fees will be charged for certified radiologist assistants:	
Application	150.00
Renewal	150.00
Late renewal penalty	75.00
Expired reissuance	75.00
Certification of registration or certificate	15.00
Duplicate registration or certificate	15.00

AMENDATORY SECTION (Amending WSR 08-16-008, filed 7/24/08, effective 7/25/08)

WAC 246-927-990 Recreation therapy fees and renewal cycle. (1) Registrations must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged for registered recreational therapists:

Title of Fee	Fee
Application	$205.00
Renewal	((~~155.00~~)) 230.00
Late renewal penalty	((~~77.50~~)) 116.00
Expired registration reissuance	90.00
Duplicate registration	15.00
Certification of certificate	25.00

AMENDATORY SECTION (Amending WSR 08-16-008, filed 7/24/08, effective 7/25/08)

WAC 246-928-990 Respiratory care fees and renewal cycle. (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	$((~~150.00~~)) 335.00
Temporary practice permit	50.00
Duplicate license	15.00
Verification of licensure	15.00
Renewal	((~~110.00~~)) 305.00
Late renewal penalty	((~~55.00~~)) 153.00
Expired license reissuance	65.00

WSR 10-15-122
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed July 21, 2010, 10:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-12-127.

Title of Rule and Other Identifying Information: Chapter 16-662 WAC, Weights and measures—National Handbooks. The department is proposing to adopt:

(1) Modifications to the biodiesel labeling requirements specified in the National Institute of Standards and Technology (NIST) Handbook 130;

(2) The 2010 edition of NIST Handbook 44 (Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices) as required by RCW 19.94.195; and

(3) The 2010 amendments to Section 2.1. (Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation) of the 2009 edition of NIST Handbook 130 (Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality).

Hearing Location(s): Washington State Department of Agriculture, 1111 Washington Street S.E., Natural Resources Building, Conference Room 259, Olympia, WA 98504-2560, on August 25, 2010, at 9:30 a.m.

Date of Intended Adoption: September 1, 2010.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by August 25, 2010.

Assistance for Persons with Disabilities: Contact Henri Gonzales by August 18, 2010, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to adopt the most recent version of NIST Handbook 44 and 130; and modifications to the biodiesel labeling requirements for lower blends of biodiesel fuel.

Reasons Supporting Proposal: During the 2010 legislative session, the Washington state legislature adopted amendments to chapter 19.112 RCW (see chapter 96, Laws of 2010) relative to biodiesel fuel labeling requirements. In order to comply with this legislation, the department needs to modify the associated rule.

RCW 19.94.195 requires that the most current version of NIST Handbook 44 be adopted every year. The department also adopts the current version of NIST Handbook 130 and NIST Handbook 133 in order to maintain uniformity with other states. The currently adopted edition (January 2005) of NIST Handbook 133 (Checking the Net Contents of Packaged Goods) remains the most current.

Statutory Authority for Adoption: Chapters 19.94, 19.112, and 34.05 RCW; chapter 96, Laws of 2010.

Statute Being Implemented: Chapters 19.94 and 19.112 RCW; chapter 96, Laws of 2010.

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kirk Robinson, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1856.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency must prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor cost on small businesses in an industry. Analysis of the economic effects of the proposed rule amendments demonstrate that the changes will not be more than a minor cost to the regulated industry and, therefore, an SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

July 21, 2010
Mary A. Martin Toohey
Assistant Director

AMENDATORY SECTION (Amending WSR 09-19-007, filed 9/3/09, effective 10/4/09)

WAC 16-662-105 What national weights and measures standards are adopted by the Washington state department of agriculture (WSDA)? The WSDA adopts the following national standards:

National standard for:	Contained in the:
(1) The specifications, tolerances, and other technical requirements for the design, manufacture, installation, performance test, and use of weighing and measuring equipment	((~~2009~~)) 2010 Edition of *NIST Handbook 44 - Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*
(2) The procedures for checking the accuracy of the net contents of packaged goods	Fourth Edition (January 2005) of *NIST Handbook 133 - Checking the Net Contents of Packaged Goods*
(3) The requirements for packaging and labeling, method of sale of commodities, examination procedures for price verification, and engine fuels, petroleum products and automotive lubricants	2009 Edition, including the 2010 Amendments to Section 2.1. Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation of *NIST Handbook 130 - Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality*, specifically:
(a) Weights and measures requirements for all food and nonfood commodities in package form	*Uniform Packaging and Labeling Regulation*s adopted by the National Conference on Weights and Measures and published in *NIST Handbook 130*, 2009 Edition, including the 2010 Amendments to Section 2.1. Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation
(b) Weights and measures requirements for the method of sale of food and nonfood commodities	*Uniform Regulation for the Method of Sale of Commodities* as adopted by the National Conference on Weights and Measures and published in *NIST*

