WSR 13-03-138
PROPOSED RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2012-17—Filed January 23, 2013, 9:52 a.m.]

Supplemental Notice to WSR 13-03-041.

Preproposal statement of inquiry was filed as WSR 12-12-064.

Title of Rule and Other Identifying Information: Essential health benefits designation, supplementation and establishment of scope and limitation requirements.

Hearing Location(s): Training Room, T-120, 5000 Capitol Way South, Tumwater, WA, on March 12, 2013, at 10:00 a.m.

Date of Intended Adoption: March 13, 2013.

Submit Written Comments to: Meg L. Jones, P.O. Box 40258, Olympia, WA 98504, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by March 11, 2013.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by March 10, 2013, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules will establish new sections in chapter 284-43 WAC (health benefits), explaining the requirements associated with carrier inclusion of the essential health benefits (EHB) package in nongrandfathered individual and small group plans for plans with coverage beginning January 1, 2014. Under federal law, plans must be substantially equal to the "EHB-benchmark plan." The proposed rules identify the specific supplementation of benefits for pediatric oral and vision services with federally-designated benchmark plans for those benefits, and the scope, limitation and definition of covered benefits that comprise the EHB-benchmark plan.

Reasons Supporting Proposal: RCW 48.43.715 directs the commissioner to designate by rule the small group plan with the largest enrollment as the benchmark plan for purposes of defining the essential health benefits package for nongrandfathered individual and small group health benefit plans issued on or after January 1, 2014. The same legislation requires supplementation, and adjustment or establishment of scope and limitation requirements by the commissioner in order to ensure meaningful benefits and prevent bias based on health selection. Carriers require specific guidance in order to prepare plan filings for the commissioner's review, and have sufficient time to satisfy plan replacement and health benefit exchange participation requirements.

Statutory Authority for Adoption: RCW 48.02.060, 48.21.241, 48.21.320, 48.44.460, 48.44.341, 48.46.291, 48.46.530, and 48.43.715.

Statute Being Implemented: RCW 48.43.715.

Rule is necessary because of federal law, P.L. 111-148, section 1302 (2010).

Name of Proponent: Office of the insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Meg Jones, P.O. Box 40258, Olympia, WA 98504, (360) 725-7170; Implementation: Beth Berendt, P.O. Box 40258, Olympia, WA 98504, (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40258, Olympia, WA 98504, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The entities that must comply with the proposed rule are not small businesses, pursuant to chapter 19.85 RCW.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Meg Jones, P.O. Box 40258, Olympia, WA 98504, phone (360) 725-7170, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

January 23, 2013
Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-43-849 Purpose and scope. For plan years beginning on or after January 1, 2014, each nongrandfathered health benefit plan offered, issued, amended or renewed to small employers or individuals, both inside and outside the Washington health benefit exchange, must provide coverage for a package of essential health benefits, pursuant to RCW 48.43.715. This subchapter explains the regulatory standards related to this coverage, establishes supplementation of the base-benchmark plan, consistent with PPACA and RCW 48.43.715, and the final parameters for the state EHB-benchmark plan.

(1) This subchapter does not apply to a health benefit plan that provides excepted benefits as described in section 2722 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-21), or a health benefit plan that qualifies as a grandfathered health plan as defined in RCW 48.43.005.

(2) This subchapter does not require provider reimbursement at the same levels negotiated by the base-benchmark plan's issuer for their plan.

(3) This subchapter does not require a plan to exclude the services or treatments from coverage that are excluded in the base-benchmark plan.

NEW SECTION

WAC 284-43-852 Definitions. The following definitions apply to this subchapter unless the context indicates otherwise.

"Base-benchmark plan" means the small group plan with the largest enrollment, as designated in WAC 284-43-865(1), prior to any adjustments made pursuant to RCW 48.43.715.

"EHB-benchmark plan" means the set of benefits that an issuer must include in nongrandfathered plans offered in the individual or small group market in Washington state.

"Health benefit," unless defined differently pursuant to federal rules, regulations, or guidance issued pursuant to section 1302(b) of PPACA, means health care items or services for injury, disease, or a health condition, including a behavioral health condition.

"Individual plan" includes any nongrandfathered health benefit plan offered, issued, amended or renewed by an admitted issuer in the state of Washington for the individual health benefit plan market, unless the certificate of coverage

is issued to an individual pursuant to or issued through an organization meeting the definition pursuant to 29 USC 1002 (5).

"Mandated benefit" or "required benefit" means a health plan benefit for a specific type of service, device or medical equipment, or treatment for a specified condition or conditions that a health plan is required to cover by either state or federal law. Required benefits do not include provider, definition, delivery method, or health status based requirements.

"Meaningful health benefit" means a benefit that must be included in an essential health benefit category in order for the category to reasonably provide medically necessary services for an individual patient's condition on a nondiscriminatory basis.

"Medical necessity determination process" means the process used by a health issuer to make a coverage determination about whether a medical item or service is medically necessary for an individual patient.

"PPACA" means the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and any rules, regulations, or guidance issued thereunder.

"Scope and limitation requirements" means any requirement applicable to a benefit that limits its duration, the number of times coverage is available for the benefit, or imposes a legally permitted eligibility or reference-based limitation on a specific benefit.

"Small group plan" includes any nongrandfathered health benefit plan offered, issued, amended or renewed by an admitted issuer in the state of Washington for the small group health benefit plan market to a small group, as defined in RCW 48.43.005, unless the certificate of coverage is issued to a small group pursuant to a master contract held by or issued through an organization meeting the definition established pursuant to 29 USC 1002(5).

"Stand-alone dental plan" means coverage for a set of benefits limited to oral care including, but not necessarily limited to, pediatric oral care, as referenced in RCW 43.71.-065.

NEW SECTION

WAC 284-43-860 Medical necessity determination. (1) An issuer's certificate of coverage and the summary of coverage for the health plan must specifically explain any uniformly applied limitation on the scope, visit number or duration of a benefit, and state whether the uniform limitation is subject to adjustment based on the specific treatment requirements of the patient.

(2) An issuer's medical necessity determination process must:

(a) Be clearly explained in the certificate of coverage, plan document, or contract for health benefit coverage;

(b) Be conducted fairly, and with transparency to enrollees and providers, at a minimum when an enrollee or their representative appeals or seeks review of an adverse benefit determination;

(c) Include consideration of services that are a logical next step in reasonable care if they are appropriate for the patient, even if the service has not been the subject of clinical studies. Medical necessity determination processes must explicitly address the information needed in the decision making process and incorporate appropriate outcomes within a developmental framework;

(d) Ensure that when the interpretation of the medical purpose of interventions is part of the medical necessity decision making, the interpretation standard can be explained in writing to an enrollee and providers, and is broad enough to address any of the services encompassed in the ten essential health benefits categories of care;

(e) Comply with inclusion of the ten essential health benefits categories and prohibitions against discrimination based on age, disability, and expected length of life;

(f) Include consideration of the treating provider's clinical judgment and recommendations regarding the medical purpose of the requested service, and the extent to which the service is likely to produce incremental health benefits for the enrollee;

(f) Identify by role who will participate in the decision making process; and

(g) Support flexibility in the sites of service delivery.

(3) An issuer's medical necessity determination process may include, but is not limited to, evaluation of the effectiveness and benefit of a service for the individual patient based on scientific evidence considerations, up-to-date and consistent professional standards of care, convincing expert opinion and a comparison to alternative interventions, including no interventions. Cost effectiveness may be criteria for determining medical necessity if it is not limited to lowest price.

(4) Medical necessity criteria for medical/surgical benefits and mental health/substance use disorder benefits or for other essential health benefit categories must be furnished to an enrollee or provider within thirty days of a request to do so.

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.

NEW SECTION

WAC 284-43-877 Plan design. (1) A nongrandfathered individual or small group health benefit plan issued, renewed, amended, or offered on or after January 1, 2014, must provide coverage that is substantially equal to the EHB-benchmark plan, as described in WAC 284-43-878, 284-43-879 and 284-43-880.

(a) For plans offered, issued, amended or renewed for a plan or policy year beginning on or after January 1, 2014, until December 31, 2015, an issuer must offer the EHB-benchmark plan without substituting benefits for those specifically identified in the EHB-benchmark plan.

(b) For plan or policy years beginning on or after January 1, 2016, an issuer may substitute benefits to the extent that the benefits are substantially equal to the EHB-benchmark plan.

(c) For the purposes of this section "substantially equal" means that:

(i) The scope and level of benefits offered within each essential health benefit category is meaningful;

(ii) The aggregate value of the benefits across all essential health benefit categories does not vary more than a de minimus aggregate value of the EHB-benchmark base plan; and

(iii) Within each essential health benefit category, the actuarial value of the category must not vary more than a de minimus amount from the actuarial value of the category for the EHB-benchmark plan.

(2) An issuer must classify covered services to an essential health benefits category consistent with WAC 284-43-878, 284-43-879, and 284-43-880 for purposes of determining actuarial value. An issuer may not use classification of services to an essential health benefits category for purposes of determining actuarial value as the basis for denying coverage under a health benefit plan.

(3) The base-benchmark plan does not specifically list all types of services, settings and supplies that can be classified to each essential health benefits category. The base-benchmark plan is designed so that coverage for benefits that are not specifically listed in the base-benchmark plan document is determined under that plan based on medical necessity. For this reason, the plan document does not list each and every service, supply or covered benefit. An issuer may design its plan in this way and comply with the EHB-benchmark plan requirements if each of the essential health benefit categories is specifically covered in a manner substantially equal to the EHB-benchmark plan.

(4) An issuer is not required to exclude services excluded by the base-benchmark plan, but must not include those services as part of its calculation of actuarial value for a category to which those services are classified. A plan may not exclude a benefit that is specifically included in the base-benchmark plan, other than as set forth in this chapter.

(5) An issuer must not apply visit limitations or limit the scope of the benefit category based on the type of provider delivering the service, other than requiring that the service must be within the provider's scope of license for purposes of coverage. This obligation does not require an issuer to contract with any willing provider, nor is an issuer restricted from establishing reasonable requirements for credentialing of and access to providers within its network.

(6) Telemedicine or telehealth services are considered provider services, and not a benefit for purposes of the essential health benefits package.

(7) Consistent with state and federal law, a health benefit plan must not contain an exclusion that unreasonably restricts access to medically necessary services for populations with special needs including, but not be limited to, a chronic condition caused by illness or injury, either acquired or congenital.

(8) Unless an age based reference limitation is specifically included in the base-benchmark plan or a supplemental base-benchmark plan for a category set forth in WAC 284-43-878, 284-43-879 or 284-43-880, an issuer's scope of coverage for those categories of benefits must cover both pediatric and adult populations.

(9) A health benefit plan may not be offered if the commissioner determines that:

(a) It creates a risk of biased selection based on health status;

(b) The benefits within an essential health benefit category are limited so that the coverage for the category is not a meaningful benefit; or

(c) The benefit violates the antidiscrimination requirements of PPACA, section 511 of Public Law 110-343 (the federal Mental Health Parity and Addiction Equity Act of 2008).

(10) An issuer must not impose annual or lifetime dollar limits on an essential health benefit, other than those permitted as reference based limitations pursuant to WAC 284-43-878, 284-43-879 or 284-43-880.

NEW SECTION

WAC 284-43-878 Essential health benefit categories. (1) A health benefit plan must cover "ambulatory patient services." For purposes of determining a plan's actuarial value, an issuer must classify medically necessary services delivered to enrollees in settings other than a hospital or skilled nursing facility, which are generally recognized and accepted for diagnostic or therapeutic purposes to treat illness or injury, in a substantially equivalent manner to the base-benchmark plan as ambulatory patient services.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as ambulatory patient services:

(i) Home and out-patient dialysis services;

(ii) Hospice and home health care, including skilled nursing care as an alternative to hospitalization consistent with WAC 284-44-500, 284-46-500, and 284-96-500;

(iii) Provider office visits and treatments, and associated supplies and services, including therapeutic injections and related supplies;

(iv) Urgent care center visits, including provider services, facility costs and supplies;

(v) Ambulatory surgical center professional services, including anesthesiologist, assistant surgeon and surgeon services, surgical supplies and facility costs;

(vi) Diagnostic procedures including colonoscopies, cardiovascular testing, pulmonary function studies and neurology/neuromuscular procedures; and

(vii) Provider contraceptive services and supplies including, but not limited to, vasectomy, tubal ligation and insertion of IUD or Norplant, or extraction of FDA-approved contraceptive devices.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. These services are specifically excluded by the base-benchmark plan, and should not be included in establishing actuarial value for this category.

(i) Infertility treatment and reversal of voluntary sterilization;

(ii) Routine foot care for those that are not diabetic;

(iii) Coverage of dental services following injury to sound natural teeth, but not excluding services or appliances necessary for or resulting from medical treatment if the service is:

(A) Emergency in nature; or

(B) Requires extraction of teeth to prepare the jaw for radiation treatments of neoplastic disease. Oral surgery related to trauma and injury must be covered.

(iv) Private duty nursing for hospice care and home health care, to the extent consistent with state and federal law;

(v) Adult dental care and orthodontia delivered by a dentist or in a dentist's office;

(vi) Nonskilled care and help with activities of daily living;

(vii) Hearing care, routine hearing examinations, programs or treatment for hearing loss including, but not limited to, externally worn or surgically implanted hearing aids, and the surgery and services necessary to implant them, other than for cochlear implants, which are covered, and for hearing screening tests required under the preventive services category;

(viii) Obesity or weight reduction or control other than covered nutritional counseling.

(c) The base-benchmark plan establishes specific limitations on services classified to the ambulatory patient services category that conflict with state or federal law as of January 1, 2014. The base-benchmark plan limits nutritional counseling to three visits per lifetime, if the benefit is not associated with diabetes management. This lifetime limitation for nutritional counseling is not part of the state EHB-benchmark plan. An issuer may limit this service based on medical necessity, and may establish an additional reasonable visit limitation requirement for nutritional counseling for medical conditions when supported by evidence based medical criteria.

(d) The base-benchmark plan's visit limitations on services in this category include:

(i) Ten spinal manipulation services per calendar year without referral;

(ii) Twelve acupuncture services per calendar year without referral;

(iii) Fourteen days respite care on either an inpatient or outpatient basis for hospice patients;

(iv) One hundred thirty visits per calendar year for home health care.

(e) State benefit requirements classified to this category are:

(i) Chiropractic care (RCW 48.20.412, 48.21.142, and 48.44.310);

(ii) TMJ disorder treatment (RCW 48.21.320, 48.44.460, and 48.46.530);

(iii) Diabetes-related care and supplies (RCW 48.20.391, 48.21.143, 48.44.315, and 48.46.272).

(2) A health benefit plan must cover "emergency medical services." For purposes of determining a plan's actuarial value, an issuer must classify care and services related to an emergency medical condition to the emergency medical services category.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as emergency services:

(i) Ambulance transportation to an emergency room and treatment provided as part of the ambulance service;

(ii) Emergency room based services, supplies and treatment, including professional charges, facility costs, and outpatient charges for patient observation and medical screening exams required to stabilize a patient experiencing an emergency medical condition;

(iii) Prescription medications associated with an emergency medical condition, including those purchased in a foreign country.

(b) The base-benchmark plan does not exclude services classified to the emergency medical care category.

(c) The base-benchmark base plan does not establish specific limitations on services classified to the emergency medical services category that conflict with state or federal law as of January 1, 2014.

(d) The base-benchmark plan does not establish visit limitations on services in this category.

(e) State benefit requirements covered under this category include services necessary to screen and stabilize a covered person (RCW 48.43.093).

(3) A health benefit plan must cover "hospitalization." For purposes of determining a plan's actuarial value, an issuer must classify medically necessary medical services delivered in a hospital or skilled nursing setting including, but not limited to, professional services, facility fees, supplies, laboratory, therapy or other types of services delivered on an inpatient basis, in a manner substantially equivalent to the base-benchmark plan as hospitalization services.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as hospitalization services:

(i) Hospital visits, facility costs, provider and staff services and treatments delivered during an inpatient hospital stay, including inpatient pharmacy services;

(ii) Skilled nursing facility costs, including professional services and pharmacy services and prescriptions filled in the skilled nursing facility pharmacy;

(iii) Transplant services for donors and recipients, including the transplant facility fees performed in either a hospital setting or outpatient setting;

(iv) Dialysis services delivered in a hospital;

(v) Artificial organ transplants based on an issuer's medical guidelines and manufacturer recommendation;

(vi) Respite care services delivered on an inpatient basis in a hospital or skilled nursing facility.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. These services are specifically excluded by the base-benchmark plan, and should not be included in establishing actuarial value:

(i) Hospitalization where mental illness is the primary diagnosis to the extent that it is classified under the mental health and substance use disorder benefits category;

(ii) Cosmetic or reconstructive services and supplies except in the treatment of a congenital anomaly, to restore a physical bodily function lost as a result of injury or illness, or related to breast reconstruction following a medically necessary mastectomy;

(iii) Bariatric surgery and supplies, orthognathic surgery and supplies unless due to temporomandibular joint disorder

or injury, sleep apnea or congenital anomaly, and sexual reassignment treatment and surgery;

(iv) Reversal of sterilizations;

(v) Surgical procedures to correct refractive errors/astigmatism or reversals or revisions of surgical procedures which alter the refractive character of the eye.

(c) The base-benchmark plan establishes specific limitations on services classified to the hospitalization category that conflict with state or federal law as of January 1, 2014. The state EHB-benchmark plan limitations for these services are:

(i) The transplant waiting period must not be longer than ninety days, inclusive of prior creditable coverage, if an issuer elects to apply a limitation to the benefit.

(ii) Where transplant benefit services are delivered in a nonhospital setting, the same waiting period limitation may be applied.

(d) The base-benchmark plan's visit limitations on services in this category include:

(i) Sixty inpatient days per calendar year for illness, injury or physical disability in a skilled nursing facility;

(ii) Thirty inpatient rehabilitation service days per calendar year. This benefit may be classified to this category for determining actuarial value or to the rehabilitation services category, but not to both.

(e) State benefit requirements covered under this category are:

(i) General anesthesia and facility charges for dental procedures for those who would be at risk if the service were performed elsewhere and without anesthesia (RCW 48.43.185);

(ii) Reconstructive breast surgery resulting from a mastectomy that resulted from disease, illness or injury (RCW 48.20.395, 48.21.230, 48.44.330, and 48.46.280);

(iii) Coverage for treatment of temporomandibular joint disorder (RCW 48.21.320, 48.44.460, and 48.46.530);

(iv) Coverage at a long-term care facility following hospitalization (RCW 48.43.125).

(4) A health benefit plan must cover "maternity and newborn" services. For purposes of determining a plan's actuarial value, an issuer must classify to the maternity and newborn services category medically necessary care and services delivered to women during pregnancy and in relation to delivery and recovery from delivery, and to newborn children, in a manner substantially equivalent to the base-benchmark plan.