National standard for:	Contained in the:
	Handbook 130, 2009 Edition, including the 2010 Amendments to Section 2.1. Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation
(c) Weights and measures requirements for price verification	*Examination Procedure for Price Verification* as adopted by the National Conference on Weights and Measures and published in *NIST Handbook 130*, 2009 Edition, including the 2010 Amendments to Section 2.1. Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation
(d) Definitions and requirements for standard fuel specifications; classification and method of sale of petroleum products; retail storage tanks and dispenser filters; condemned product; product registration; and test methods and reproducibility limits	*Uniform Engine Fuels and Automotive Lubricants Regulation* as adopted by the National Conference on Weights and Measures and published in *NIST Handbook 130*, 2009 Edition, including the 2010 Amendments to Section 2.1. Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation

AMENDATORY SECTION (Amending WSR 09-19-007, filed 9/3/09, effective 10/4/09)

WAC 16-662-110 Does the WSDA modify NIST Handbook 44? The WSDA adopts the following modifications to *NIST Handbook 44*, which is identified in WAC 16-662-105(1):

Modified Section:	Modification:
General Code: Section G-UR.4.1. Maintenance of Equipment	In the last sentence of G-UR.4.1., Maintenance of Equipment, change the words "device user" to "device owner or operator." As a result of this modification, the last sentence of G-UR.4.1. will read: "Equipment in service at a single place of business found to be in error predominantly in a direction favorable to the device owner or operator (see also Introduction, Section Q) shall not be considered "maintained in a proper operating condition.""
Liquid-Measuring Devices: Section S.1.6.4.1. Unit Price	Modify subsection (b) under section S.1.6.4.1. Unit Price, to read: Whenever a grade, brand, blend, or mixture is offered for sale from a device at more than one unit price, then all of the unit prices at which that product is offered for sale shall be displayed or shall be capable of being displayed on the dispenser using controls available to the consumer prior to the delivery of the product or after prepayment for the product but prior to its delivery. It is not necessary that all of the unit prices for all grades, brands, blends, or mixtures be simultaneously displayed prior to the delivery of the product. This subsection shall not apply to fleet sales, other contract sales, or truck refueling sales (e.g., sales from dispensers used to refuel trucks).

AMENDATORY SECTION (Amending WSR 09-19-007, filed 9/3/09, effective 10/4/09)

WAC 16-662-115 Does the WSDA modify NIST Handbook 130? The WSDA adopts the following modifications to the *Uniform Regulation for the Method of Sale of Commodities* requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(b):

Modified Section:	Modification:
(1) Section 2.20. Gasoline-Oxygenate Blends	Modify section 2.20.1. Method of Retail Sale. Type of Oxygenate must be Disclosed, to read: All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. For example, the label may read "contains ethanol." The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This information shall be posted on the upper fifty percent of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type). Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel. Ethanol at no less than one percent and no more than ten percent, by volume, must be labeled "Contains up to 10% Ethanol." Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol." (Example: E85 Ethanol.) Modify section 2.20.2. Documentation for Dispenser Labeling Purposes, to read: At the time of delivery of the fuel, the retailer shall be provided, on an invoice, bill of lading, shipping paper, or other documentation a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. When ethanol and/or methanol is blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol.
(2) Section 2.23. Animal Bedding	Add a new subsection which reads: 2.23.1. Sawdust, Barkdust, Decorative Wood Particles, and Similar Products. As used in this subsection, "unit" means a standard volume equal to 200 cubic feet. When advertised, offered for sale, or sold within Washington state, quantity representations for sawdust, barkdust, decorative wood particles, and similar loose bulk materials must be in cubic measures or units and fractions thereof.
(3) Section 2.31.2 Labeling of Retail Dispensers	Add a new subsection which reads: 2.31.2.5. Labeling of Retail Dispensers Containing Not More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing not less than two percent and not more than five percent biodiesel must be labeled "May contain((~~s~~)) up to 5% Biodiesel." Retail dispensers containing less than two percent biodiesel may not be labeled as dispensing biodiesel or biodiesel blends. Add a new subsection which reads: 2.31.2.6. Labeling of Retail Dispensers Containing More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "biodiesel" or "biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel Blend).
(4) Section 2.31.4. Exemption	Delete section 2.31.4.