(a) A health benefit plan must cover the following services which are specifically covered by the base-benchmark plan and classify them as maternity and newborn services:

(i) In utero treatment for the fetus;

(ii) Vaginal or cesarean childbirth delivery in a hospital or birthing center, including facility fees;

(iii) Nursery services and supplies for newborns, including newly adopted children;

(iv) Infertility diagnosis;

(v) Prenatal and postnatal care and services, including screening;

(vi) Complications of pregnancy such as, but not limited to, fetal distress, gestational diabetes, and toxemia; and

(vii) Termination of pregnancy. Termination of pregnancy may be included in an issuer's essential health benefits package, but nothing in this section requires an issuer to offer the benefit in a qualified health plan, consistent with 42 USC 18023 (b)(a)(A)(i).

(b) A health benefit plan may include, but is not required to include, the following service as part of the EHB-benchmark package. This service is specifically excluded by the base-benchmark plan, and should not be included in determining actuarial value: Genetic testing of the child's father.

(c) The base-benchmark plan establishes specific limitations on services classified to the maternity and newborn category that conflict with state or federal law as of January 1, 2014. The state EHB-benchmark plan requirements for these services are:

(i) Maternity coverage for dependent daughters must be included in the base-benchmark plan on the same basis that the coverage is included for other enrollees;

(ii) Newborns delivered of dependent daughters must be covered to the same extent, and on the same basis, as newborns delivered to the other enrollees under the plan.

(d) The base-benchmark plan's limitations on services in this category include covering home birth by a midwife or nurse midwife only for low risk pregnancy.

(e) State benefit requirements covered under this category include:

(i) Maternity services that include diagnosis of pregnancy, prenatal care, delivery, care for complications of pregnancy, physician services, and hospital services (RCW 48.43.041);

(ii) Newborn coverage that is not less than the coverage for the mother, for no less than three weeks (RCW 48.43.-115);

(iii) Prenatal diagnosis of congenital disorders by screening/diagnostic procedures if medically necessary (RCW 48.20.430, 48.21.244, 48.44.344, and 48.46.375).

(5) A health benefit plan must cover "mental health and substance use disorder services, including behavioral health treatment." For purposes of determining a plan's actuarial value, an issuer must classify as mental health and substance use disorder services, including behavioral health treatment medically necessary care, treatment and services for mental health conditions and substance use disorders categorized in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*, including behavioral health treatment for those conditions, in a manner substantially equivalent to the base-benchmark plan.

(a) A health benefit plan must include the following services, when medically necessary, which are specifically covered by the base-benchmark plan, and classify them as mental health and substance use disorder services, including behavioral health treatment:

(i) Inpatient, residential and outpatient mental health and substance use disorder treatment, including partial hospital programs or inpatient services;

(ii) Chemical dependency detoxification;

(iii) Behavioral treatment for a DSM category diagnosis;

(iv) Services provided by a licensed behavioral health provider for a covered diagnosis in a skilled nursing facility;

(v) Prescription medication prescribed during an inpatient and residential course of treatment;

(vi) Acupuncture treatment visits without application of the visit limitation requirements for chemical dependency.

(b) A health benefit plan may include, but is not required to include, the following services as part of the EHB-benchmark package. These services are specifically excluded by the base-benchmark plan, and should not be included in establishing actuarial value.

(i) Counseling in the absence of illness, other than family counseling when the patient is a child or adolescent with a covered diagnosis and the family counseling is part of the treatment for mental health services;

(ii) Mental health treatment for diagnostic codes 302 through 302.9 in the DSM-IV, or for "V code" diagnoses except for medically necessary services for parent-child relational problems for children five years of age or younger, neglect or abuse of a child for children five years of age or younger, and bereavement for children five years of age or younger, unless this exclusion is preempted by federal law;

(iii) Not medically necessary court-ordered mental health treatment.

(c) The base-benchmark plan establishes specific limitations on services classified to the mental health and substance abuse disorder services category that conflict with state or federal law as of January 1, 2014. The state EHB-benchmark plan requirements for these services are:

(i) Coverage for eating disorder treatment must be covered for a diagnosis of a DSM-IV or DSM-V categorized mental health condition;

(ii) Chemical detoxification coverage must not be uniformly limited to thirty days. Medical necessity, utilization review and criteria consistent with federal law may be applied by an issuer in designing coverage for this benefit;

(iii) Mental health services and substance use disorder treatment must be delivered in a home health setting on parity with medical surgical benefits, consistent with state and federal law.

(d) The benchmark-base plan's visit limitations on services in this category include:

(i) Court ordered treatment only when medically necessary.

(e) State benefit requirements covered under this category include:

(i) Mental health parity (RCW 48.20.580, 48.21.241, 48.44.341, and 48.46.285);

(ii) Chemical dependency detoxification services (RCW 48.21.180, 48.44.240, 48.44.245, 48.46.350, and 48.46.355);

(iii) Services delivered pursuant to involuntary commitment proceedings (RCW 48.21.242, 48.44.342, and 48.46.-292).

(g) The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Public Law 110-343) (MHPAEA) applies to a health benefit plan subject to this section. Coverage of mental health and substance use disorder services, along with any scope and duration limits imposed on the benefits, must comply with the MHPAEA, and all rules, regulations and guidance issued pursuant to Section 2726 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-26) where state law is silent, or where federal law preempts state law.

(6) A health benefit plan must cover "prescription drug services." For purposes of determining actuarial value, an issuer must classify as prescription drug services medically necessary prescribed drugs, medication and drug therapies, in a manner substantially equivalent to the base-benchmark plan.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan,

(i) Those classes of drugs, and the specific drugs in the drug formulary, both generic and brand name, including self-administrable prescription medications;

(ii) Prescribed medical supplies, including diabetic supplies that are not otherwise covered as durable medical equipment under the rehabilitative and habilitative services category, including test strips, glucagon emergency kits, insulin and insulin syringes;

(iii) All FDA approved contraceptive methods, and prescription based sterilization procedures for women with reproductive capacity;

(iv) Certain preventive medications including, but not limited to, aspirin, fluoride, and iron, and medications for tobacco use cessation, according to, and as recommended by, the United States Preventive Services Task Force, when obtained with a prescription order.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. These services are specifically excluded by the base-benchmark plan as prescription drug or pharmacy benefit services, and should not be included in establishing actuarial value for this category:

(i) Insulin pumps and their supplies, which are classified to and covered under the rehabilitation and habilitation services category;

(ii) Weight loss drugs.

(c) The base-benchmark plan establishes specific limitations on services classified to the prescription drug services category that conflict with state or federal law as of January 1, 2014. The state EHB-benchmark plan requirements for these services are:

(i) Preauthorized tobacco cessation products must be covered consistent with state and federal law. Brand name tobacco cessation products must be available pursuant to an issuer's formulary exception or substitution process;

(ii) Medication prescribed as part of a clinical trial, which is not the subject of the trial, must be covered in a manner consistent with state and federal law.

(d) The base-benchmark plan's visit limitations on services in this category include:

(i) Prescriptions for self-administrable injectable medication are limited to thirty day supplies at a time, other than insulin, which may be offered with more than a thirty day supply;

(ii) Teaching doses of self-administrable injectable medications are limited to three doses per medication per lifetime.

(e) State benefit requirements classified to this category include:

(i) Medical foods to treat inborn errors of metabolism including, but not limited to, formula for phenylketonuria (RCW 48.44.440, 48.46.510, 48.20.520, and 48.21.300);

(ii) Diabetes supplies ordered by the physician (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143). Inclusion of this mandate does not bar issuer variation in diabetic supply manufacturers under its drug formulary;

(iii) Mental health prescription drugs to the extent not covered under the hospitalization or skilled nursing facility services, or mental health and substance use disorders categories (RCW 48.44.341, 48.46.291, 48.20.580, and 48.21.241).

(f) An issuer's formulary is part of the prescription drug services category. The formulary filed with the commissioner must be substantially equal to the benchmark base plan formulary, both as to therapeutic classes covered and included drugs in each class.

(i) An issuer must file its formulary quarterly following the filing instructions defined by the Insurance Commissioner's office in WAC 284-44A-040, WAC 284-46A-040 and WAC 284-58-025.

(ii) An issuer's formulary does not have to be substantially equal to the base-benchmark plan formulary in terms of formulary placement.

(7) A health benefit plan must cover "rehabilitative and habilitative services." For purposes of determining a plan's actuarial value, an issuer must classify as rehabilitative services medically necessary services that help a person keep, restore or improve skills and function for daily living that have been lost or impaired because a person was sick, hurt or disabled, in a manner substantially equivalent to the base-benchmark plan.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as rehabilitative services:

(i) Cochlear implants;

(ii) In-patient rehabilitation facility and professional services delivered in those facilities;

(iii) Outpatient physical therapy, occupational therapy and speech therapy for rehabilitative purposes;

(iv) Braces, splints, prostheses, orthopedic appliances and orthotic devices, supplies or apparatuses used to support, align or correct deformities or to improve the function of moving parts;

(v) Durable medical equipment and mobility enhancing equipment used to serve a medical purpose, including sales tax.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. These services are specifically excluded by the base-benchmark plan, and should not be included in establishing actuarial value.

(i) Off the shelf shoe inserts and orthopedic shoes;

(ii) Exercise equipment for medically necessary conditions;

(iii) Durable medical equipment that serves solely as a comfort or convenience item; and

(iv) Hearing aids other than cochlear implants.

(c) The base-benchmark plan does not cover certain federally required services under this category. The state EHB-benchmark plan requirements for habilitative services are:

(i) For purposes of determining actuarial value, the issuer must classify the range of medically necessary health care services and health care devices designed to assist an individual in partially or fully developing, keeping and learning age appropriate skills and functioning, within the individual's environment, or to compensate for a person's progressive physical, cognitive, and emotional illness as habilitative services.

(ii) A health benefit plan must cover habilitative services in a manner consistent with RCW 48.43.045. An issuer must not exclude otherwise covered habilitative services provided by an individual who is supervised by a provider qualified pursuant to RCW 48.43.045.

(iii) An issuer may establish limitations on habilitative services at parity with those for rehabilitative services. A health benefit plan may include reference based limitations only if the limitations take into account the unique needs of the individual and target measurable, and specific treatment goals appropriate for the person's age, and physical and mental condition. When habilitative services are delivered to treat a mental health diagnosis categorized in the most recent version of the DSM, the mental health parity requirements apply and supercede any rehabilitative services parity limitations permitted by this subsection.

(iv) Absent a federal or state requirement to do so, this section does not require an issuer to coordinate its benefits in conjunction with services provided by a public or government program. However, a health benefit plan must not limit an enrollee's access to covered services on the basis that some, but not all of the services in a plan of treatment are provided by a public or government program.

(v) An issuer may establish utilization review guidelines and practice guidelines for habilitative services that are recognized by the medical community as efficacious. The guidelines may not require a return to a prior level of function.

(vi) Habilitative health care devices may be limited to those that require FDA approval and a prescription to dispense the device.

(vii) Consistent with the standards in (c) of this subsection, speech therapy, occupational therapy, physical therapy, and aural therapy are habilitative services. Day habilitation services designed to provide training, structured activities and specialized assistance to adults, chore services to assist with basic needs, vocational or custodial services are not classified as habilitative services.

(viii) An issuer must not exclude coverage for habilitative services received at a school-based health care center unless the habilitative services and devices are delivered pursuant to federal Individuals with Disabilities Education Act of 2004 (IDEIA) requirements pursuant to an individual educational plan (IEP).

(d) The base-benchmark plan's visit limitations on services in this category include:

(i) In-patient rehabilitation facility and professional services delivered in those facilities are limited to thirty days per calendar year;

(ii) Outpatient physical therapy, occupational therapy and speech therapy are limited to twenty-five outpatient visits per calendar year, on a combined basis, for rehabilitative purposes.

(e) State benefit requirements covered under this category include:

(i) State sales tax for durable medical equipment;

(ii) Coverage of diabetic supplies and equipment (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143).

(f) An issuer must not classify services to the rehabilitative services category if the classification results in a limitation of coverage for therapy that is medically necessary for an enrollee's treatment for cancer, chronic pulmonary or respiratory disease, cardiac disease or other similar chronic conditions or diseases. For purposes of this subsection, an issuer must establish limitations on the number of visits and coverage of the rehabilitation therapy consistent with its medical necessity and utilization review guidelines for medical/surgical benefits. Examples of these are, but are not limited to, breast cancer rehabilitation therapy, respiratory therapy, and cardiac rehabilitation therapy. Such services may be classified to the ambulatory patient or hospitalization services categories for purposes of determining actuarial value.

(8) A health plan must cover "laboratory services." For purposes of determining actuarial value, an issuer must classify as laboratory services medically necessary laboratory services and testing, including those performed by a licensed provider to determine differential diagnoses, conditions, outcomes and treatment, and including blood and blood services, storage and procurement, and ultrasound, X ray, MRI, CAT scan and PET scans, in a manner substantially equivalent to the base-benchmark plan.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as laboratory services:

(i) Laboratory services, supplies and tests, including genetic testing;

(ii) Radiology services, including X ray, MRI, CAT scan, PET scan, and ultrasound imaging;

(iii) Blood, blood products, and blood storage, including the services and supplies of a blood bank.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. These services are specifically excluded by the base-benchmark plan, and should not be included in establishing actuarial value: An enrollee's not medically indicated procurement and storage of personal blood supplies provided by a member of the enrollee's family.

(9) A health plan must cover "preventive and wellness services, including chronic disease management." For purposes of determining a plan's actuarial value, an issuer must classify as preventive and wellness services, including chronic disease management, services that identify or prevent the onset or worsening of disease or disease conditions, illness or injury, often asymptomatic, services that assist in the multidisciplinary management and treatment of chronic diseases, services of particular preventive or early identification of disease or illness of value to specific populations, such as women, children and seniors, in a manner substantially equivalent to the base-benchmark plan,.

(a) A health benefit plan must include the following services as preventive and wellness services:

(i) Immunizations recommended by the Centers for Disease Control's Advisory Committee on Immunization Practices;

(ii) Screening and tests with A and B recommendations by the U.S. Preventive Services Task Force for prevention and chronic care, for recommendations issued on or before the applicable plan year;

(iii) Services, tests and screening contained in the U.S. Health Resources and Services Administration Bright Futures guidelines as set forth by the American Academy of Pediatricians;

(iv) Services, tests, screening and supplies recommended in the U.S. Health Resources and Services Administration women's preventive and wellness services guidelines;

(v) Chronic disease management services; and

(vi) Wellness services.

(b) The base-benchmark plan does not exclude any services that could reasonably be classified to this category.

(c) The base-benchmark plan does not apply any limitations or scope restrictions that conflict with state or federal law as of January 1, 2014.

(d) The base-benchmark plan does not establish visit limitations on services in this category.

(e) State benefit requirements classified in this category are:

(i) Colorectal cancer screening as set forth in RCW 48.43.043;

(ii) Mammogram services, both diagnostic and screening (RCW 48.21.225, 48.44.325, and 48.46.275);

(iii) Prostate cancer screening (RCW 48.20.392, 48.21.-227, 48.44.327, and 48.46.277).

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.

NEW SECTION

WAC 284-43-879 Essential health benefit category—Pediatric oral services. A health plan must include "pediatric oral services" in its essential health benefits package. The base-benchmark plan covers pediatric services for the categories set forth in WAC 284-43-878 (1) through (9), but does not include pediatric oral services. Pediatric services are services delivered to those age 19 and under.

(1) A health plan must cover pediatric oral services either as an embedded set of services, offered through a rider or as a contracted service. If a health plan is subsequently certified by the health benefit exchange as a qualified health plan, this requirement is met for that benefit year for the certified plan if a stand-alone dental plan that covers pediatric oral services as set forth in the EHB-benchmark plan is offered in the health benefit exchange for that benefit year.

(2) If a health plan is a stand-alone dental plan offered through the health benefit exchange, then the requirements of this section are the sole essential health benefit requirements applicable to the stand-alone dental plan.

(3) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The supplemental base-benchmark plan specifically excludes oral implants, and an issuer should not include benefits for oral implants in establishing a plan's actuarial value.

(4) The state EHB-benchmark plan requirements for pediatric oral benefits must be offered and classified consis-

tent with the designated supplemental base-benchmark plan for pediatric oral services, the Washington state CHIP plan. The oral benefits included in the "pediatric" category are:

(a) Diagnostic services;

(b) Preventive care;

(c) Restorative care;

(d) Oral surgery and reconstruction to the extent not covered under the hospitalization benefit;

(e) Endodontic treatment;

(f) Periodontics;

(g) Crown and fixed bridge;

(h) Removable prosthetics; and

(i) Medically necessary orthodontia.

(5) The supplemental base-benchmark plan's visit limitations on services in this category are:

(a) Diagnostic exams once every six months, beginning before one year of age;

(b) Bitewing X ray once a year;

(c) Panoramic X rays once every three years;

(d) Prophylaxis every six months beginning at age six months;

(e) Fluoride three times in a twelve-month period for ages six and under; two times in a twelve-month period for ages seven and older; three times in a twelve-month period during orthodontic treatment; sealant once every three years for occlusal surfaces only; oral hygiene instruction two times in twelve months for ages eight and under if not billed on the same day as a prophylaxis treatment;

(f) Every two years for the same restoration (fillings);

(g) Frenulectomy or frenuloplasty covered for ages six and under without prior authorization;

(h) Root canals on baby primary posterior teeth only;

(i) Root canals on permanent anterior, bicuspid and molar teeth, excluding teeth 1, 16, 17 and 32;

(j) Periodontal scaling and root planing once per quadrant in a two-year period for ages thirteen and older, with prior authorization;

(k) Periodontal maintenance once per quadrant in a twelve-month period for ages thirteen and older, with prior authorization;

(l) Stainless steel crowns for primary anterior teeth once every three years; if age thirteen and older with prior authorization;

(m) Stainless steel crowns for permanent posterior teeth once every three years;

(n) Metal/porcelain crowns and porcelain crowns on anterior teeth only, with prior authorization;

(o) Space maintainers for missing primary molars A, B, I, J, K, L, S, and T;

(p) One resin based partial denture, replaced once within a three-year period;

(q) One complete denture upper and lower, and one replacement denture per lifetime after at least five years from the seat date;

(r) Rebasing and relining of complete or partial dentures once in a three-year period, if performed at least six months from the seating date.

(6) State benefit requirements that are limited to those receiving pediatric services, but that are classified to other categories for purposes of determining actuarial value, are:

(a) Neurodevelopmental therapy to age six, consisting of physical, occupational and speech therapy and maintenance to restore or improve function based on developmental delay, which cannot be combined with rehabilitative services for the same condition (RCW 48.44.450, 48.46.520, and 48.21.310 (may be classified to ambulatory patient services or mental health and substance abuse disorder including behavioral health categories));

(b) Congenital anomalies in newborn and dependent children (RCW 48.20.430, 48.21.155, 48.44.212, and 48.46.-250 (may be classified to hospitalization, ambulatory patient services or maternity and newborn categories)).

NEW SECTION

WAC 284-43-880 Pediatric vision services A health plan must include "pediatric vision services" in its essential health benefits package. The base-benchmark plan covers pediatric services for the categories set forth in WAC 284-43-878 (1) through (9), but does not include pediatric vision services. Pediatric services are services delivered to enrollees age 19 and under.

(1) A health plan must cover pediatric vision services either as an embedded set of services.

(2) The state EHB-benchmark plan requirements for pediatric vision benefits must be offered and classified consistent with the designated supplemental base-benchmark plan for pediatric vision services, the Federal Employees Vision Plan with the largest enrollment and published by the U.S. Department of Health and Human Services at www.cciioo.cms.gov on July 2, 2012,

(a) The vision services included in the "pediatric" category are:

(i) Routine vision screening for children, including dilation and with refraction every calendar year, including dilation;

(ii) One pair of prescription lenses or contacts every calendar year, including polycarbonate lenses and scratch resistant coating;

(iii) One pair of frames every calendar year;

(iv) Low vision optical devices including low vision services, and an aid allowance with follow-up care when preauthorized.

(b) The pediatric vision benefits specifically exclude:

(i) Visual therapy;

(ii) Two pairs of glasses may not be ordered in lieu of bifocals.

NEW SECTION

WAC 284-43-882 Plan cost-sharing and benefit substitution of limitations. (1) A health benefit plan must not apply cost-sharing requirements to Native Americans purchasing a health benefit plan through the exchange, whose incomes are at or below three hundred percent of federal poverty level.

(2) A small group health benefit plan that includes the essential health benefits package may not impose annual cost-sharing or deductibles that exceed the maximum annual amounts that apply to high deductible plans linked to health savings accounts, as set forth in the most recent version of

IRS Publication 969, pursuant to Section 106 (c)(2) of the Internal Revenue Code of 1986, and Section 1302 (c)(2) of PPACA.

(3) An issuer may use reasonable medical management techniques to control costs, including promoting the use of appropriate, high value preventive services, providers and settings. An issuer's policies must accommodate enrollees for whom it would be medically inappropriate to have the service provided in one setting versus another, as determined by the attending provider, and permit waiver of an otherwise applicable copayment for the service that is tied to one setting but not the preferred high-value setting.

(4) An issuer may not require cost-sharing for preventive services delivered by network providers, specifically related to those with an A or B rating in the most recent recommendations of the United States Preventive Services Task Force, women's preventive health care services recommended by the U.S. Health Resources and Services Administration (HRSA) and HRSA Bright Futures guideline designated pediatric services. An issuer must post on its web site a list of the specific preventive and wellness services mandated by PPACA that it covers.

(5) An issuer must establish cost-sharing levels, structures or tiers for specific essential health benefit categories that are not discriminatory based on health status. "Cost-sharing" has the same meaning as set forth in RCW 48.43.005(16) and WAC 284-43-130(8).

(a) An issuer must not apply cost-sharing or coverage limitations differently to enrollees with chronic disease or complex underlying medical conditions than to other enrollees, unless the difference provides the enrollee with access to care and treatment commensurate with the enrollee's specific medical needs without imposing a surcharge or other additional cost to the enrollee beyond normal cost-sharing requirements under the plan.

(b) An issuer must not establish a different cost-sharing structure for a specific benefit or tier for a benefit than is applied to the plan in general if the sole type of enrollee who would access that benefit or benefit tier is one with a chronic illness or medical condition.

NEW SECTION

WAC 284-43-885 Representations regarding coverage. A health plan issuer must not indicate or imply that a health benefit plan covers essential health benefits unless the plan, policy, or contract covers the essential health benefits in compliance with this subchapter. This requirement applies to any health benefit plan offered on or off the Washington health benefit exchange.

WSR 13-04-001
PROPOSED RULES
LIQUOR CONTROL BOARD

[Filed January 23, 2013, 12:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-24-030.

Title of Rule and Other Identifying Information: WAC 314-02-109 What are the quarterly reporting and payment requirements for a spirits retailer license?, 314-23-022 What if a distributor licensee fails to report or pay, or reports or pays late?, and 314-28-080 What if a distillery or craft distillery licensee fails to report or pay, or reports or pays late?

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on March 13, 2013, at 10:00 a.m.

Date of Intended Adoption: March 20, 2013.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504-3080, e-mail rules@liq.wa.gov, fax (360) 664-9689, by March 13, 2013.

Assistance for Persons with Disabilities: Contact Karen McCall by March 13, 2013, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As part of implementing I-1183, the board adopted these rules in June 2012. Language needs to be added to these rules to allow the board to suspend or revoke the license of a licensee that fails to report and/or pay these fees.

Reasons Supporting Proposal: The rules clarify to licensees the board may revoke or suspend the license of a licensee who fails to report and/or pay their required fees.

Statutory Authority for Adoption: RCW 66.24.630, 66.24.055, 66.24.145.

Statute Being Implemented: RCW 66.24.630, 66.24.055, 66.24.145.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A fiscal impact statement was not required.

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

January 23, 2013
Sharon Foster
Chairman

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

WAC 314-02-109 What are the quarterly reporting and payment requirements for a spirits retailer license? (1) A **spirits retailer** must submit quarterly reports and payments to the board.

The required reports must be:

(a) On a form furnished by the board;

(b) Filed every quarter, including quarters with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twenty-fifth day following the tax quarter (e.g., Quarter 1 (Jan., Feb., Mar.) report is due April 25th). When the twenty-fifth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

(2) **What if a spirits retailer licensee fails to report or pay, or reports or pays late?** ((~~If~~)) Failure of a spirits retailer licensee ((~~does not~~)) to submit its quarterly reports and payment to the board as required in subsection (1) of this section((~~, the licensee is subject to penalties~~)) will be sufficient grounds for the board to suspend or revoke the liquor license.

A penalty of two percent per month will be assessed on any payments postmarked after the twenty-fifth day quarterly report is due. When the twenty-fifth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

WAC 314-23-022 What if a distributor licensee fails to report or pay, or reports or pays late? (1) ((~~If~~)) Failure of a spirits distributor licensee ((~~does not~~)) to submit its monthly reports and payment to the board as required in WAC 314-23-021(1)((~~, the licensee is subject to penalties~~)) will be sufficient grounds for the board to suspend or revoke the liquor license.

(2) A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

WAC 314-28-080 What if a distillery or craft distillery licensee fails to report or pay, or reports or pays late? ((~~If~~)) Failure of a distillery or craft distiller ((~~does not~~)) to submit its monthly reports and payment to the board as required in WAC 314-28-070(1)((~~, the licensee is subject to penalties~~)) will be sufficient grounds for the board to suspend or revoke the liquor license.

Penalties. A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

WSR 13-04-006
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed January 24, 2013, 11:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-20-102.

Title of Rule and Other Identifying Information: WAC 388-165-180 Child care subsidy rates DSHS pays for child care in a licensed or certified care center and 388-165-185 Child care subsidy rates DSHS pays for child care in a licensed or certified family child care home.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html or by calling (360) 664-6094), on March 12, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 13, 2013.

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 March 12, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by February 26, 2013, 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: To match the children's administration child care subsidy program.

Reasons Supporting Proposal: The amended rule will be in compliance with children's administration's revised and updated child care subsidy program to minimize impact on direct services and implement fiscal policy and practice efficiencies.

Statutory Authority for Adoption: RCW 74.08.090, rule-making authority and enforcement.

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: Michael Luque, Children's Administration, P.O. Box 45710, Olympia, WA, (360) 902-7986.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rule changes are to be in compliance with children's administration's revised and updated child care subsidy program to minimize impact on direct services and implement fiscal policy and practice efficiencies.

A cost-benefit analysis is not required under RCW 34.05.328. These rule changes are to be in compliance with children's administration's revised and updated child care

subsidy program to minimize impact on direct services and implement fiscal policy and practice efficiencies.

January 22, 2013
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 99-22-011, filed 10/22/99, effective 11/22/99)

WAC 388-165-180 What are the maximum child care subsidy rates DSHS pays for child care in a licensed or certified child care center? ((~~DSHS pays directly to a licensed or certified child care center, whichever is less:~~

~~(1) The provider's usual rate for that child; or~~

~~(2) The DSHS maximum child care subsidy rate for that child as listed in the following table.~~))

((~~DSHS Maximum Child Care Subsidy Rate for Licensed Child Care Centers~~))

		((~~Infants (Birth - 11 mos.)~~	~~Toddlers (12 - 29 mos.)~~	~~Preschool (30 mos. - 5 years)~~	~~School-age (5 - 12 years)~~
~~Region 1~~	~~Full-Day~~	~~$22.73~~	~~$19.85~~	~~$18.00~~	~~$16.70~~
	~~Half-Day~~	~~$11.36~~	~~$9.93~~	~~$9.00~~	~~$8.35~~
~~Region 2~~	~~Full-Day~~	~~$23.18~~	~~$20.45~~	~~$17.75~~	~~$16.82~~
	~~Half-Day~~	~~$11.59~~	~~$10.23~~	~~$8.88~~	~~$8.41~~
~~Region 3~~	~~Full-Day~~	~~$30.18~~	~~$26.00~~	~~$22.00~~	~~$19.77~~
	~~Half-Day~~	~~$15.09~~	~~$13.00~~	~~$11.00~~	~~$9.89~~
~~Region 4~~	~~Full-Day~~	~~$37.80~~	~~$29.55~~	~~$26.14~~	~~$23.40~~
	~~Half-Day~~	~~$18.90~~	~~$14.77~~	~~$13.07~~	~~$11.70~~
~~Region 5~~	~~Full-Day~~	~~$25.82~~	~~$22.18~~	~~$19.45~~	~~$17.50~~
	~~Half-Day~~	~~$12.91~~	~~$11.09~~	~~$9.73~~	~~$8.75~~
~~Region 6~~	~~Full-Day~~	~~$25.59~~	~~$22.73~~	~~$20.00~~	~~$20.00~~
	~~Half-Day~~	~~$12.80~~	~~$11.36~~	~~$10.00~~	~~$10.00~~))

(((~~(3) The maximum rate paid for a five year old child is:~~

~~(a) The preschool rate for a child who has not entered kindergarten; or~~

~~(b) The school-age rate for a child who has entered kindergarten~~)) DSHS maximum child care subsidy rates for licensed child care centers are located on the Washington state child care resource & referral network website at: http://www.childcarenet.org/partners/data/home-rates.

AMENDATORY SECTION (Amending WSR 99-22-011, filed 10/22/99, effective 11/22/99)

WAC 388-165-185 What are the maximum child care subsidy rates DSHS pays for child care in a licensed or certified family child care home? ((~~DSHS pays directly to a licensed or certified family child care provider, whichever is less:~~

~~(1) The provider's usual rate for that child; or~~

~~(2) The DSHS maximum child care subsidy rate for that child as listed in the following table.~~))

((~~DSHS Maximum Child Care Subsidy Rate for Licensed Family Child Care Homes~~))

		((~~Infants (Birth - 11 mos.)~~	~~Toddlers (12 - 29 mos.)~~	~~Preschool (30 mos. - 5 years)~~	~~School-age (5 - 12 years)~~
~~Region 1~~	~~Full-Day~~	~~$19.00~~	~~$17.60~~	~~$17.00~~	~~$15.00~~
	~~Half-Day~~	~~$9.50~~	~~$8.80~~	~~$8.50~~	~~$7.50~~
~~Region 2~~	~~Full-Day~~	~~$18.00~~	~~$18.00~~	~~$16.00~~	~~$15.00~~
	~~Half-Day~~	~~$9.00~~	~~$9.00~~	~~$8.00~~	~~$7.50~~
~~Region 3~~	~~Full-Day~~	~~$28.00~~	~~$24.00~~	~~$22.00~~	~~$20.00~~
	~~Half-Day~~	~~$14.00~~	~~$12.00~~	~~$11.00~~	~~$10.00~~
~~Region 4~~	~~Full-Day~~	~~$30.00~~	~~$27.27~~	~~$25.00~~	~~$22.50~~
	~~Half-Day~~	~~$15.00~~	~~$13.64~~	~~$12.50~~	~~$11.25~~
~~Region 5~~	~~Full-Day~~	~~$21.00~~	~~$20.00~~	~~$19.00~~	~~$17.00~~
	~~Half-Day~~	~~$10.50~~	~~$10.00~~	~~$9.50~~	~~$8.50~~
~~Region 6~~	~~Full-Day~~	~~$20.50~~	~~$20.00~~	~~$18.00~~	~~$17.00~~
	~~Half-Day~~	~~$10.25~~	~~$10.00~~	~~$9.00~~	~~$8.50~~))

(((~~(3) The maximum rate paid for a five year old child is:~~

~~(a) The preschool rate for a child who has not entered kindergarten; or~~

~~(b) The school-age rate for a child who has entered kindergarten~~)) DSHS maximum child care subsidy rates for licensed or certified family child care homes are located on the Washington state child care resource & referral network website at: http://www.childcarenet.org/partners/data/home-rates.

WSR 13-04-046
PROPOSED RULES
HORSE RACING COMMISSION
[Filed February 1, 2013, 8:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-22-081.

Title of Rule and Other Identifying Information: Chapter 260-34 WAC, Drug and alcohol testing of licensees.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on March 15, 2013, at 9:30 a.m.

Date of Intended Adoption: March 15, 2013.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail doug.moore@whrc.state.wa.us, fax (360) 459-6461, by March 13, 2013.

Assistance for Persons with Disabilities: Contact Patty Sorby by March 13, 2013, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To address the passage of I-502, this legalized marijuana. The Washington horse racing commission (WHRC) intends to prohibit the possession and use of marijuana in the stable area to protect the horses and ensure safety of the participants.

Reasons Supporting Proposal: The possibility of cross-contamination with the horses will be eliminated and to ensure anyone working with the horses is not under the influence of any substances.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [WHRC], governmental.

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

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

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

February 1, 2013
Douglas L. Moore
Deputy Secretary

AMENDATORY SECTION (Amending WSR 06-07-064, filed 3/10/06, effective 4/10/06)

WAC 260-34-010 Primary purpose. In order to protect the integrity of horse racing in the state of Washington, and to protect the safety of the public and all participants, the Washington horse racing commission intends to regulate the use of any illegal controlled substances, the use and possession of marijuana, and the use of alcohol by licensees at all race meets. This chapter shall be applicable to all licensees or applicants on the grounds of any racetrack during its licensed race meet.

AMENDATORY SECTION (Amending WSR 11-07-030, filed 3/10/11, effective 4/10/11)

WAC 260-34-020 Drug and alcohol violations. No licensee or applicant, while acting in an official capacity or participating directly in horse racing, will commit any of the following violations, while on the grounds of a licensed race track during its licensed race meet and periods of training:

(1) Be under the influence of or affected by intoxicating liquor and/or drugs, have an alcohol concentration of 0.08 percent or higher, or have within their body any illegal controlled substance ((~~while on the grounds of any licensed race meet~~));

The alcohol concentration for persons on horseback may not be 0.02 percent or higher.

(2) Engage in the illegal sale or distribution of alcohol;

(3) Engage in the illegal sale or distribution of a controlled substance or possess an illegal controlled substance with intent to deliver;

(4) Possess an illegal controlled substance;

(5) Possess marijuana or be under the influence of or affected by marijuana, or have in their body any measurable concentration of tetrahydrocannabinol (THC);

Possess any equipment, products or materials of any kind, which are used or intended for use in injecting, ingesting, inhaling or otherwise introducing into the human body marijuana;

(6) Possess on the grounds of any licensed race meet any equipment, products or materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing an illegal controlled substance, or any equipment, products or materials of any kind, which are used or intended for use in injecting, ingesting, inhaling or otherwise introducing into the human body an illegal controlled substance; or

((~~(6)~~)) (7) Refuse to submit to blood, breath, oral fluids, and/or urine testing, when notified that such testing is conducted pursuant to the conditions of WAC 260-34-030.

Failure to provide a blood, breath, oral fluids, and/or urine sample when directed or intentional contamination of the sample by any person tested for the purpose of preventing accurate analysis of the sample, or other actions with intent to subvert the test, will be considered a refusal to submit to a test.

"Controlled substance" or "drug" as used in this chapter means any substance listed in chapter 69.50 RCW or legend drug as defined in chapter 69.41 RCW. The presence of a controlled substance or drug in any quantity measured by the testing instrument establishes the presence of that substance for the purpose of this section. The fact that a licensee or applicant is or has been entitled to use a drug under the laws of the state of Washington will not constitute a defense against a violation for being under the influence of or affected by intoxicating liquor and/or any drug.

WSR 13-04-047
PROPOSED RULES
HORSE RACING COMMISSION
[Filed February 1, 2013, 8:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-23-026.

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

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on March 15, 2013, at 9:30 a.m.

Date of Intended Adoption: March 15, 2013.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail doug.moore@whrc.state.wa.us, fax (360) 459-6461, by March 13, 2013.

Assistance for Persons with Disabilities: Contact Patty Sorby by March 13, 2013, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates the penalty matrix to reflect current WACs and adopts new penalties for the possession and use of marijuana due to the passage of I-502.

Reasons Supporting Proposal: WACs have been amended and the current matrix was incorrect is [in] some circumstances.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Washington horse racing commission], governmental.