The WSDA adopts the following modifications to the *Uniform Engine Fuels and Automotive Lubricants Regulation* requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(d):

Modified Section:	Modification:
(1) Section 2.12. Motor Oil	Delete section 2.12.
(2) Section 2.13. Products for Use in Lubricating Manual Transmissions, Gears, or Axles	Delete section 2.13.
(3) Section 2.14. Products for Use in Lubricating Automatic Transmissions	Delete section 2.14.
(4) Section 3.2.6. Method of Retail Sale. Type of Oxygenate must be Disclosed	Modify section 3.2.6 to read: All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. For example, the label may read "contains ethanol." The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This information shall be posted on the upper fifty percent of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type). Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel. Ethanol at no less than one percent and no more than ten percent, by volume, must be labeled "Contains up to 10% Ethanol." Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol" (example: E85 Ethanol).
(5) Section 3.2.7. Documentation for Dispenser Labeling Purposes	Modify section 3.2.7 to read: The retailer shall be provided, at the time of delivery of the fuel, on an invoice, bill of lading, shipping paper, or other documentation, a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. When ethanol and/or methanol is blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol.
(6) Section 3.8.2. Labeling Requirements	Add a new subsection which reads: (c) Each retail dispenser of greater than ten percent fuel ethanol by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol" (example: E85 Ethanol).
(7) Section 3.9.2. Retail Dispenser Labeling	Add a new subsection which reads: (c) Each retail dispenser of fuel methanol shall be labeled by the capital letter M followed by the numerical value maximum volume percent and ending with the word "methanol." (Example: M85 Methanol.)
(8) Section 3.13. Oil	Delete section 3.13.
(9) Section 3.14. Automatic Transmission Fluid	Delete section 3.14.
(10) Section 3.15.2. Labeling of Retail Dispensers	Add a new subsection which reads: 3.15.2.5. Labeling of Retail Dispensers Containing Not More Than 5% Biodiesel. Each retail dispenser of biodiesel blend containing not less than two percent and not more than five percent biodiesel must be labeled "May contain((s)) up to 5% Biodiesel." Retail dispensers containing less than two percent biodiesel may not be labeled as dispensing biodiesel or biodiesel blends.

Modified Section:	Modification:
	Add a new subsection which reads: 3.15.2.6. Labeling of Retail Dispensers Containing More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "biodiesel" or "biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel blend).
(11) Section 3.15.4. Exemption	Delete section 3.15.4.
(12) Section 7. Test Methods and Reproducibility Limits	Add a new subsection which reads: 7.3. Biodiesel Blends. The test method for determining the percent biodiesel in a blend of biodiesel and diesel fuel shall be EN 14078 "Liquid petroleum products - Determination of fatty methyl esters (FAME) in middle distillates - Infrared spectroscopy method." When ASTM develops a comparable standard test method, the ASTM method will become the standard method for purposes of this rule.

WSR 10-15-124
PROPOSED RULES
STATE BOARD OF EDUCATION
[Filed July 21, 2010, 11:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-12-084.

Title of Rule and Other Identifying Information: WAC 180-51-066 Minimum requirements for high school graduation—Student entering the ninth grade on or after July 1, 2009, amending subsection (1)(b) regarding the three credits of high school mathematics required for high school graduation.

Hearing Location(s): Puget Sound Educational Service District, 800 Oakesdale Avenue S.W., Renton, WA 98057, (425) 917-7600, http://www.psesd.org, on September 15, 2010, at 4:00 p.m.

Date of Intended Adoption: September 16, 2010.

Submit Written Comments to: Brad Burnham, Washington State Board of Education, P.O. Box 47206, 600 Washington Street, Olympia, WA 98504-7206, e-mail brad.burnham @k12.wa.us, fax (360) 586-2357, by September 13, 2010.