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

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

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

February 1, 2013
Douglas L. Moore
Deputy Secretary

AMENDATORY SECTION (Amending WSR 12-05-042, filed 2/10/12, effective 3/12/12)

WAC 260-84-060 Penalty matrixes. (1) Unless provided for elsewhere, the imposition of reprimands, fines and suspensions will be based on the following penalty matrixes:

Class A and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Disturbing the peace WAC 260-80-140	Warning to $200 and/or suspension	Warning to $500 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010	$100	$200	$300
Unlicensed or improperly licensed personnel WAC ((~~260-28-230,~~)) 260-28-250 and 260-36-150((~~, and 260-28-295~~))	$100	$200	$300
Violation of any claiming rule in chapter 260-60 WAC	$200 to $500 plus possible suspension		
Failure of jockey agent to honor riding engagements (call) WAC 260-32-400	$75	$100	$200
Failure of jockey to report correct weight WAC 260-32-150	$100	$200	$300
Failure of jockey to appear for films WAC 260-24-510	$50	$100	$200
Failure of jockey to fulfill riding engagement WAC 260-32-080	$100	$150	$200
Jockey easing mount without cause WAC 260-52-040	$250 and/or suspension	$500 and/or suspension	$1000 and/or suspension
Jockey failing to maintain straight course or careless riding with no disqualification (jockey at fault) WAC 260-52-040	Warning to $750 and/or suspension (riding days)		
Jockey failing to maintain straight course or careless riding resulting in a disqualification (jockey at fault) WAC 260-52-040	$500 and/or suspension (riding days)	Suspension (riding days)	
Rider's misuse of ((~~whip~~)) crop WAC 260-52-040	Warning to $2500		
Entering ineligible horse or unauthorized late scratch chapter 260-40 WAC and WAC 260-80-030	Warning to $200	$200 to $300	$200 to $500
Arriving late to the paddock or receiving barn WAC 260-28-200	Warning to $50	$50 to $100	$100 to $200

Class A and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Failure to deliver furosemide treatment form to official veterinarian by appointed time WAC 260-70-650	Warning to $50	$50 to $100	$100 to $200
Failure to obtain permission for equipment changes WAC 260-44-010	$50	$100	$200
Failure to report performance records WAC 260-40-100	Warning to $50	$100	$150
Trainer failure to report proper identity of horses in their care WAC 260-28-295	$50	$100	$200
Failure to submit gelding report WAC 260-28-295	$100	$200	$300

Class C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Disturbing the peace WAC 260-80-140	Warning to $100 and/or suspension	$250 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010	$50	$100	$150
Unlicensed or improperly licensed personnel WAC ((~~260-28-230,~~)) 260-28-250 and 260-36-150((~~, and 260-28-295~~))	$50	$100	$200
Violation of any claiming rule in chapter 260-60 WAC	$100 to $250 plus possible suspension		
Failure of jockey agent to honor riding engagements (call) WAC 260-32-400	$25	$50	$100
Failure of jockey to report correct weight WAC 260-32-150	$25	$50	$100
Failure of jockey to appear for films WAC 260-24-510	$25	$50	$100
Failure of jockey to fulfill riding engagement WAC 260-32-080	$50	$100	$200
Jockey easing mount without cause WAC 260-52-040	$100	$200 and/or suspension	$400 and/or suspension
Jockey failing to maintain straight course or careless riding with no disqualification (jockey at fault) WAC 260-52-040	Warning to $500 and/or suspension (riding days)		
Jockey failing to maintain straight course or careless riding resulting in a disqualification (jockey at fault) WAC 260-52-040	$100 to $500 and/or suspension (riding days)		

Class C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Rider's misuse of ((~~whip~~)) crop WAC 260-52-040	Warning to $2500		
Entering ineligible horse or unauthorized late scratch chapter 260-40 WAC and WAC 260-80-030	Warning to $50	$100 to $200	$200 to $300
Arriving late to the paddock WAC 260-28-200	Warning to $25	$50	$100
Failure to deliver furosemide treatment form to official veterinarian by appointed time WAC 260-70-650	Warning to $25	$50	$100
Failure to obtain permission for equipment change WAC 260-44-010	$25	$50	$100
Failure to report performance records WAC 260-40-100	Warning to $25	$50	$100
Failure to submit gelding report WAC 260-28-295	$50	$100	$200

Class A, B and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Smoking in restricted areas WAC 260-20-030	$50	$100	$250 and/or suspension
Tampering with a fire protection, prevention or suppression system or device WAC 260-20-030	$200	$500	$1000 and/or suspension
Failure to post problem gambling signs WAC 260-12-250	Warning to $50	$100	$200
Issuing a check to the commission with not sufficient funds WAC 260-28-030	$50	$100	$200
Failure to ride in a safe or prudent manner WAC 260-80-145	Warning	$50	$50 - subsequent offenses $50 plus possible suspensions
Use of improper, profane, or indecent language WAC 260-80-130	Warning to $200	$200 to $300	$300 to $500
Failure to complete temporary license application within fourteen days WAC 260-36-200	$100 and suspension of license	$250 and suspension of license	$500 and suspension of license
Failure to register employees with the commission (trainers responsibility) WAC 260-28-230	Warning to $50	$100	$200
Failure to furnish fingerprints WAC 260-36-100	$100 and suspension of license	$250 and suspension of license	$500 and suspension of license
Nonparticipation - licensing WAC 260-36-080	License canceled		
Pending felony charges or conviction - ineligible for licensing WAC 260-36-120(2)	Denial, suspension or revocation of license		

Class A, B and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Failure to divulge a felony conviction WAC 260-36-050	$100 to $250		
False information or failure to provide accurate and complete information on application WAC 260-36-050	Warning to $250		
Failure to provide full disclosure, refusal to respond to questions, or responding falsely to stewards or commission investigators WAC 260-24-510	$500 fine and/or denial, suspension or revocation of license		
Financial responsibility WAC 260-28-030	Suspension of license until debt is satisfied (suspension may be stayed with a mutual payment agreement and licensee remains compliant with agreement)		
Failure to appear for a ruling conference WAC 260-24-510	Suspension (conference may be held in individual's absence)		
Failure to pay fine when due (no extension granted or no request for hearing filed) WAC 260-24-510	Suspension until fine paid		
Possession or use of a stimulating device (may include batteries) WAC 260-52-040 and 260-80-100	Immediate ejection from the grounds and permanent revocation		
Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010	Immediate ejection from the grounds and permanent revocation		
Failure to wear proper safety equipment WAC 260-12-180 and 260-32-105	$50	$100	$200
Horses shod with improper toe grabs WAC 260-44-150	Horse scratched and $250 fine to trainer and plater	Horse scratched and $500 fine to trainer and plater	Horse scratched and $1000 fine to trainer and plater
Failure to display or possess license badge when in restricted area WAC 260-36-110	$25	$50	$100

(2) In determining whether an offense is a first, second, third or subsequent offense, the commission, or designee will include violations which occurred in Washington as well as any other recognized racing jurisdiction within the calendar year, absent mitigating circumstances. The stewards may impose more stringent penalties if aggravating circumstances exist. If a penalty is not listed under second or third/subsequent offense columns, the penalty listed in the "first offense" column will apply to each violation.

(3) Except as otherwise provided in this chapter, for any other violation not specifically listed above, the stewards have discretion to impose the penalties as provided in WAC 260-24-510 (3)(a).

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

(a) The past record of the licensee or applicant;

(b) The impact of the offense on the integrity of the parimutuel industry;

(c) The danger to human and/or equine safety;

(d) The number of prior violations of these rules of racing or violations of racing rules in other jurisdictions; and/or

(e) The deterrent effect of the penalty imposed.

(5) For violations covered by chapter 260-70 WAC, Medication, the stewards will follow the penalty guidelines as set forth in WAC 260-84-090, 260-84-100, 260-84-110, 260-84-120, and 260-84-130.

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

AMENDATORY SECTION (Amending WSR 11-03-053, filed 1/14/11, effective 2/14/11)

WAC 260-84-065 Licensees—Drug and alcohol penalties. (((~~(1) Engaging in the illegal sale or distribution of alcohol in violation of WAC 260-34-020(2).~~

~~(a) First offense - Five-day suspension;~~

~~(b) Second offense - Thirty-day suspension;~~

~~(c) Third offense - One-year suspension; and~~

~~(d) Subsequent offense, (within five years) - Revocation.~~

~~(2) Possessing any equipment, products or materials of any kind, which are used or intended for use in injecting, ingesting, inhaling or otherwise introducing into the human body an illegal controlled substance, other than marijuana in violation of WAC 260-34-020(5); or possessing or having within their body while on the grounds of a licensed race meet any illegal controlled substance, in violation of WAC 260-34-020 (1) or (4).~~

~~(a) First offense - Thirty-day suspension;~~

~~(b) Second offense - One-year suspension; and~~

~~(c) Third and subsequent offenses - Revocation.~~

~~(3) Possessing any equipment, products or materials of any kind, which are used or intended for use in ingesting, inhaling or otherwise introducing into the human body marijuana, in violation of WAC 260-34-020(5); or possessing or having within their body marijuana, an illegal controlled substance, while on the grounds of any licensed race meet, in violation of WAC 260-34-020(1).~~

~~(a) First offense - Three-day suspension;~~

~~(b) Second offense - Thirty-day suspension;~~

~~(c) Third offense - One-year suspension; and~~

~~(d) Subsequent offenses - Revocation.~~

~~(4) Being under the influence of or affected by intoxicating liquor and/or drugs in violation of WAC 260-34-020(1), excluding persons on horseback.~~

~~(a) First offense - Warning to one-day suspension;~~

~~(b) Second offense - Three-day suspension;~~

~~(c) Third offense - Thirty-day suspension; and~~

~~(d) Subsequent offenses - One-year suspension.~~

~~(5) Being under the influence of or affected by intoxicating liquor and/or drugs, and being on horseback in violation of WAC 260-34-020(1).~~

~~(a) First offense - Warning to three-day suspension;~~

~~(b) Second offense - Three to thirty-day suspension;~~

~~(c) Third offense - Thirty-day-to-one-year suspension; and~~

~~(d) Subsequent offenses - Revocation.~~

~~(6) Refusing to submit to a drug or alcohol test, in violation of WAC 260-34-020(6) will result in immediate ejection from the grounds and a penalty of a one-year suspension or revocation.~~

~~(7) Possessing any equipment or material used to manufacture or distribute any controlled substance, or engaging in the sale, manufacturing or distribution of any illegal controlled substance or possessing an illegal controlled substance with intent to deliver on the grounds of any licensed race meet in violation of WAC 260-34-020 (3) or (5), immediate ejection from the grounds and revocation.~~

~~(8)~~)) (1) Be under the influence of or affected by intoxicating liquor and/or drugs, or have within their body any illegal controlled substance in violation of WAC 260-34-020 (1) and (5):

(a) First offense - Warning to one-day suspension;

(b) Second offense - Three-day suspension;

(c) Third offense - Thirty-day suspension;

(d) Subsequent offenses (within five years) - One-year suspension.

(2) Be under the influence of or affected by intoxicating liquor and/or drugs, or having within their body any illegal controlled substance, while on horseback, in violation of WAC 260-34-020 (1) and (5):

(a) First offense - Warning to one-day suspension;

(b) Second offense - Three-day to thirty-day suspension;

(c) Third offense - Thirty-day to one-year suspension;

(d) Subsequent offenses (within five years) - Revocation.

(3) Engage in the illegal sale or distribution of alcohol in violation of WAC 260-34-020(2):

(a) First offense - Five-day suspension;

(b) Second offense - Thirty-day suspension;

(c) Third offense - One-year suspension;

(d) Subsequent offenses (within five years) - Revocation.

(4) Engaging in the illegal sale or distribution of a controlled substance, including marijuana, or possess an illegal controlled substance, including marijuana with intent to deliver in violation of WAC 260-34-020(3), revocation and immediate ejection from the grounds.

(5) Possess an illegal controlled substance, including marijuana if under the age of twenty-one, and excluding marijuana if twenty-one years or older in violation of WAC 260-34-020(4):

(a) First offense - Thirty-day suspension;

(b) Second offense - One-year suspension; and

(c) Third offense - Revocation.

(6) Possession of marijuana over the age of twenty-one, WAC 260-34-020(5):

(a) First offense - Warning to one-day suspension;

(b) Second offense - Three-day to thirty-day suspension;

(c) Third offense - Thirty-day to one-year suspension;

(d) Subsequent offenses (within five years) - Revocation.

(7) Possession of any equipment, products or materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing an illegal controlled substance, or any equipment, products or materials of any kind, which are used or intended for use in injecting, ingesting, inhaling or otherwise introducing into the human body an illegal controlled substance in violation of WAC 260-34-020(6):

(a) First offense - Three-day suspension;

(b) Second offense - Three-day to thirty-day suspension;

(c) Third offense - One-year suspension;

(d) Subsequent offenses (within five years) - Revocation.

(8) Refusal to submit to blood, breath, oral fluids, and/or urine testing, in violation of WAC 260-34-020(7), immediate ejection for the grounds and a one-year suspension to revocation.

(9)(a) For violations of WAC 260-34-020 (1) ((~~and~~)), (4), or (5), the board of stewards may stay a suspension if the licensee or applicant shows proof of participation in a drug

rehabilitation or alcohol treatment program approved or certified by the department of social and health services. Individuals will only be allowed a stay of a suspension under this subsection once in a five-year period. If during the period of the stay a licensee or applicant violates the provisions of chapter 260-34 WAC, the violation for which the stay of suspension was entered will be considered as a prior violation for penalty purposes. Before being granted a stay of the suspension, the licensee or applicant must also agree to comply with the following conditions during the duration of the treatment program:

(i) Remain in compliance with the rehabilitation and/or treatment program.

(ii) Submit to random drug or alcohol testing at the discretion of the board of stewards or commission security investigators.

(iii) Have no violations of chapter 260-34 WAC.

Upon completion of the rehabilitation or treatment program, the licensee or applicant must provide documentation of completion to the board of stewards. Upon making a determination that the licensee or applicant successfully completed the rehabilitation or treatment program, the board of stewards may direct that the final disposition of the violation will be that the licensee or applicant completed a treatment program in lieu of suspension.

(b) If the board of stewards finds that the licensee or applicant failed to comply with the conditions required in (a)(iii) of this subsection, the board of stewards may impose the original suspension. If the failure to comply with the conditions of the stay is a violation of chapter 260-34 WAC, the board of stewards may also hold a ruling conference for that rule violation and impose such penalty as is provided for that violation.

((~~(9)~~)) (10) Any licensee or applicant who tests positive (presumptive or confirmatory) for the presence of an illegal controlled substance is prohibited from performing any duties for which a license is required until the licensee does not test positive (presumptive or confirmatory) for the presence of any illegal controlled substance.

((~~(10)~~)) (11) Any licensee or applicant who is affected by intoxicating liquor or who has an alcohol concentration of 0.08 percent or higher is prohibited from performing any duties for which a license is required until the licensee is not affected by intoxicating liquor and his/her alcohol concentration is below 0.08 percent.

((~~(11)~~)) (12) Any licensee or applicant who has an alcohol concentration of 0.02 percent or higher while on horseback is prohibited from being on horseback until his/her alcohol concentration is below 0.02 percent.

WSR 13-04-048
PROPOSED RULES
HORSE RACING COMMISSION
[Filed February 1, 2013, 8:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-23-029.

Title of Rule and Other Identifying Information: Chapter 260-48 WAC, Mutuels.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on March 15, 2013, at 9:30 a.m.

Date of Intended Adoption: March 15, 2013.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail doug.moore@whrc.state.wa.us, fax (360) 459-6461, by March 13, 2013.

Assistance for Persons with Disabilities: Contact Patty Sorby by March 13, 2013, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Defines what a self-service device is and to change the definition of a cash voucher from a document to a record to include electronic documents.

Reasons Supporting Proposal: Stakeholder requested and supported.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Washington horse racing commission], governmental.

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

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

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

February 1, 2013
Douglas L. Moore
Deputy Secretary

AMENDATORY SECTION (Amending WSR 08-17-049, filed 8/14/08, effective 9/14/08)

WAC 260-48-490 Definitions. (1) "Common pool wagering." The inclusion of wagers placed at guest association locations and secondary parimutuel organizations (SPMO) into a common parimutuel pool for the purpose of display of wagering information and calculation of payoffs on winning wagers.

(2) "Guest association." An association approved to offer simulcast races and parimutuel wagering on races conducted at other racetracks.

(3) "Host association." An association where live racing and parimutuel wagering are conducted and on which parimutuel wagering is conducted by guest associations or satellite locations.

(4) "Parimutuel system." The hardware, software and communications equipment used to record wagers, calculate payouts for winning wagers, and transmit wagering transactions and parimutuel pool data for display to patrons and to communicate with other parimutuel systems linked to facilitate common pool wagering.

(5) "Parimutuel wagering." A form of wagering on the outcome of a horse race in which all wagers are pooled and held by a parimutuel pool host for distribution of the total amount, less the deductions authorized by law, to holders of tickets on the winning contestants.

(6) "Secondary parimutuel organization (SPMO)." An entity other than a licensed association that offers and accepts parimutuel wagers. This may include a satellite location (off-track wagering) or an advance deposit wagering service provider.

(7) "Self-service device." A computerized wagering device that allows the patron, only while on the grounds of a licensed Class 1 racing association, to wager by use of portable electronic device. The self-service device allows the patron to place wagers only. The patron must contact a mutuel clerk to cash in any winnings.

(8) "Self-service terminal." A computerized wagering device that allows the patron to wager by use of a touch activated screen using account cards, vouchers, winning tickets and cash.

((~~(8)~~)) (9) "Simulcast." Live video and audio transmission of a race and parimutuel information for the purpose of parimutuel wagering at locations other than a host association.

AMENDATORY SECTION (Amending WSR 08-17-049, filed 8/14/08, effective 9/14/08)

WAC 260-48-680 Parimutuel cash vouchers. (1) A parimutuel cash voucher is a ((~~document~~)) record or card produced by a parimutuel system device on which a stored cash value is represented and the value is recorded in and redeemed through the parimutuel system. Parimutuel cash vouchers may be offered by an association that issues parimutuel tickets. The stored value on a voucher may be redeemed in the same manner as a value of a winning parimutuel ticket for wagers placed at a parimutuel window, a self-service device, or a self-service terminal, and may be redeemed for their cash value at any time.

(2) An association may, with the prior approval of the commission, issue special parimutuel cash vouchers as incentives or promotional prizes, and may restrict the use of those vouchers to the purchase of parimutuel wagers.

(3) The tote system transaction record for all parimutuel vouchers will include the following:

(a) The voucher identification number in subsequent parimutuel transactions;

(b) Any parimutuel wagers made from a voucher will identify the voucher by identification number.

AMENDATORY SECTION (Amending WSR 08-17-049, filed 8/14/08, effective 9/14/08)

WAC 260-48-690 Other stored value instruments and systems. (1) An association may not, without the prior approval of the commission, utilize any form of stored value instrument or system other than a parimutuel voucher, including an electronic voucher, for the purpose of making or cashing parimutuel wagers.

(2) Any request for approval of a stored value instrument or system will include a detailed description of the standards utilized:

(a) To identify the specific stored value instrument or account in the parimutuel system wagering transaction record;

(b) To verify the identity and business address of the person(s) obtaining, holding, and using the stored value instrument or system; and

(c) To record and maintain records of deposits, credits, debits, transaction numbers, and account balances involving the stored value instruments or accounts.

(3) A stored value instrument or system will prevent wagering transactions in the event such transactions would create a negative balance in an account, and will not automatically transfer funds into a stored value instrument or account without the direct authorization of the person holding the instrument or account.

(4) Any request for approval of a stored value instrument or system will include all records and reports relating to all transactions, account records, and customer identification and verification in hard copy or in an electronic format approved by the commission. All records will be retained for a period of not less than three years.

WSR 13-04-049
PROPOSED RULES
HORSE RACING COMMISSION
[Filed February 1, 2013, 8:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-09-038.

Title of Rule and Other Identifying Information: WAC 260-32-400 Jockey agents—Powers and duties.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on March 15, 2013, at 9:30 a.m.

Date of Intended Adoption: March 15, 2013.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail doug.moore@whrc.state.wa.us, fax (360) 459-6461, by March 13, 2013.

Assistance for Persons with Disabilities: Contact Patty Sorby by March 13, 2013, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Allows jockey agents to participate as owners with certain restrictions.

Reasons Supporting Proposal: Requested and supported by stakeholders.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Washington horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and

Enforcement: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

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

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

February 1, 2013
Douglas L. Moore
Deputy Secretary

AMENDATORY SECTION (Amending WSR 06-07-065, filed 3/10/06, effective 4/10/06)

WAC 260-32-400 Powers and duties. (1) Each jockey agent ((~~shall~~)) must be licensed by the commission.

(2) ((~~No~~)) A jockey agent ((~~shall~~)) may be the owner or trainer of ((~~any~~)) a horse under the following conditions:

(a) A jockey agent may only enter one horse that they have an ownership interest in for any overnight race.

(b) A jockey agent may not claim a horse.

(c) A jockey whom the jockey agent represents must ride the horse, unless approved by the stewards, or no other jockey that the jockey agent represents may compete against the horse.

(3) A jockey agent may represent up to three jockeys.

(4) No jockey agent shall make or assist in making any engagement for any rider other than those he is licensed to represent, without prior approval of the board of stewards, which may be granted for a temporary time period not to exceed ten days.

(5) If a jockey agent is absent for a period of more than ten days, the jockey will be required to engage another jockey agent.

(6) Each jockey agent shall keep, on a form provided by the association, a record by races of all engagements made by him of the riders he is representing. This record must be kept up to date and held ready at all times for the inspection by the stewards.

(7) If any jockey agent gives up the making of engagements for any rider, he/she shall immediately notify the stewards, and he/she shall also turn over to the stewards a list of any unfilled engagements he/she may have made for that rider. A jockey agent may not drop a rider without notifying the board of stewards in writing. The stewards will decide all rival claims for the services of a rider. Jockey agents who fail to honor commitments made are subject to disciplinary action.

WSR 13-04-050
PROPOSED RULES
HORSE RACING COMMISSION
[Filed February 1, 2013, 8:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-17-069.

Title of Rule and Other Identifying Information: WAC 260-70-630 Threshold levels.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on March 15, 2013, at 9:30 a.m.

Date of Intended Adoption: March 15, 2013.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail doug.moore@whrc.state.wa.us, fax (360) 459-6461, by March 13, 2013.

Assistance for Persons with Disabilities: Contact Patty Sorby by March 13, 2013, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adopts acceptable threshold levels in post race samples on therapeutic medications used in treating horses.

Reasons Supporting Proposal: To protect the horses and ensure that medications used in treating them are used in a manner to ensure all participants' safety.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Washington horse racing commission], governmental.

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

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

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

February 1, 2013
Douglas L. Moore
Deputy Secretary

AMENDATORY SECTION (Amending WSR 12-07-010, filed 3/9/12, effective 4/9/12)

WAC 260-70-630 Threshold levels. (1) Permitted medications.

(a) The following quantitative medications are permissible in test samples up to the stated concentrations:

Acepromazine - 25 ng/ml urine
Albuterol - 1 ng/ml urine
Benzocaine - 50 ng/ml urine
Bupivacaine - 5 ng/ml urine
Betamethansone - 60 ng/ml urine
Clenbuterol - 25 pg/ml serum or plasma
Dexamethasone - 1.5 mc/ml serum or plasma
Diclofenac - 5 ng/ml serum or plasma
DMSO - 10 mc/ml serum or plasma
Firocoxib - 40 ng/ml serum or plasma
Glycopyrrolate - 3.5 pg/ml serum or plasma
Lidocaine - 50 ng/ml urine
Mepivacaine - 10 ng/ml urine
Methocarbamol - 1 ng/ml serum or plasma
Methylprednisolone - 1.3 ng/ml serum or plasma
Prednisolone - 2 ng/ml serum or plasma
Procaine - 25 ng/ml urine
Promazine - 25 ng/ml urine

Pyrilamine - 50 ng/ml urine

Salicylates - 750,000 ng/ml urine

Theobromine - 2000 ng/ml urine

Triamcinolone acetonide - 1 ng/ml serum or plasma

(b) The official urine or blood test sample may not contain more than one of the above substances, including their metabolites or analogs, and may not exceed the concentrations established in this rule.

(2) Environmental substances.

(a) Certain substances can be considered "environmental" in that they are endogenous to the horse or that they can arise from plants traditionally grazed or harvested as equine feed or are present in equine feed because of contamination or exposure during the cultivation, processing, treatment, storage, or transportation phases. Certain drugs are recognized as substances of human use and could therefore be found in a horse. The following substances are permissible in test samples up to the stated concentrations:

Caffeine - 100 ng/ml serum or plasma

Benzoylecgonine - 50 ng/ml urine

Morphine Glucuronides - 50 ng/ml urine

(b) If a preponderance of evidence presented shows that a positive test is the result of environmental substance or inadvertent exposure due to human drug use, that evidence should be considered as a mitigating factor in any disciplinary action taken against the trainer.

(3) Androgenic-anabolic steroids.

(a) The following androgenic-anabolic steroids are permissible in test samples up to the stated concentrations:

Stanozolol (Winstrol) - 1 ng/ml urine in all horses regardless of sex.

Boldenone (Equipoise) - 15 ng/ml urine in intact males. No level is permitted in geldings, fillies or mares.

Nandrolone (Durabolin) - 1 ng/ml urine in geldings, fillies, and mares, and for nandrolone metabolite (5a-oestrane-3β,17a-diol) - 45 ng/ml urine in intact males.

Testosterone - 20 ng/ml urine in geldings. 55 ng/ml urine in fillies and mares. Samples from intact males will not be tested for the presence of testosterone.

(b) All other androgenic-anabolic steroids are prohibited in race horses.

WSR 13-04-051
PROPOSED RULES
HORSE RACING COMMISSION
[Filed February 1, 2013, 8:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-17-065.

Title of Rule and Other Identifying Information: WAC 260-20-090 Association security.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on March 15, 2013, at 9:30 a.m.

Date of Intended Adoption: March 15, 2013.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail doug.moore@whrc.state.wa.us, fax (360) 459-6461, by March 13, 2013.

Assistance for Persons with Disabilities: Contact Patty Sorby by March 13, 2013, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Requires association security to record a log of individual[s] entering the stable area during late night hours (midnight to 4:00 a.m.).

Reasons Supporting Proposal: To protect the horses and ensure only authorized individuals have access to the stable area during those times. Also complies with ARCI model rules.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Washington horse racing commission], governmental.

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

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

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

February 1, 2013
Douglas L. Moore
Deputy Secretary

AMENDATORY SECTION (Amending WSR 12-23-015, filed 11/9/12, effective 12/10/12)

WAC 260-20-090 Association security. (1) A racing association conducting a race meet must maintain security controls over its grounds.

(2) An association will prevent access to, and will remove or cause to be removed from its restricted areas any person who is unlicensed, or who has not been issued a visitor's pass or other identifying credential, or whose presence in such restricted area is unauthorized.

(3) Class A or B racing associations must provide continuous security in the stable area during all times that horses are stabled on the grounds. An association will require any person entering the stable area to display a valid license or credential issued by the commission or a pass issued by the association.

(4) Class A or B racing associations must keep a written record, on a form approved by the commission, of all horses admitted to or leaving the stable areas. For horses admitted to the stable areas the log must contain the date, time, names of horses, and barn or name of trainer they are being delivered to. For horses leaving the stable areas the log must contain the date, time, name of horses, and barn or name of trainer they are leaving from. A copy of the completed form(s) must be provided to the commission on a weekly basis. The original log is subject to inspection at any time by the commission.

(5) All persons and businesses transporting horses on and off the grounds of a racing association are responsible to provide association security, and if applicable, the commis-

sion with the names of any horses delivered to or leaving the grounds and the trainer responsible.

(6) Class A or B racing associations must keep a written record of all individuals admitted to the stable area between the hours of 12:00 midnight and 4:00 a.m. At a minimum the record shall contain the name of the person admitted, the person's license numbers and the time admitted.

(7) Class A or B racing associations must provide fencing around the stable area in a manner that is approved by the commission.

(((~~7~~))) (8) Not later than twenty-four hours after an incident occurs requiring the attention of security personnel, the chief of security must deliver to commission security a written report describing the incident, which may be forwarded to the stewards for disciplinary action. The report must include the name of each individual involved in the incident and the circumstances of the incident.

WSR 13-04-060
PROPOSED RULES
BOARD OF PILOTAGE COMMISSIONERS

[Filed February 1, 2013, 12:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-01-066.

Title of Rule and Other Identifying Information: WAC 363-116-078 Training program.

Hearing Location(s): 2901 Third Avenue, 5th Floor, Alki Conference Room, Seattle, WA 98121, on March 14, 2013 at 9:30 a.m.

Date of Intended Adoption: March 14, 2013.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA 98121, e-mail larsonp@wsdot.wa.gov, fax (206) 515-3906, by March 7, 2013.

Assistance for Persons with Disabilities: Contact Shawna Erickson by March 11, 2013, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Modifications to this rule are in effect under emergency provisions that will expire on April 16, 2013. This rule permits the Port of Grays Harbor to provide funding to pay trainee stipends to Grays Harbor pilotage district pilot trainees rather than by means of a Grays Harbor pilotage district tariff surcharge.

Other provisions in the rule will be reviewed, including but not limited to, stipend payment provisions, housekeeping modifications, etc.

Reasons Supporting Proposal: It is the board's intent to retain the emergency provisions in the permanent rule.

The Port of Grays Harbor supports the new rule.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Statute Being Implemented: Chapter 88.16 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposed modifications to this rule were developed collaboratively between the port of Grays Harbor and the board.

Name of Proponent: Port of Grays Harbor, Private.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Board of Pilotage Commissioners, 2901 Third Avenue, Seattle, WA 98121, (206) 515-3904.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The application of the proposed modifications is clear in the description of the proposal and its anticipated effects as well as the proposed language shown below.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the adoption of these rules. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

February 1, 2013
Peggy Larson
Executive Director

AMENDATORY SECTION (Amending WSR 12-05-064, filed 2/15/12, effective 3/17/12)

WAC 363-116-078 Training program. After passing the written examination and simulator evaluation, pilot applicants pursuing a pilot license will be put on a list for the applicable pilotage district(s) and must enter and successfully complete a training program specified by the board.

(1) Notification. Pilot applicants on a list as described in subsection (2) of this section, waiting to enter a training program shall provide the board with a current address to be used for notification for entry into a training program. Such address shall be a place at which mail is delivered. In addition, a pilot applicant may provide the board with other means of contact such as a phone number, fax number, and/or an e-mail address. The mailing address will, however, be considered the primary means of notification by the board. It will be the responsibility of the pilot applicant to ensure that the board has a current mailing address at all times. If a pilot applicant cannot personally receive mail at the address provided to the board for any period of time, another person may be designated in writing with a notarized copy to the board as having power of attorney specifically to act in the pilot applicant's behalf regarding such notice. If notice sent to the address provided by the pilot applicant is returned after three attempts to deliver, that pilot applicant will be skipped and the next pilot applicant on the list will be contacted for entry into a training program. A person so skipped will remain next on the list. A pilot applicant or his/her designated attorney in fact shall respond within fifteen calendar days of receipt of notification to accept, refuse, or request a delayed entry into a training program.

(2) Entry. At such time that the board chooses to start a pilot applicant or applicants in a training program for a pilotage district, notification shall be given as provided in this section. Pilot applicants shall be ranked in accordance with a point system established by the board to assess overall performance on the written examination and simulator evaluation. Applicants shall be eligible to enter a training program

for a pilotage district in the order of such rankings or as otherwise may be determined by the board. A pilot applicant who refuses entry into a program will be removed from the waiting list with no further obligation by the board to offer a position in that district's training program to such pilot applicant. If the pilot applicant applied for a license in the other pilotage district when applying for the written examination, the applicant shall remain available for that other district's training program in accordance with his/her position on that list.

(a) A pilot applicant who is not able to start a training program within two months of the board's specified entry date may, with written consent of the board, delay entry into that training program. When an applicant delays entry into a training program by more than two months, the board will give notice to the next pilot applicant on the list for that pilotage district to enter a training program. The pilot applicant who delays entry, shall remain eligible for the next position in that district, provided that the next position becomes available within the earlier of:

(i) Four years from the pilot applicant's taking the written examination; or

(ii) The date scheduled for the next pilotage examination for the district.

(b) A pilot applicant not able to start in a training program within two months of the board's specified entry date and who does not obtain the board's written consent to delay entry into a training program shall no longer be eligible for that district's training program without retaking the examination provided in WAC 363-116-076 and the simulator evaluation provided in WAC 363-116-077.

(3) Training license. Prior to receiving a training license pilot applicants must pass a physical examination by a board-designated physician and in accordance with the requirements of WAC 363-116-120 for initial pilot applicants. A form provided by the board must be completed by the physician and submitted to the board along with a cover letter indicating the physician's findings and recommendations as to the pilot applicant's fitness to pilot. The physical examination must be taken not more than ninety days before issuance of the training license. Holders of a training license will be required to pass a general physical examination annually within ninety days prior to the anniversary date of that license. Training license physical examinations will be at the expense of the pilot applicant. All training licenses shall be signed by the chairperson or his/her designee and shall have an expiration date. Training licenses shall be surrendered to the board upon completion or termination of the training program.

(4) Development. As soon as practical after receiving notification of eligibility for entry into a training program as set forth in this section, the pilot applicant shall meet with the trainee evaluation committee (TEC) for the purpose of devising a training program for that pilot applicant. The training program shall be tailored to the ability and experience of the individual pilot applicant and shall consist of observation trips, training trips and evaluation trips, and such other forms of learning and instruction that may be designated. The TEC shall recommend a training program for adoption by the board. After adoption by the board, it will be presented to the pilot applicant. If the pilot applicant agrees in writing to the training program, the board shall issue a training license to the pilot applicant, which license shall authorize the pilot applicant to take such actions as are contained in the training program. If the pilot applicant does not agree to the terms of a training program in writing within fifteen business days of it being mailed to the applicant by certified mail, return receipt requested, that pilot applicant shall no longer be eligible for entry into that pilotage district's training program and the board may give notice to the next available pilot applicant that he/she is eligible for entry into a training program pursuant to the terms in subsections (1) and (2) of this section.

(5) Initial route.

(a) The trainee evaluation committee (TEC) shall assign an initial route between a commonly navigated port or terminal and the seaward boundary of the pilotage district to each trainee at the beginning of his/her training program.

(b) Unless an extension of time is granted by the board, within eight months of the beginning of the training program if the trainee is on stipend or within fifteen months of the beginning of the training program if the trainee is not on stipend, the trainee must:

(i) Take and pass all conning quizzes provided by the board applicable to the assigned route. These quizzes can be repeated as necessary, provided that they may not be taken more than once in any seven-day period and further provided that they must be successfully passed before the expiration date time period specified in (b) of this subsection; and

(ii) Take and pass the local knowledge examinations provided by the board applicable to the assigned route. These examinations can be repeated as necessary, provided that they may not be taken more than once in any seven-day period and further provided that they must be successfully passed before the expiration date time period specified in (b) of this subsection; and

(iii) Possess a first class pilotage endorsement without tonnage or other restrictions on his/her United States Coast Guard license to pilot on the assigned initial route.

(6) Specification of trips. To the extent possible, a training program shall provide a wide variety of assignments, observation, training and evaluation trips. A training program may contain deadlines for achieving full or partial completion of certain necessary actions. Where relevant, it may specify such factors as route, sequence of trips, weather conditions, day or night, stern or bow first, draft, size of ship and any other relevant factors. The board may designate specific trips or specific numbers of trips that shall be made with training pilots or with the pilot members of the trainee evaluation committee (TEC) or with pilots of specified experience. In the Puget Sound pilotage district, pilot trainees shall complete a minimum of one hundred fifty trips. The board shall set from time to time the minimum number of trips for pilot trainees in the Grays Harbor pilotage district. The total number of trips in a training program shall be established by the board based on the recommendation of the TEC. The board will ensure that during a training program the pilot trainee will get significant review by training pilots and the pilot members of the TEC.

(7) Length of training program. The board shall set the minimum length of a training program provided that it will

not be less than eight months in the Puget Sound pilotage district.

(8) Local knowledge. A training program shall provide opportunities for the education of pilot trainees and shall provide for testing of pilot trainees on the local knowledge necessary to become a pilot. This education program shall be developed by the trainee evaluation committee (TEC) and recommended to the board for adoption, in the form of a policy statement, and shall be tailored to the needs of the individual pilot trainee. It shall be the responsibility of the pilot trainee to obtain the local knowledge necessary to be licensed as a pilot in the pilotage district for which he/she is applying. Prior to the completion of a training program, the board, or its designee, may give such local knowledge examination(s) as it deems appropriate to the pilot trainees who shall be required to pass such examination(s) before completing a training program. The TEC may require a pilot trainee to sit for a local knowledge examination provided the TEC informs the pilot trainee in writing sixty days in advance of the scheduled date of the examination. Failure to sit for the examination on the date scheduled may constitute cause for removal from the training program. The TEC may also establish in writing such interim performance requirements as it deems necessary. These local examinations can be repeated as necessary, except that an examination for the same local area may not be taken more than once in any seven-day period and all required local knowledge examinations must be successfully passed before the expiration date of the training program. The local knowledge required of a pilot trainee and the local knowledge examination(s) may include the following subjects as they pertain to the pilotage district for which the pilot trainee seeks a license:

(a) Area geography;

(b) Waterway configurations including channel depths, widths and other characteristics;

(c) Hydrology and hydraulics of large ships in shallow water and narrow channels;

(d) Tides and currents;

(e) Winds and weather;

(f) Local aids to navigation;

(g) Bottom composition;

(h) Local docks, berths and other marine facilities including length, least depths and other characteristics;

(i) Mooring line procedures;

(j) Local traffic operations e.g., fishing, recreational, dredging, military and regattas;

(k) Vessel traffic system;

(l) Marine VHF usage and phraseology, including bridge-to-bridge communications regulations;

(m) Air draft and keel clearances;

(n) Submerged cable and pipeline areas;

(o) Overhead cable areas and clearances;

(p) Bridge transit knowledge - Signals, channel width, regulations, and closed periods;

(q) Lock characteristics, rules and regulations;

(r) Commonly used anchorage areas;

(s) Danger zone and restricted area regulations;

(t) Regulated navigation areas;

(u) Naval operation area regulations;

(v) Local ship assist and escort tug characteristics;

(w) Tanker escort rules - State and federal;

(x) Use of anchors and knowledge of ground tackle;

(y) Applicable federal and state marine and environmental safety law requirements;

(z) Marine security and safety zone concerns;

(aa) Harbor safety plan and harbor regulations;

(bb) Chapters 88.16 RCW and 363-116 WAC, and other relevant state and federal regulations in effect on the date the examination notice is published pursuant to WAC 363-116-076; and

(cc) Courses in degrees true and distances in nautical miles and tenths of miles between points of land, navigational buoys and fixed geographical reference points, and the distance off points of land for such courses as determined by parallel indexing along pilotage routes.

(9) Rest. It is the pilot trainee's responsibility to provide adequate rest time so that he/she is fully able to pilot on training trips. Pilot trainees shall not take pilot training trips in which they will be piloting the vessel without observing the rest rules for pilots in place by federal or state law or regulation or any other rest requirements contained in a training program. For purposes of calculating rest required before a training trip in which the pilot trainee will be piloting after an observation trip in which the pilot trainee did not pilot the vessel, such observation trip shall be treated as though it had been a normal pilot training assignment.

(10) Stipend.