Assistance for Persons with Disabilities: Contact Brad Burnham by September 10, 2010, TTY (360) 664-3631 or (360) 725-6025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **(1) Provisions for taking classes simultaneously.** The current version of this rule provides that mathematics courses must be taken in a progressive sequence. The proposed amendments to this rule would allow a student who has failed all or part of certain courses to enroll in the next course in the sequence while retaking the failed course.

(2) What constitutes an appropriate sequence. Amendments are proposed that would explicitly provide the sequence in which courses must be taken. This is intended to clarify that the intent of the rule is not to allow a student to combine algebra/geometry courses and integrated mathematic courses for credit when taken in a sequence that is not progressive (e.g., the amendments would preclude the taking of algebra 1 and integrated mathematics I, or geometry and integrated mathematics II to satisfy the high school graduation requirements).

(3) Provisions for placing out of required courses. Amendments are proposed to the rule providing for the sequence of mathematics courses that must be taken by a student that is allowed to place out of lower level courses, by satisfactorily establishing competency through a procedure set forth in a written policy of the school district.

(4) Nomenclature changes. Minor nomenclature changes are proposed that will more accurately reflect common usage in the field, (i.e., changing algebra I to algebra 1; algebra II to algebra 2). In addition, the words "high school-level" have been inserted in section (b)(ii) to reinforce the expectation that a third credit of mathematics other than algebra 2 or integrated mathematics III will be high school level mathematics.

Statutory Authority for Adoption: RCW 28A.305.215 (8), 28A.230.090.

Statute Being Implemented: RCW 28A.305.215(8).

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

Name of Proponent: Washington state board of education, governmental.

Name of Agency Personnel Responsible for Drafting: Brad Burnham, 600 Washington Street, Olympia, WA 98504-7206, (360) 725-6029; Implementation and Enforcement: Edie Harding, 600 Washington Street, Olympia, WA 98504-7206, (360) 725-6025.

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

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

July 21, 2010
Edith W. Harding
Executive Director

AMENDATORY SECTION (Amending WSR 09-16-028, filed 7/27/09, effective 8/27/09)

WAC 180-51-066 Minimum requirements for high school graduation—Students entering the ninth grade on or after July 1, 2009. (1) The statewide minimum subject areas and credits required for high school graduation, beginning July 1, 2009, for students who enter the ninth grade or

begin the equivalent of a four-year high school program, shall total ((~~20~~)) twenty as listed below.

(a) Three **English** credits (reading, writing, and communications) that at minimum align with grade level expectations for ninth and tenth grade, plus content that is determined by the district. Assessment shall include the tenth grade Washington assessment of student learning beginning 2008.

(b) Three **mathematics** credits that align with the high school mathematics standards as developed and revised by the office of superintendent of public instruction and satisfy the requirements set forth below:

(i) Unless otherwise provided for in (b)((~~(iii) or~~)) (iv) through (vii) of this subsection, the three mathematics credits required under this section must include ((~~mathematics courses taken in the following progressive sequence~~)):

(A) Algebra ((~~I, geometry, and algebra II~~)) 1 or integrated mathematics I; ((~~or~~))

(B) ((~~Integrated mathematics I,~~)) Geometry or integrated mathematics II((~~, and integrated mathematics III~~)); ((~~or~~)) and

(C) ((~~Any combination of three mathematics courses set forth in (b)(i)(A) and (B) of this subsection.~~)) Algebra 2 or integrated mathematics III.

(ii) A student may elect to pursue a third credit of high school-level mathematics, other than algebra ((~~II~~)) 2 or integrated mathematics III if all of the following requirements are met:

(A) ((~~The student has completed, for credit, mathematics courses in:~~

~~(I) Algebra I and geometry; or~~

~~(II) Integrated mathematics I and integrated mathematics II; or~~

~~(III) Any combination of two mathematics courses set forth in (b)(ii)(A)(I) and (II) of this subsection;~~

~~(B)~~)) The student's elective choice is based on a career oriented program of study identified in the student's high school and beyond plan that is currently being pursued by the student;

((~~(C)~~)) (B) The student's parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable) agree that the third credit of mathematics elected is a more appropriate course selection than algebra ((~~II~~)) 2 or integrated mathematics III because it will better serve the student's education and career goals;

((~~(D)~~)) (C) A meeting is held with the student, the parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable), and a high school representative for the purpose of discussing the student's high school and beyond plan and advising the student of the requirements for credit bearing two and four year college level mathematics courses; and

((~~(E)~~)) (D) The school has the parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable) sign a form acknowledging that the meeting with a high school representative has occurred, the information as required was discussed((~~,~~)), and the parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable) agree that the third credit of mathematics elected is a more appropriate course selection given the student's education and career goals.