(a) At the initial meeting with the trainee evaluation committee (TEC) the pilot trainee shall indicate whether he/she wishes to receive a stipend during their training program. In the Puget Sound pilotage district, as a condition of receiving such stipend, pilot trainees will agree to forego during their training program other full- or part-time employment which prevents them from devoting themselves on a full-time basis to the completion of their training program. With the consent of the board and, if necessary, the restructuring of their training program, pilot trainees may elect to change from a stipend to nonstipend status, and vice versa, during their training program. In the Puget Sound pilotage district the stipend paid to pilot trainees shall be six thousand dollars per month (or such other amount as may be set by the board from time to time), shall be contingent upon the board's setting of a training surcharge in the tariffs levied pursuant to WAC 363-116-300 sufficient to cover the expense of the stipend and shall be paid from a pilot training account as directed by the board and pursuant thereto shall be paid to pilot trainees as set forth below:

(b) In the Grays Harbor pilotage district the stipend paid to pilot trainees shall be determined by the board and shall be contingent upon the board's ((~~setting of a training surcharge in the tariffs levied pursuant to WAC 363-116-185~~)) receipt of funds, from any party collecting the tariff or providing funds, sufficient to cover the expense of the stipend and shall be paid from a pilot training account as directed by the board and pursuant thereto shall be paid to pilot trainees as set forth below:

((~~(i)~~)) Determinations as to stipend entitlement will be made on a full calendar month basis and documentation of trips will be submitted to the board by the fifth day of the following month. The stipend will be paid on an all or nothing

basis for each month except that prorations shall be allowed at the rate of two hundred dollars per day (or such other amount as may be set by the board from time to time), under the following circumstances:

(((~~(A)~~))) (i) For the first and last months of a training program (unless the training program starts on the first or ends on the last day of a month); or

(((~~(B)~~))) (ii) For a pilot trainee who is deemed unfit for duty by a board-designated physician during a training month; or

(((~~(C)~~))) (iii) For a pilot trainee who requests a change from a nonstipend status to a stipend status, or from a stipend status to a nonstipend status as set forth in (((~~(a)(vi)~~))) (g) of this subsection.

(((~~(ii)~~))) (c) In the Puget Sound pilotage district a minimum of eighteen trips are required each month for eligibility to receive the stipend. In the Grays Harbor pilotage district the minimum number of trips each month for eligibility to receive the stipend is (((~~fifty~~))) seventy percent or such number or percentage of trips that may be set by the board of the total number of vessel movements occurring in this district during that month. Only trips required by the training program can be used to satisfy these minimums. Trips will be documented at the end of each month.

(((~~(iii)~~))) (d) It is the pilot trainee's responsibility to make all hard-to-get trips before the end of the training program. If a training program is extended due to a failure to get all of these trips, the board may elect not to pay the stipend if the missing trips were available to the pilot trainee but not taken.

(((~~(iv)~~))) (e) The TEC with approval by the board may allocate, assign or specify training trips among multiple pilot trainees. Generally, the pilot trainee who entered his/her training program earlier has the right of first refusal of training trips provided that the TEC may, with approval by the board, allocate or assign training trips differently as follows:

(((~~(A)~~))) (i) When it is necessary to accommodate any pilot trainee's initial route;

(((~~(B)~~))) (ii) When it is necessary to spread hard-to-get trips among pilot trainees so that as many as possible complete required trips on time. If a pilot trainee is deprived of a hard-to-get trip by the TEC, that trip will not be considered "available" under (((~~(a)(ii)~~))) (c) of this subsection. However, the pilot trainee will still be required to complete the minimum number of trips for the month in order to receive a stipend, and the minimum number of trips as required to complete his/her training program;

(((~~(v)~~))) (f) If a pilot trainee elects to engage in any full-or part-time employment, the terms and conditions of such employment must be submitted to the TEC for prior determination by the board of whether such employment complies with the intent of this section prohibiting employment that "prevents (pilot trainees) from devoting themselves on a full-time basis to the completion of the training program."

(((~~(vi)~~))) (g) If a pilot trainee requests to change to a nonstipend status as provided in this section such change shall be effective for a minimum nonstipend period of thirty days, provided that before any change takes effect the board and the pilot trainee must agree in writing on the terms of a revised training program.

(((~~(b)~~))) (h) Any approved pilot association or other organization collecting the pilotage tariff levied by WAC 363-116-185 or 363-116-300 shall transfer the pilot training surcharge receipts to the board at least once a month or otherwise dispose of such funds as directed by the board. In the Grays Harbor pilotage district, if there is no separate training surcharge in the tariff, any organization collecting the pilotage tariff levied by WAC 363-116-185 shall transfer sufficient funds to pay the stipend to the board at least once a month or otherwise dispose of such funds as directed by the board. The board may set different training stipends for different pilotage districts. Receipts from the training surcharge shall not belong to the pilot providing the service to the ship that generated the surcharge or to the pilot association or other organization collecting the surcharge receipts, but shall be disposed of as directed by the board. Pilot associations or other organizations collecting surcharge receipts shall provide an accounting of such funds to the board on a quarterly basis or at such other intervals as may be requested by the board. Any audited financial statements filed by pilot associations or other organizations collecting pilotage tariffs shall include an accounting of the collection and disposition of these surcharges. The board shall direct the disposition of all funds in the account.

(11) Trainee evaluation committee. There is hereby created a trainee evaluation committee (TEC) to which members shall be appointed by the board. The TEC shall include at a minimum: Three active licensed Washington state pilots, who, to the extent possible, shall be from the pilotage district in which the pilot trainee seeks a license and at least one of whom shall be a member of the board; one representative of the marine industry (who may be a board member) who holds, or has held, the minimum U.S. Coast Guard license required by RCW 88.16.090; and one other member of the board who is not a pilot. The TEC may include such other persons as may be appointed by the board. The TEC shall be chaired by a pilot member of the board and shall meet as necessary to complete the tasks accorded it. In the event that the TEC cannot reach consensus with regard to any issue it shall report both majority and minority opinions to the board.

(12) Training pilots. The board shall designate as training pilots those pilots who are willing to undergo such specialized training as the board may require and provide. Training pilots shall receive such training from the board to better enable them to give guidance and training to pilot trainees and to properly evaluate the performance of pilot trainees. The board shall keep a list of training pilots available for public inspection at all times. All pilot members of the trainee evaluation committee (TEC) shall also be training pilots.

(13) Training and assessment. Before, during and after a pilot trainee pilots a vessel under the supervision of a pilot on a training trip, the supervising pilot shall, to the extent possible, communicate with and give guidance to the pilot trainee in an effort to make the trip a valuable learning experience. On an evaluation trip, this communication will normally occur after completion of the trip. After each trip, the supervising pilot shall complete a trip report form provided by the board. Trip report forms prepared by licensed pilots who are not training pilots shall be used by the trainee evaluation committee (TEC) and the board for assessing a pilot trainee's

progress, providing guidance to the pilot trainee and for making alterations to a training program. The use of trip report forms prepared by licensed pilots who are not training pilots shall be appropriately weighed by the board and the TEC when making licensing decisions and recommendations. All trip report forms shall be delivered or mailed by the supervising pilot to the board. They shall not be given to the pilot trainee. The supervising pilot may show the contents of the form to the pilot trainee, but the pilot trainee has no right to see the form until it is filed with the board. The TEC shall review these trip report forms from time to time and the chairperson of the TEC shall report the progress of all pilot trainees at each meeting of the board. If it deems it necessary, the TEC may recommend, and the board may make, changes from time to time in the training program requirements applicable to a pilot trainee, including the number of trips in a training program.

(14) Termination of and removal from a training program. A pilot trainee's program may be immediately terminated and the trainee removed from a training program by the board if it finds any of the following:

(a) Failure to maintain the minimum federal license required by RCW 88.16.090;

(b) Conviction of an offense involving drugs or involving the personal consumption of alcohol;

(c) Failure to devote full time to training in the Puget Sound pilotage district if receiving a stipend;

(d) The pilot trainee is not physically fit to pilot;

(e) Failure to make satisfactory progress toward timely completion of the program or timely meeting of interim performance requirements in a training program;

(f) Inadequate performance on examinations or other actions required by a training program;

(g) Failure to complete the initial route requirements specified in subsection (5) of this section within the time periods specified;

(h) Inadequate, unsafe, or inconsistent performance in a training program and/or on training trips as determined by the supervising pilots, the trainee evaluation committee (TEC) and/or the board; or

(i) Violation of a training program requirement, law, regulation or directive of the board.

(15) Completion of a training program shall include the requirement that the pilot trainee:

(a) Successfully and timely complete the requirements set forth in the training program;

(b) Possess a valid first class pilotage endorsement without tonnage or other restrictions on his/her United States government license to pilot in all of the waters of the pilotage district in which the pilot applicant seeks a license; and

(c) Successfully complete any local knowledge examination(s) required by the board and specified in the training program.

WSR 13-04-078

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed February 5, 2013, 10:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-21-085.

Title of Rule and Other Identifying Information: Chapter 196-26A WAC, Registered professional engineers and land surveyors fees.

Hearing Location(s): Department of Licensing, Business and Professions Division, 405 Black Lake Boulevard, Room 2105, Olympia, WA 98502, on March 14, 2013, at 9:00 a.m.

Date of Intended Adoption: April 4, 2013.

Submit Written Comments to: George A. Twiss, PLS, Executive Director, Board of Professional Engineers and Land Surveyors, P.O. Box 9025, Olympia, WA 98507-9025, e-mail engineers@dol.wa.gov, fax (360) 664-2551, by March 13, 2013.

Assistance for Persons with Disabilities: Contact Cassandra Fewell, executive assistant, by March 13, 2013, TTY (360) 664-8885 or (360) 664-1564.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments to chapter 196-26A WAC are necessary to make a reduction in renewal fees charged to licensees. These adjustments are being made to assure revenue collections are consistent with expenditures and do not result in an over-collection.

Reasons Supporting Proposal: This proposal will reduce the renewal fees that professional engineers and land surveyors pay the state thus making their access to state services less burdensome and their cost to do business lower. The limited suspension (two years) will enable the department and the program to more quickly respond to changing economic impacts.

Statutory Authority for Adoption: RCW 18.43.080, 43.24.086.

Statute Being Implemented: Chapter 18.43 RCW.

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

Name of Proponent: Board of registration for professional engineer[s] and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: George Twiss, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1565.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no negative economic impact to the licensees.

A cost-benefit analysis is not required under RCW 34.05.328. There is no negative economic impact to the licensees.

February 5, 2013

Damon Monroe

Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-13-171, filed 6/23/10, effective 8/1/10)

WAC 196-26A-110 Suspended fees. Effective ((~~August 1, 2010~~)) July 1, 2013, the following fees will have the listed portions suspended from collection until ((~~July 31, 2012~~)) August 31, 2015.

Fee categories	Current Fees	Portion Suspended	Temporary Fees
License Renewals:			
Engineer	$116	$((~~40~~)) 56	$((~~76~~)) 60
Engineer late renewal penalty	$174	$((~~60~~)) 84	$((~~114~~)) 90
Surveyor	$116	$((~~40~~)) 56	$((~~76~~)) 60
Surveyor late renewal penalty	$174	$((~~60~~)) 84	$((~~114~~)) 90

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 196-26A-100	Suspended fees.

WSR 13-04-080
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed February 5, 2013, 10:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-11-103.

Title of Rule and Other Identifying Information: Amending WAC 182-531-1500 Sleep studies and 182-550-1800 Hospital specialty services not requiring prior authorization; and repealing WAC 182-550-6350 Outpatient sleep apnea/sleep study programs.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://maa.dshs.wa.gov/pdf/CherryStreet DirectionsNMap.pdf or directions can be obtained by calling (360) 725-1000), on March 12, 2013, at 10:00 a.m.

Date of Intended Adoption: Not sooner than March 13, 2013.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on March 12, 2013.

Assistance for Persons with Disabilities: Contact Kelly Richters by March 5, 2013, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As a result of a health technology assessment, the agency is amending centers of excellence criteria to include nonhospital-owned and operated facilities in the agency-approved sleep study list.

Reasons Supporting Proposal: This action to improve access to care.

Statutory Authority for Adoption: RCW 41.05.021.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason R. P. Crabbe, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1346; Implementation and Enforcement: Maureen Guzman, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-2033.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rule amendments and concludes that they do not impose a disproportionate cost impact on small businesses. As a result, the preparation of a small business economic impact statement is not required.

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.

February 5, 2013
Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-531-1500 Sleep studies. (((~~(1) 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 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 a department-approved sleep study center, a sleep lab must send 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, the department requires the provider to submit accreditation for the new director. If an accredited director moves to a facility that the department has not approved, the provider must submit certification for the facility.~~)) (1) Purpose. For the purposes of this section, sleep studies include polysomnography (PSG) and multiple sleep latency testing (MSLT). The medicaid agency covers attended, full-channel, PSG and MSLT when:

(a) Ordered by the client's physician;

(b) Performed in an agency-designated center of excellence (COE) that is an independent diagnostic testing facility, sleep laboratory, or outpatient hospital; and

(c) Results are used to:

(i) Establish a diagnosis of narcolepsy or sleep apnea; or

(ii) Evaluate a client's response to therapy, such as continuous positive airway pressure (CPAP).

(2) Definitions. The following definitions, those found in chapter 182-500 WAC, and definitions found in other sections of this chapter, apply to this section:

(a) "American Academy of Sleep Medicine" or "AASM" - The only professional society dedicated exclusively to the medical subspecialty of sleep medicine. AASM sets standards and promotes excellence in health care, education, and research. Members specialize in studying, diagnosing, and treating disorders of sleep and daytime alertness such as insomnia, narcolepsy, and obstructive sleep apnea.

(b) "Continuous positive airway pressure" or "CPAP" - See WAC 182-552-0005.

(c) "Core provider agreement" or "CPA" - The basic contract the agency holds with providers serving medical assistance clients.

(d) "Multiple sleep latency test" or "MSLT" - A sleep disorder diagnostic tool used to measure the time elapsed from the start of a daytime nap period to the first signs of sleep, called sleep latency. The MSLT is used extensively to test for narcolepsy, to distinguish between physical tiredness and true excessive daytime sleepiness, or to assess whether treatments for breathing disorders are working.

(e) "Obstructive sleep apnea" or "OSA" - See WAC 182-552-0005.

(f) "Polysomnogram" - The test results from a polysomnography.

(g) "Polysomnography" - A multiparametric test that electronically transmits and records specific physical activities while a person sleeps. The recordings become data that are analyzed by a qualified sleep specialist to determine whether or not a person has a sleep disorder.

(h) "PSG" - The abbreviation for both "polysomnography" and "polysomnogram."

(i) "Registered polysomnographic technologist" or "RPSGT" - A sleep technologist credentialed by the board of registered polysomnographic technologists to assist sleep specialists in the clinical assessment, physiological monitoring and testing, diagnosis, management, and prevention of sleep-related disorders with the use of various diagnostic and therapeutic tools. These tools include, but are not limited to, polysomnograph, positive airway pressure devices, oximeter, capnograph, actigraph, nocturnal oxygen, screening devices, and questionnaires. To become certified as a registered polysomnographic technologist, a sleep technologist must have the necessary clinical experience, hold CPR certification or its equivalent, adhere to the board of registered polysomnographic technologists standards of conduct, and pass the registered polysomnographic technologist examination for polysomnographic technologists.

(3) Client eligibility. Clients in the following agency programs are eligible to receive sleep studies as described in this section:

(a) Categorically needy (CN);

(b) Apple health for kids and other children's medical assistance programs as defined in WAC 182-505-0210;

(c) Medical care services as described in WAC 182-508-0005 (within Washington state or border areas only);

(d) Alcoholism and Drug Addiction Treatment and Support Act (ADATSA) (within Washington state or border areas only); and

(e) Medically needy (MN) only when the client is either:

(i) Twenty years of age or younger and referred by a screening provider under the early and periodic screening, diagnosis, and treatment program as described in chapter 182-534 WAC; or

(ii) Receiving home health care services as described in chapter 182-551 WAC, subchapter II.

(4) Provider requirements. To be paid for providing sleep studies as described in this section to eligible clients, the facility must:

(a) Be a sleep study COE. Refer to subsection (5) of this section for information on becoming an agency-approved sleep study COE;

(b) Be currently accredited by AASM and continuously meet the accreditation standards of AASM;

(c) Have at least one physician on staff who is board certified in sleep medicine; and

(d) Have at least one registered polysomnographic technologist (RPSGT) in the sleep lab when studies are being performed.

(5) Documentation.

(a) To become an agency-approved COE, a sleep center must send the following documentation to the Health Care Authority, c/o Provider Enrollment, P.O. Box 45510, Olympia, WA 98504-5510:

(i) A completed CPA; and

(ii) Copies of the following:

(A) The sleep center's current accreditation certificate by AASM;

(B) Either of the following certifications for at least one physician on staff:

(I) Current certification in sleep medicine by the American Board of Sleep Medicine (ABSM); or

(II) Current subspecialty certification in sleep medicine by a member of the American Board of Medical Specialties (ABMS); and

(C) The certification of an RPSGT who is employed by the sleep center.

(b) Sleep centers must request reaccreditation from AASM in time to avoid expiration of COE status with the agency.

(c) At least one physician on staff at the sleep center must be board certified in sleep medicine. If the only physician on staff who is board certified in sleep medicine resigns, the sleep center must ensure another physician on staff at the sleep center obtains board certification or another board-certified physician is hired. The sleep center must then send provider enrollment a copy of the physician's board certification.

(d) If a certified medical director leaves a COE, the COE status does not transfer with the medical director to another sleep center.

(e) The COE must maintain a record of the physician's order for the sleep study.

(6) Coverage.

(a) The agency covers only medically necessary sleep studies. The need for the sleep study must be confirmed by medical evidence (e.g., physician examination and laboratory tests).

(b) For clients twenty-one years of age and older, the agency covers:

(i) Full-night, in-laboratory PSG for either of the following:

(A) Confirmation of obstructive sleep apnea (OSA) in an individual with signs or symptoms consistent with OSA (e.g., loud snoring, awakening with gasping or choking, excessive daytime sleepiness, observed cessation of breathing during sleep, etc.); or

(B) Titration of positive airway pressure therapy when initial PSG confirms the diagnosis of OSA, and positive airway pressure is ordered; or

(ii) Split-night, in-laboratory PSG in which the initial diagnostic portion of the PSG is followed by positive airway pressure titration when the PSG meets either of the following criteria:

(A) The apnea-hypopnea index (AHI) or respiratory disturbance index (RDI) is greater than or equal to fifteen events per hour with a minimum of thirty events; or

(B) The AHI or RDI is greater than or equal to five and less than or equal to fourteen events per hour with a minimum of ten events with documentation of either of the following:

(I) Excessive daytime sleepiness, impaired cognition, mood disorders, or insomnia; or

(II) Hypertension, ischemic heart disease, or history of stroke.

(c) For clients younger than twenty-one years of age, the agency considers any of the following indications as medically necessary criteria for a sleep study:

(i) OSA suspected based on clinical assessment;

(ii) Obesity, Trisomy 21, craniofacial abnormalities, neuromuscular disorders, sickle cell disease, or mucopolysaccharidosis (MPS), prior to adenotonsillectomy in a child;

(iii) Residual symptoms of OSA following mild preoperative OSA;

(iv) Residual symptoms of OSA in a child with preoperative evidence of moderate to severe OSA, obesity, craniofacial anomalies that obstruct the upper airway, or neurologic disorder following adenotonsillectomy;

(v) Titration of positive airway pressure in a child with OSA;

(vi) Suspected congenital central alveolar hypoventilation syndrome or sleep related hypoventilation due to neuromuscular disorder or chest wall deformities;

(vii) Primary apnea of infancy;

(viii) Evidence of a sleep-related breathing disorder in an infant who has experienced an apparent life threatening event;

(ix) Child being considered for adenotonsillectomy to treat OSA; or

(x) Clinical suspicion of an accompanying sleep-related breathing disorder in a child with chronic asthma, cystic fibrosis, pulmonary hypertension, bronchopulmonary dysplasia, or chest wall abnormality.

(7) Noncoverage. The agency does not cover sleep studies:

(a) When the sleep study is an unattended home study;

(b) When documentation for a repeat study does not indicate medical necessity (e.g., no new clinical documentation indicating the need for a repeat study); or

(c) For the following indications, except when an underlying physiology exists (e.g., loud snoring, awakening with gasping or choking, excessive daytime sleepiness, observed cessation of breathing during sleep, etc.):

(i) Chronic insomnia; and

(ii) Snoring.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-1800 Hospital specialty services not requiring prior authorization. The ((~~department~~)) medicaid agency pays for certain specialty services without requiring prior authorization when such services are provided consistent with ((~~department~~)) agency medical necessity and utilization review standards. These services include, but are not limited to, the following:

(1) All transplant procedures specified in WAC ((~~388-550-1900~~)) 182-550-1900(2) under the conditions established in WAC ((~~388-550-1900~~)) 182-550-1900;

(2) Chronic pain management services, including outpatient evaluation and inpatient treatment, as described under WAC ((~~388-550-2400~~)) 182-550-2400;

(3) Polysomnograms and multiple sleep latency tests ((~~for clients one year of age and older (allowed only in outpatient hospital settings)~~)), as described under WAC ((~~388-550-6350~~)) 182-531-1500;

(4) Diabetes education (allowed only in outpatient hospital setting), as described under WAC ((~~388-550-6400~~)) 182-550-6400; and

(5) Weight loss program (allowed only in outpatient hospital setting), as described under WAC ((~~388-550-6450~~)) 182-550-6450.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-550-6350	Outpatient sleep apnea/sleep study programs.

WSR 13-04-081
PROPOSED RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed February 5, 2013, 12:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-23-034.

Title of Rule and Other Identifying Information: Amends WAC 181-78A-250 to reduce certain requirements

for professional educator advisory boards a [and] preparation programs.

Hearing Location(s): Coast Wenatchee Center Hotel, 201 North Wenatchee Avenue, Wenatchee, WA 98801, on May 16, 3012 [2013], at 8:30 a.m.

Date of Intended Adoption: May 16, 2013.

Submit Written Comments to: David Brenna, Old Capitol Building, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by May 9, 2013.

Assistance for Persons with Disabilities: Contact David Brenna by May 9, 2013, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Reduces certain requirements for advisory boards.

Reasons Supporting Proposal: Stakeholder supported.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is not required under RCW 34.05.328. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) and (2).

February 5, 2013
David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 09-20-110, filed 10/7/09, effective 11/7/09)

WAC 181-78A-250 Approval standards professional education advisory board. Building on the mission to prepare educators who demonstrate a positive impact on student learning, the following evidence shall be evaluated to determine whether each preparation program is in compliance with the program approval standards of WAC 181-78A-220(1):

(1) The ((~~college or university~~)) professional education advisory board has been established in accordance with WAC 181-78A-209.

(2) ((~~The educational service district professional education advisory board for a teacher professional certification program has been established in accordance with WAC 181-78A-520.~~

(~~3~~))) The professional education advisory board has adopted operating procedures and has met at least three times a year.

(((~~4~~))) (3) The professional education advisory board has reviewed all program approval standards at least once every five years.

(((~~5~~))) (4) The professional education advisory board annually has reviewed and analyzed data for the purposes of determining whether candidates have a positive impact on student learning and providing the institution with recommendations for programmatic change. This data may include, but not be limited to: Student surveys, follow-up studies, employment placement records, student performance portfolios, course evaluations, and summaries of performance on the pedagogy assessment for teacher candidates.

(((~~6~~))) (5) The professional education advisory board has made recommendations when appropriate for program changes to the institution which must in turn consider and respond to the recommendations in writing in a timely fashion.

(((~~7) The professional education advisory board annually has seen, reviewed and approved an executive summary of the activities of the professional education advisory board. The college, university or educational service district has submitted the approved executive summary to the professional educator standards board.~~

~~(8) The professional education advisory board for administrator preparation programs participated in the candidate selection process for principal preparation programs.~~))

WSR 13-04-086
PROPOSED RULES
NORTHWEST CLEAN AIR AGENCY

[Filed February 5, 2013, 3:01 p.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Regulation of the Northwest Clean Air Agency (NWCAA).

Hearing Location(s): NWCAA, 1600 South Second Street, Mount Vernon, WA 98273, on March 13, 2013, at 9:00 a.m.

Date of Intended Adoption: March 14, 2013.

Submit Written Comments to: Mark Buford, NWCAA, 1600 South Second Street, Mount Vernon, WA 98273, e-mail mark@nwcleanair.org, fax (360) 428-1620, by March 13, 2013, at 11:00 a.m.

Assistance for Persons with Disabilities: Contact Laurie Caskey-Schreiber by March 7, 2013, (360) 428-1617 ext. 215.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

- Clarify the requirement for reasonably available control technology (RACT) for all existing sources pursuant to RCW 70.94.154 and to describe how the RACT program is implemented. (New NWCAA Section 309.)
- Clarify the existing requirements to better reflect the requirements in the RCW regarding orders, including issuance, fee assessment, appeals, and relation

to enforcement. (Amended NWCAA Sections 121, 122, 123, 131, 200 (excerpt), 324.)

- Exclude the adoption-by-reference to the RACT requirement in WAC 173-400-040(1) in favor of the RACT program proposed to be listed in the NWCAA rule to clarify the regulatory pathway. (Amended NWCAA Section 104.)
- Update the effectiveness dates under NWCAA Section 104 to ensure that the most recent versions of the referenced regulations are adopted. Also update section to reflect changes in the revised chapter 173-400 WAC. (Amended NWCAA Section 104.)
- Adopt by reference the following federal rules: 40 C.F.R. 60 Subpart LLLL (Standards of Performance for New Sewage Sludge Incineration Units), 40 C.F.R. 63 Subpart WWWWW (National Emission Standards for Hospital Ethylene Oxide Sterilizers), 40 C.F.R. 63 Subpart QQQQQQ (National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources), 40 C.F.R. 63 Subpart TTTTTT (National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources), 40 C.F.R. 63 Subpart ZZZZZZ (National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries), 40 C.F.R. 63 Subpart AAAAAAA (National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing), and 40 C.F.R. 63 Subpart DDDDDDD (National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing). (Amended NWCAA Section 104.)
- Update the cross-references in NWCAA Section 350 to reflect the renumbering of certain sections and update to reflect current NWCAA rule numbering template. (Amended NWCAA Section 350.)

New/Amended Regulation Section Derivations:

Amended NWCAA 121.1: Based on RCW 70.94.141(3) and new language.

Amended NWCAA 121.2: Based on former NWCAA 121.1.

Amended NWCAA 121.3: New language.

Amended NWCAA 121.4: New language.

New NWCAA 121.5: New language.

New NWCAA 121.6: New language.

New NWCAA 121.7: New language.

Amended NWCAA 123.1: Based on RCW 70.94.221, 43.21B.230, and new language.

Amended NWCAA 123.2: Based on RCW 43.21B.310 (1) and (2).

Amended NWCAA 131.1: Based on RCW 70.94.211.

Amended NWCAA 131.2: Based on former NWCAA 131.21 and 131.3.

Amended NWCAA 200 - "Compliance Order" with definition: New entry with new definition.

New NWCAA 324.7: New language.

New NWCAA 324.8: Based on former NWCAA 324.6.

Distributions for Section Being Replaced:

Former NWCAA 121.1: See NWCAA 121.2.

Former NWCAA 121.2: Deleted.

Former NWCAA 121.3: See NWCAA 131.1.

Former NWCAA 121.4: See NWCAA 123.1.

Former NWCAA 122.1: See NWCAA 123.1.

Former NWCAA 122.2: Deleted.

Former NWCAA 123.3: See NWCAA 123.2.

Former NWCAA 123.4: Deleted.

Former NWCAA 123.5: Deleted.

Former NWCAA 131.2: See NWCAA 131.1.

Former NWCAA 131.3: Renumbered to NWCAA 131.2.

Reasons Supporting Proposal: See bullet list above.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141 (1), (3), and 70.94.154.

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

Name of Proponent: NWCCA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mark Asmundson, 1600 South Second Street, Mount Vernon, WA, (360) 428-1617.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable under RCW 70.94.141.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable under RCW 70.94.141.

February 5, 2013
Mark Buford
Assistant Director

AMENDATORY SECTION

Section 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES

104.1 All provisions of State Law that are in effect as of February 20, 2013 ((~~July 18, 2012~~)), which are pertinent to the operation of the NWCAA, are hereby adopted by reference and made part of the Regulation of the NWCAA. Specifically, there is adopted by reference the portions pertinent to the operation of the NWCAA of the Washington State Clean Air Act (chapter 70.94 RCW), the Administrative Procedure((~~s~~)) Act (chapter 34.05 RCW) and chapters 43.21A and 43.21B RCW and the following state rules: chapter 173-400 WAC, (except - -035, -036, -040(1), ((~~-070(8),~~)) -075, -099, -100, -101, -102, -103, -104, -105 (((~~(8)~~))) (7), -110, -114, -115, -116, -171, -930), chapter 173-401 WAC, chapter 173-407 WAC, chapter 173-420 WAC, chapter 173-425 WAC, chapter 173-430 WAC, chapter 173-433 WAC, chapter 173-434 WAC, chapter 173-435 WAC, chapter 173-441 WAC, chapter 173-450 WAC, chapter 173-460 WAC, chapter 173-470 WAC, chapter 173-474 WAC, chapter 173-475 WAC, chapter 173-481 WAC, chapter 173-490 WAC, chapter 173-491 WAC, chapter 173-492 WAC, and chapter 173-495 WAC.

104.2 All provisions of the following federal rules that are in effect as of February 20, 2013 ((~~July 18, 2012~~)) are hereby adopted by reference and made part of the Regulation of the NWCAA: 40 CFR Part 51 (Requirements for Prepara-

tion, Adoption, and Submittal of Implementation Plans) Appendix M; 40 CFR Part 60 (Standards of Performance For New Stationary Sources) subparts A, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, H, I, J, Ja, K, Ka, Kb, L, M, N, Na, O, P, Q, R, T, U, V, W, X, Y, Z, AA, AAa, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, VVa, WW, XX, AAA, BBB, DDD, FFF, GGG, GGGa, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, AAAA, CCCC, EEEE, IIII, JJJJ, KKKK, LLLL, and Appendix A - I; and 40 CFR Part 61 (National Emission Standards For Hazardous Air Pollutants) Subparts A, C, D, E, F, J, L, M, N, O, P, V, Y, BB, FF and 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) Subparts A, B, C, D, F, G, H, I, L, M, N, O, Q, R, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, FFFFF, GGGGG, HHHHH, IIIII, LLLLL, MMMMM, NNNNN, PPPPP, QQQQQ, RRRRR, SSSSS, TTTTT, WWWWW, YYYYY, ZZZZZ, CCCCCC, EEEEEE, FFFFFF, GGGGGG, MMMMMM, NNNNNN, QQQQQQ, SSSSSS, TTTTTT, VVVVVV, ZZZZZZ, AAAAAAA, DDDDDDD; and 40 CFR 72, 73, 74, 75, 76, 77 and 78 (Acid Rain Program).

PASSED: July 8, 1970 AMENDED: April 14, 1993, September 8, 1993, December 8, 1993, October 13, 1994, May 11, 1995, February 8, 1996, May 9, 1996, March 13, 1997, May 14, 1998, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011, November 17, 2011, August 9, 2012, March 14, 2013

AMENDATORY SECTION

Section 121 - ORDERS

121.1 The NWCAA may issue such orders as may be necessary to effectuate and enforce the purposes of chapter 70.94 RCW or the rules adopted thereunder. ((~~If the Board or Control Officer has reason to believe that any provision of this Regulation has been violated, the Board or Control Officer, may, in addition to any other remedy of law, issue an order, or orders, that the necessary corrective action be taken within a reasonable time. Such order or orders may advise methods for the prevention, abatement or control of the emission involved for taking of such other corrective actions as may be appropriate. Any order or orders issued as a part of a notice or independently may prescribe the date or dates by which the violation or violations shall cease and may prescribe time schedules for necessary action in preventing, abating or controlling the emissions, and shall be reported to the Board at its next regular meeting.~~))

121.2 If the NWCAA has reason to believe that any provision of chapter 70.94 RCW or the rules adopted thereunder has been violated, the NWCAA may, in addition to any other remedy of law, issue an order that requires corrective action be taken within a reasonable time. Such compliance orders may include dates by which the violation or violations shall cease and may set time schedules for necessary action in preventing, abating, or controlling the emissions. ((~~In lieu of an order the Board may hold a hearing to determine if a violation has occurred or is occurring and if a finding is made that a violation has occurred may issue an order under Section 121.1 of this Regulation.~~))

121.3 Orders of approval related to the establishment of a source are addressed under NWCAA 300, in lieu of the requirements in this section. ((~~In lieu of an order the Board or Control Officer may require that the alleged violator or violators appear before the NWCAA Board pursuant to state law.~~))

121.4 General Orders of Approval are issued under WAC 173-400-560, as adopted in NWCAA 104.1, in lieu of the requirements in this section. ((~~Any orders issued by the Board or Control Officer are subject to appeal under Section 122 of this Regulation and RCW 43.21.B.~~))

121.5 Any order issued under this section that includes an action listed in NWCAA 305.2(A) is subject to the public involvement provisions of NWCAA 305.

121.6 For regulatory orders related to a RACT determination, a fee shall be assessed in accordance with NWCAA 309.7. For all other orders issued under NWCAA 121, the NWCAA shall assess a fee as specified in NWCAA 324.7 to cover the costs of processing and issuing such order.

121.7 When an applicant requests a regulatory order to limit the potential to emit of any air contaminant or contaminants pursuant to WAC 173-400-091, as adopted in NWCAA 104.1, or requests a modification to such an order, the NWCAA shall issue such order consistent with the requirements of WAC 173-400-091 as adopted in NWCAA 104.1 in addition to the requirements of this Regulation.

PASSED: January 8, 1969 AMENDED: July 8, 1970, February 14, 1973, November 8, 2007, March 14, 2013

AMENDATORY SECTION

Section 122 - (RESERVED) ((~~APPEALS FROM ORDERS OR FORMAL ENFORCEMENT ACTION~~))

((~~122.1 Any order issued by the Board or Control Officer shall become final unless, no later than thirty (30) days after the date that the order is served, the person aggrieved by the order appeals to the Pollution Control Hearings Board as provided by state law.~~

~~122.2 The final decision and order of the Pollution Control Hearings Board after a hearing shall become final unless no later than thirty (30) days after the issuance of such order, a petition requesting judicial review is filed in Superior Court in accordance with RCW 34.05.~~

~~PASSED: January 8, 1969 AMENDED: July 8, 1970, July 10, 2003, November 8, 2007~~))

AMENDATORY SECTION

Section 123 - ((~~STATUS OF ORDERS ON APPEAL~~)) APPEAL OF ORDERS

123.1 Any order issued by the NWCAA shall become final unless, no later than thirty (30) days after the date that

the order is served, any person appeals the order to the Pollution Control Hearings Board as provided by chapter 43.21B RCW. This is the exclusive means of appeal of such an order. ((~~Any order issued by the Board or Control Officer under the NWCAA Regulation Section 121 may be appealed.~~))

123.2 Any order issued by the NWCAA ((~~Board or Control Officer,~~)) under appeal in accordance with chapter ((~~RCW~~)) 43.21B RCW shall remain in effect during the pendency of such appeal unless the ((~~Board or~~)) Control Officer, at his/her ((~~their~~)) discretion, issues a ((~~S~~))stay of the original order. At any time during the pendency of an appeal of such an order to the Pollution Control Hearings Board, the appellant may apply to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW to stay or vacate the order.

((~~123.3 The appellant may also apply to the Pollution Control Hearings Board at any time for a stay of such order per RCW 43.21B.320.~~))

((~~123.4 Such notice of appeal to the Pollution Control Hearings Board must contain the following information:~~

~~(a) The appellant's name and address;~~

~~(b) The date and number of the order or permit that is subject to the appeal;~~

~~(c) Description of the substance of the order or permit that is the subject of the appeal;~~

~~(d) A clear, separate, and concise statement of each error alleged to have been committed;~~

~~(e) A clear, separate and concise statement of facts upon which the appellant relies to sustain the statements of error; and~~

~~(f) A statement setting forth the relief sought.~~))

((~~123.5 The Board or Control Officer may request the attorney for the NWCAA to bring action in Superior Court to obtain any such relief as is necessary to insure compliance with said order, including injunctive relief.~~

~~No bond shall be required from the NWCAA as a condition of granting any restraining order or temporary injunction.~~))

PASSED: January 8, 1969 AMENDED: July 8, 1970, February 14, 1973, November 15, 1988, November 8, 2007, March 14, 2013

AMENDATORY SECTION

SECTION 131 - NOTICE TO VIOLATORS

131.1 At least 30 days prior to the commencement of any formal enforcement action under RCW 70.94.430 or 70.94.431, or NWCAA 132 or 133, ((~~If the Board or Control Officer has reason to believe that a violation of this Regulation has occurred or is occurring,~~)) the ((~~Board, Control Officer, or duly authorized representative~~)) NWCAA shall ((~~may~~)) cause written notice of violation to be served upon the alleged violator. The notice shall specify the provisions of chapter 70.94 RCW or the orders, rules, or regulations adopted pursuant thereto alleged to be violated, and ((~~summarize~~)) the facts alleged to constitute a violation thereof, and may include an order pursuant to NWCAA 121 directing that necessary corrective action be taken within a reasonable time. In lieu of an order, the Control Officer may require that the alleged violator appear before the Board for a hearing pursuant to NWCAA 120. Every notice of violation shall offer to the alleged violator an opportunity to meet with the NWCAA prior to the commencement of enforcement action. ((~~Written notice shall be served at least thirty days prior to the commencement of the imposition of a penalty under RCW 70.94.430 and 70.94.431.~~))

((~~131.2 The Board, Control Officer, or duly authorized representative upon issuance of notice of violation may do any or all of the following:~~

~~131.21 Require that the alleged violator respond in writing or in person within thirty (30) days of the notice and specify the corrective action being taken.~~

~~131.22 Issue an order pursuant to Section 121 of this Regulation.~~

~~131.23 Initiate action pursuant to Sections 132, 133, 134 and 135 of this Regulation.~~

~~131.24 Hold a hearing pursuant to Section 120 of this Regulation.~~

~~131.25 Require the alleged violator or violators appear before the Board.~~

~~131.26 Avail itself of any other remedy provided by law.~~))

131.2((~~3~~)) The NWCAA, upon issuance of notice of violation, may require the alleged violator to respond in writing or in person within thirty (30) days of the notice and specify the corrective action being taken. Failure to respond ((~~as required in Section 131.21~~)) shall constitute a prima facie violation of this Regulation and the NWCAA ((~~Board or Control Officer~~)) may initiate action pursuant to Sections 132, 133, 134, 135 of this Regulation.