(iii) Courses in (b)(i) and (ii) of this subsection may be taken currently in the following combinations:

(A) Algebra 1 or integrated mathematics I may be taken concurrently with geometry or integrated mathematics II.

(B) Geometry or integrated mathematics II may be taken concurrently with algebra 2 or integrated mathematics III or a third credit of mathematics to the extent authorized in (b)(ii) of this subsection.

(iv) Equivalent career and technical education (CTE) mathematics courses meeting the requirements set forth in RCW 28A.230.097 can be taken for credit instead of any of the mathematics courses set forth in (b)(i)(((~~(A) or (B) or (ii)(A)(I) or (II)~~)) of this subsection if the CTE mathematics courses are recorded on the student's transcript using the equivalent academic high school department designation and course title.

((~~(iv)~~)) (v) A student who prior to ninth grade successfully completed algebra ((~~I~~)) 1 or integrated mathematics I((~~,~~)); and/or geometry or integrated mathematics II, ((~~or any combination of courses taken in a progressive sequence as provided in (b)(i)(C) of this subsection,~~)) but does not request high school credit for such course(s) as provided in RCW 28A.230.090, may either:

(A) Repeat the course(s) for credit in high school; or

(B) Complete three credits of mathematics as follows:

(I) A student who has successfully completed algebra ((~~I~~)) 1 or integrated mathematics I shall:

• Earn the first high school credit in geometry or integrated mathematics II;

• Earn ((~~a~~)) the second high school credit in algebra ((~~II~~)) 2 or integrated mathematics III; and

• Earn ((~~a~~)) the third high school credit in a math course that is consistent with the student's education and career goals.

(II) A student who has successfully completed algebra ((~~I~~)) 1 or integrated mathematics I, and geometry or integrated mathematics II, shall:

• Earn the first high school credit in algebra ((~~II~~)) 2 or integrated mathematics III; and

• Earn the second and third credits in mathematics courses that are consistent with the educational and career goals of the student.

(vi) A student who satisfactorily demonstrates competency in algebra 1 or integrated mathematics I pursuant to a written district policy, but does not receive credit under the provisions of WAC 180-51-050, shall complete three credits of high school mathematics in the following sequence:

• Earn the first high school credit in geometry or integrated mathematics II;

• Earn the second high school credit in algebra 2 or integrated mathematics III; and

• Earn the third credit in a mathematics course that is consistent with the student's education and career goals.

(vii) A student who satisfactorily demonstrates competency in algebra 1 or integrated mathematics I and geometry or integrated mathematics II pursuant to a written district policy, but does not receive credit for the courses under the provisions of WAC 180-51-050, shall complete three credits of high school mathematics in the following sequence:

• Earn the first high school credit in algebra 2 or integrated mathematics III;

• Earn the second and third high school credits in courses that are consistent with the educational and career goals of the student.

(c) Two **science** credits (physical, life, and earth) that at minimum align with grade level expectations for ninth and tenth grade, plus content that is determined by the district. At least one credit in laboratory science is required which shall be defined locally. Assessment shall include the tenth grade Washington assessment of student learning beginning 2010.

(d) Two and one-half **social studies** credits that at minimum align with the state's essential academic learning requirements in civics, economics, geography, history, and social studies skills at grade ten and/or above plus content that is determined by the district. The assessment of achieved competence in this subject area is to be determined by the local district although state law requires districts to have "assessments or other strategies" in social studies at the high school level by 2008-09. In addition, districts shall require students to complete a classroom-based assessment in civics in the eleventh or twelfth grade also by 2008-09. The state superintendent's office has developed classroom-based assessment models for districts to use (RCW 28A.230.095). The social studies requirement shall consist of the following mandatory courses or equivalencies:

(i) One credit shall be required in United States history and government which shall include study of the Constitution of the United States. No other course content may be substituted as an equivalency for this requirement.

(ii) Under the provisions of RCW 28A.230.170 and 28A.230.090, one-half credit shall be required in Washington state history and government which shall include study of the Constitution of the state of Washington and is encouraged to include information on the culture, history, and government of the American Indian people who were the first inhabitants of the state.

(A) For purposes of the Washington state history and government requirement only, the term "secondary student" shall mean a student who is in one of the grades seven through twelve. If a district offers this course in the seventh or eighth grade, it can still count towards the state history and government graduation requirement. However, the course should only count as a high school credit if the academic level of the course exceeds the requirements for seventh and eighth grade classes and the course would qualify for high school credit, because the course is similar or equivalent to a course offered at a high school in the district as determined by the school district board of directors (RCW 28A.230.090 (4)).

(B) The study of the United States and Washington state Constitutions shall not be waived, but may be fulfilled through an alternative learning experience approved by the local school principal under written district policy.

(C) Secondary school students who have completed and passed a state history and government course of study in another state may have the Washington state history and government requirement waived by their principal. The study of the United States and Washington state Constitutions required under RCW 28A.230.170 shall not be waived, but may be fulfilled through an alternative learning experience approved by the school principal under a written district policy.

(D) After completion of the tenth grade and prior to commencement of the eleventh grade, eleventh and twelfth grade students who transfer from another state, and who have or will have earned two credits in social studies at graduation, may have the Washington state history requirement waived by their principal if without such a waiver they will not be able to graduate with their class.

(iii) One credit shall be required in contemporary world history, geography, and problems. Courses in economics, sociology, civics, political science, international relations, or related courses with emphasis on current problems may be accepted as equivalencies.

(e) Two **health and fitness** credits that at minimum align with current essential academic learning requirements at grade ten and/or above plus content that is determined by the local school district. The assessment of achieved competence in this subject area is to be determined by the local district although state law requires districts to have "assessments or other strategies" in health and fitness at the high school level by 2008-09. The state superintendent's office has developed classroom-based assessment models for districts to use (RCW 28A.230.095).

(i) The fitness portion of the requirement shall be met by course work in fitness education. The content of fitness courses shall be determined locally under WAC 180-51-025. Suggested fitness course outlines shall be developed by the office of the superintendent of public instruction. Students may be excused from the physical portion of the fitness requirement under RCW 28A.230.050. Such excused students shall be required to substitute equivalency credits in accordance with policies of boards of directors of districts, including demonstration of the knowledge portion of the fitness requirement.

(ii) "Directed athletics" shall be interpreted to include community-based organized athletics.

(f) One **arts** credit that at minimum is aligned with current essential academic learning requirements at grade ten and/or above plus content that is determined by the local school district. The assessment of achieved competence in this subject area is to be determined by the local district although state law requires districts to have "assessments or other strategies" in arts at the high school level by 2008-09. The state superintendent's office has developed classroom-based assessment models for districts to use (RCW 28A.230.-095). The essential content in this subject area may be satisfied in the visual or performing arts.

(g) One credit in **occupational education.** "Occupational education" means credits resulting from a series of learning experiences designed to assist the student to acquire and demonstrate competency of skills under student learning goal four and which skills are required for success in current and emerging occupations. At a minimum, these competencies shall align with the definition of an exploratory course as proposed or adopted in the career and technical education program standards of the office of the superintendent of public instruction. The assessment of achieved competence in this subject area is determined at the local district level.

(h) Five and one-half electives: Study in a world language other than English or study in a world culture may satisfy any or all of the required electives. The assessment of achieved competence in these subject areas is determined at the local district level.

(i) Each student shall complete a culminating project for graduation. The project shall consist of the student demonstrating both their learning competencies and preparations related to learning goals three and four. Each district shall define the process to implement this graduation requirement, including assessment criteria, in written district policy.

(j) Each student shall have a high school and beyond plan for their high school experience, including what they expect to do the year following graduation.

(k) Each student shall attain a certificate of academic achievement or certificate of individual achievement. The tenth grade Washington assessment of student learning and Washington alternate assessment system shall determine attainment.

(2) State board of education approved private schools under RCW 28A.305.130(5) may, but are not required to, align their curriculums with the state learning goals under RCW 28A.150.210 or the essential academic learning requirements under RCW 28A.655.070.