PASSED: January 8, 1969 AMENDED: February 14, 1973, ((~~April 14, 1993,~~)) March 13, 1997, July 14, 2005, November 8, 2007, March 14, 2013

AMENDATORY SECTION

Section 200 - DEFINITIONS

…

COMPLIANCE ORDER - An order issued by the NWCAA pursuant to the authority of RCW 70.94.332 and 70.94.141(3) that addresses or resolves a compliance issue regarding any requirement of chapter 70.94 RCW or the rules adopted thereunder. Compliance orders may include, but are not limited to, time schedules and/or necessary actions for preventing, abating, or controlling emissions.

…

ORDER - Any order issued by the NWCAA pursuant to chapter 70.94 RCW, including, but not limited to RCW 70.94.332, 70.94.152, 70.94.153, and 70.94.141(3), and includes, where used in the generic sense, the terms order, ((~~corrective action~~)) compliance order, order of approval, and regulatory order.

…

REGULATORY ORDER - An order issued by ((~~an Authority~~)) the NWCAA to an air contaminant source or sources pursuant to chapter 70.94 RCW including, but not limited to, RCW 70.94.141(3). A regulatory order includes an order which applies to that source((~~,~~)) or sources any applicable provision of chapter 70.94 RCW((~~,~~)) or the rules adopted thereunder((~~, or the NWCAA Regulation~~)).

…

PASSED: January 8, 1969 AMENDED: October 31, 1969, September 3, 1971, June 14, 1972, July 11, 1973, February 14, 1973, January 9, 1974, October 13, 1982, November 14, 1984, April 14, 1993, October 13, 1994, February 8, 1996, May 9, 1996, March 13, 1997, November 12, 1998, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, November 17, 2011, March 14, 2013

NEW SECTION

SECTION 309 - REASONABLY AVAILABLE CONTROL TECHNOLOGY

309.1 Reasonably Available Control Technology (RACT) is required for all existing sources except as otherwise provided in RCW 70.94.331(9).

309.2 Where current controls are determined by the NWCAA to be less than RACT, the NWCAA shall define RACT for that source or source category and issue a rule or an order under NWCAA 121 requiring the installation of RACT.

309.3 RACT for each source category containing three or more sources shall be determined by rule, except as provided in NWCAA 309.4.

309.4 Source-specific RACT determinations may be performed under any of the following circumstances:

(A) For replacement or substantial alteration of existing control equipment under NWCAA 300.13;

(B) When required by the federal Clean Air Act;

(C) For sources in source categories containing fewer than three sources;

(D) When an air quality problem, for which the source is a contributor, justifies a source-specific RACT determination prior to development of a categorical RACT rule; or

(E) When a source-specific RACT determination is needed to address either specific air quality problems, for which the source is a significant contributor, or source-specific economic concerns.

309.5 The Control Officer shall have the authority to perform a RACT determination, to hire a consultant to perform relevant RACT analyses in whole or in part, or to order the owner or operator to perform RACT analyses and submit the results to the NWCAA.

305.6 In determining RACT, the NWCAA shall utilize the factors set forth in the RACT definition in NWCAA 200 and shall consider RACT determinations and guidance made by the EPA, other states, and local authorities for similar sources, and other relevant factors. In establishing or revising RACT requirements, the NWCAA shall address, where practicable, all air contaminants deemed to be of concern for that source or source category.

309.7 The NWCAA shall assess a fee to be paid by any source included in a RACT determination to cover the direct and indirect costs of developing, establishing, or reviewing categorical or source-specific RACT determinations. The fee for RACT determinations shall be as established in NWCAA 324.6. The amount of the fee may not exceed the direct and indirect costs of establishing the requirement for the particular source or the pro rata portion of the direct and indirect costs of establishing the requirement for the relevant source category.

309.8 Emission standards and other requirements contained in rules or regulatory orders in effect at the time of operating permit issuance shall be considered RACT for purposes of operating permit issuance or renewal.

309.9 Replacement or substantial alteration of control equipment under NWCAA 300.13 shall be subject to the New Source Review fees under NWCAA 324.2, in lieu of RACT fees under this section.

PASSED: March 14, 2013

AMENDATORY SECTION

SECTION 324 - FEES

324.1 Annual Registration Fees

(A) The NWCAA shall levy annual registration program fees as set forth in Section 324.1(C) to cover the costs of administering the registration program.

(B) Upon assessment by the NWCAA, registration fees are due and payable. A source shall be assessed a late penalty in the amount of twenty-five percent (25%) of the registration fee for failure to pay the registration fee within thirty (30) days after the due date. The late penalty shall be in addition to the registration fee.

(C) All registered air pollution sources shall pay the appropriate registration fee(s) as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA. ((~~A proposed resolution that changes any fee schedules described in this section shall be posted on the NWCAA website for not less than 30 days prior to the Board of Directors meeting at which the Board takes action on the resolution. In addition, an electronic version of the proposed fee schedule changes shall be provided by e-mail to any person requesting notice of proposed fee schedule changes, not less than 30 days prior to the Board meeting at which such changes are considered. It shall be the ongoing responsibility of a person requesting electronic notice of proposed fee schedule amendments to provide their current e-mail address to the NWCAA, however no person is required to request such notice. Each notice of a proposed fee schedule change shall provide for a comment period on the proposal of not less than 30 days. Any such proposal shall be subject to public comment at the Board meeting where such changes are considered. No final decision on a proposed fee schedule change shall be taken until the public comment period has ended and any comments received during the public comment period have been considered.~~))

324.2 New Source Review Fees

(A) New source review fees and fees for review of an application to replace or substantially alter the emission control technology installed on an existing stationary source emission unit shall be submitted with each Notice of Construction (NOC) application or request for a NOC applicability determination.

(B) The applicable fee(s) shall be established in the current fee schedule adopted by Resolution by the Board of Directors of the NWCAA. ((~~A proposed resolution that changes any fee schedule described in this section shall be posted on the NWCAA website for not less than 30 days prior to the Board of Directors meeting at which the Board takes action on the resolution. In addition, an electronic version of~~

~~the proposed fee schedule changes shall be provided by e-mail to any person requesting notice of proposed fee schedule changes, not less than 30 days prior to the Board meeting at which such changes are considered. It shall be the ongoing responsibility of a person requesting electronic notice of proposed fee schedule amendments to provide their current e-mail address to the NWCAA, however no person is required to request such notice. Each notice of a proposed fee schedule change shall provide for a comment period on the proposal of not less than 30 days. Any such proposal shall be subject to public comment at the Board meeting where such changes are considered. No final decision on a proposed fee schedule change shall be taken until the public comment period has ended and any comments received during the public comment period have been considered.~~))

324.3 Variance Fee. The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.4 Issuance of Emission Reduction Credits. The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.5 Plan and examination, filing, SEPA review, and emission reduction credit fees may be reduced at the discretion of the Control Officer by up to 75 percent for existing stationary sources implementing pollution prevention or undertaking voluntary and enforceable emission reduction projects.

324.6 RACT Fee. The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA. Fees shall be due and payable upon receipt of invoice and shall be deemed delinquent if not fully paid within 30 days of invoice. ((~~A proposed resolution that adopts or changes any fee schedules described in this section shall be posted on the NWCAA website for not less than 30 days prior to the Board of Directors meeting at which the Board takes action on the resolution. In addition, an electronic version of the proposed fee schedule changes shall be provided by e-mail to any person requesting notice of proposed fee schedule changes, not less than 30 days prior to the Board meeting at which such changes are considered. It shall be the ongoing responsibility of a person requesting electronic notice of proposed fee schedule amendments to provide their current e-mail address to the NWCAA; however, no person is required to request such notice. Each notice of a proposed fee schedule change shall provide for a comment period on the proposal of not less than 30 days. Any such proposal shall be subject to public comment at the Board meeting where such changes are considered. No final decision on a proposed fee schedule change shall be taken until the public comment period has ended and any comments received during the public comment period have been considered.~~))

324.7 Order Fee. The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.8 Procedure for Adoption and Revision of Fee Schedules. A proposed resolution that adopts or changes any fee schedules described in this section shall be posted on the NWCAA website for not less than 30 days prior to the Board of Directors meeting at which the Board takes action on the resolution. In addition, an electronic version of the proposed fee schedule or proposed fee schedule changes shall be provided by e-mail to any person requesting notice of proposed fee schedules or proposed fee schedule changes, not less than 30 days prior to the Board meeting at which such changes are considered. It shall be the ongoing responsibility of a person requesting electronic notice of proposed fee schedule amendments to provide their current e-mail address to the NWCAA; however, no person is required to request such notice. Each notice of a proposed fee schedule or proposed fee schedule change shall provide for a comment period on the proposal of not less than 30 days. Any such proposal shall be subject to public comment at the Board meeting where such changes are considered. No final decision on a proposed fee schedule or proposed fee schedule change shall be taken until the public comment period has ended and any comments received during the public comment period have been considered.

PASSED: November 12, 1998 AMENDED: November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, August 9, 2012, March 14, 2013

AMENDATORY SECTION

SECTION 350 - VARIANCES

350.1 Any person who owns or is in control of any plant, building, structure, establishment, process or equipment including a group of persons who own or control like processes or like equipment may apply to the board for a variance from the rules or Regulation governing the quality, nature, duration or extent of discharge of air contaminants. The application shall be accompanied by such information and data as the Board may require. The Board may grant such variance, but only after public hearing or due notice, if it finds that:

((~~350.11~~)) (A) The emissions occurring or proposed to occur do not endanger public health or safety; and

((~~350.12~~)) (B) Compliance with the rules or Regulation from which variance is sought would produce serious hardship without equal or greater benefits to the public.

350.2 No variance shall be granted pursuant to this Section until the Board has considered the relative interests of the applicant, other owners or property likely to be affected by the discharge, and the general public.

350.3 Any variance or renewal thereof shall be granted within the requirements of Section 350.1 and for time periods and under conditions consistent with reasons therefore, and with the following limitations:

((~~350.31~~)) (A) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement, or control of the pollution involved, it shall be only until the necessary means for prevention, abatement, or control becomes known and available, and subject to the taking of any substitute or alternate measure that the Board may prescribe.

((~~350.32~~)) (B) If the variance is granted on the ground that compliance with the particulate requirements or requirement from which variance is sought will require the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a

period not to exceed such reasonable time, as in view of the Board, is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

((~~350.33~~)) (C) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided in subsection ((~~350.31~~)) 350.3(A) and ((~~350.32~~)) 350.3(B), it shall be for not more than one year.

350.4 Any variance granted pursuant to this Section may be renewed on terms and conditions and for periods which would be appropriate under all circumstances including the criteria considered on the initial granting of a variance and that acquired during the existence of the variance. If a complaint is made to the board on account of the variance, no renewal thereof shall be granted unless, following a public hearing on the complaint on due notice, the board finds that renewal is justified. No renewal shall be granted except on application thereof. Any such application shall be made at least sixty (60) days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the Board shall give public notice of such application in accordance with the rules and Regulation of the Board.

350.5 A variance or renewal shall not be a right of the applicant or holder thereof but shall be at the discretion of the Board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the Board, may obtain judicial review thereof under the provisions of Section ((~~121~~)) 123 or Chapter 43.21B RCW as now or hereafter amended.

350.6 Nothing in this Section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of RCW 70.94.715 to any person or his property.

PASSED: January 8, 1969 AMENDED: October 1, 1969, February 14, 1973, January 9, 1974, ((~~April 14, 1993,~~)) September 8, 1993, March 14, 2013

WSR 13-04-088
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION
[Filed February 6, 2013, 9:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-20-004.

Title of Rule and Other Identifying Information: Airport aid grant assurances.

Hearing Location(s): 310 Maple Park Avenue, Commission Board Room 1D2, Olympia, WA 98504, on March 13, 2013, at 1:00 p.m.

Date of Intended Adoption: March 13, 2013.

Submit Written Comments to: Robert Hodgman, 818 79th Avenue S.E., Suite B, Tumwater, WA 98501-5801, e-mail Hodgmar@wsdot.wa.gov, fax (360) 596-8910, by March 12, 2013.

Assistance for Persons with Disabilities: Contact Grant Heap by March 12, 2013, TTY (360) 705-7760 or (360) 705-6808.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Grant assurances are a means to protect the public's investment in the aviation system by requiring airport sponsors to maintain and operate their facilities safely, efficiently and in accordance with specified conditions. These grant assurances are a new rule.

Reasons Supporting Proposal: The grant assurances replace an outdated grant agreement. New legislation authorizes the state to grant airport aid funds to privately-owned, public-use airports. These grant assurances establish requirements for both public-agency and privately-owned public-use airports that will ensure good stewardship of taxpayer dollars.

Statutory Authority for Adoption: RCW 47.68.090.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: These grant assurances protect the interests of the flying public and aviation professionals. They ensure grant funds provided to airports for preservation and improvement are expended in keeping with applicable state and federal laws, policies and orders, and promote good stewardship of public funds.

Name of Proponent: WSDOT aviation division, governmental.

Name of Agency Personnel Responsible for Drafting: Aviation Division Senior Planner, 818 79th Avenue S.E., Suite B, Tumwater, WA, (360) 596-8910; Implementation: Aviation Division Director, 18204 59th Drive N.E., Suite B, (360) 651-6301; and Enforcement: Aviation Division Grants Manager, 18204 59th Drive N.E., Suite B, (360) 651-6303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules does not affect small businesses as stated in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. There are no additional costs for airport aid grant assurances.

February 6, 2013
Stephen T. Reinmuth
Chief of Staff

Chapter 468-260 WAC

AIRPORT AID PROGRAM GRANT ASSURANCES

NEW SECTION

WAC 468-260-010 General. (1) Airport sponsors shall comply with these assurances pursuant to and for the purpose of carrying out the provisions of the state of Washington airport aid program grant agreements.

(2) Airport sponsors will submit these assurances as part of the project application requesting funds under the provisions of RCW 47.68.090. As used herein, the term "public agency sponsor" means any municipality or municipalities acting jointly or any Indian tribe recognized by the federal

government or such tribes acting jointly in the planning, acquisition, construction, improvement, maintenance, or operation of an airport, owned or controlled, or to be owned or controlled by such municipality or municipalities or Indian tribe or tribes, to be held available for the general use of the public; the term "private sponsor" means any person or persons acting jointly in the planning, acquisition, construction, improvement, maintenance, or operation of an airport, owned or controlled, or to be owned or controlled by such person or persons, to be held available for the general use of the public; and the term "sponsor" includes both public agency sponsors and private sponsors.

(3) Upon a sponsor's acceptance of a grant offer by the department, these assurances are incorporated in and become part of the grant agreement.

NEW SECTION

WAC 468-260-020 Duration and applicability. (1) **Washington airport aid program projects undertaken by a sponsor.** The terms, conditions, and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport project, not to exceed twenty years from the date of acceptance of a grant offer of state funds for the project. However, there shall be no limit on the duration of the assurances regarding exclusive rights and airport revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with state funds.

(2) **Airport planning undertaken by a sponsor.** Unless otherwise specified in this grant agreement, only Assurances C:1, 2, 3, 4, 6, 7, 8, 13, 20, 33, 34, and 35 apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project.

NEW SECTION

WAC 468-260-030 Sponsor certification. The sponsor certifies, with respect to this grant that:

(1) **General state requirements.** It will comply with all applicable Washington state laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of state funds for this project including, but not limited to, the following:

(a) State legislation:

• Chapter 8.26 RCW (Relocation assistance—Real property acquisition policy)

• Chapter 27.34 RCW (State historical societies—Historic preservation)

• Chapter 27.44 RCW (Indian graves and records)

• Chapter 27.48 RCW (Preservation of historical materials)

• RCW 29A.84.620 (Hindering or bribing voter)

• Chapter 36.70A RCW (Growth management—Planning by selected counties and cities)

• Title 37 RCW (Federal areas—Indians)

• Chapter 39.12 RCW (Prevailing wages on public works)

• RCW 47.29.200 (Prevailing wages)

• RCW 47.68.280 (Investigations, hearings, etc.—Subpoenas—Compelling attendance)

• RCW 47.68.310 (Enforcement of aeronautics laws)

• Title 49 RCW (Labor regulations)

• Title 64 RCW (Real property and conveyances)

• Chapter 70.94 RCW (Washington Clean Air Act)

• Title 86 RCW (Flood control)

• Title 91 RCW (Waterways)

• Title 12 WAC (Transportation, department of (aeronautics commission))

• Title 18 WAC (Air pollution)

• Title 25 WAC (Archaeology and historic preservation, department of)

• WAC 330-01-050 (dispositions, metropolitan municipal corporations)

• Title 167 WAC (Drug abuse prevention office)

• Title 197 WAC (Ecology, department of (environmental policy, council on))

• Title 198 WAC (Environmental and land use hearings office)

• Title 199 WAC (Environmental hearings office (environmental and land use hearings board))

• Title 254 WAC (Historic preservation, advisory council on)

• Title 326 WAC (Minority and women's business enterprises, office of)

• Chapter 330-01 WAC (Procedures for corridor and design public hearings under RCW 35.58.273)

• Chapter 468-100 WAC (Uniform relocation assistance and real property acquisition)

• WAC 468-100-008 (Compliance with other laws and regulations)

• Title 357 WAC (Financial management, office of—State human resources director)

• Title 508 WAC (Ecology, department of (water resources))

(b) Executive orders:

• Governor's Executive Order 92-01 (Establishing Governor's Policy on a Drug-Free Work Place)

• Governor's Executive Order 96-04, Implementing the Americans with Disabilities Act and superseding Executive Order 93-03

• Governor's Executive Order 05-05 (Archaeological and Cultural Resources) Governor's Executive Order 11-01, superseding Executive Order 09-04, Amending Washington Council on Aerospace

• Governor's Executive Order 12-02 (Workforce Diversity and Inclusion)

(2) **General legal requirements.** It will comply with all applicable laws and ordinances, orders, guidelines, policies, directives, rules and regulations of municipal, county, and federal governmental authorities or regulatory agencies.

(3) **Responsibility and authority of the sponsor.**

(a) Public agency sponsor: It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official

representative of the applicant to act in connection with the application and to provide such additional information as may be required.

(b) Private sponsor: It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

(4) **Sponsor fund availability.** It has sufficient funds available for the portion of the project which is not paid by the state of Washington. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

(5) **Good title.** It holds good title, satisfactory to the department, to the areas of the airport or site thereof necessary for aircraft takeoff and landing as well as those necessary for the movement of aircraft to and from the landing and takeoff areas, or gives assurances satisfactory to the department that good title will be acquired prior to accepting grant funds.

(6) **Preserving rights and powers.**

(a) It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the department, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the department.

(b) It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property associated with this application or that portion of the property upon which state funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the department. If the transferee is found by the department to be eligible to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.

(c) If the sponsor is a private sponsor, it will, to the department's satisfaction, ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.

(d) If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will, to the department's satisfaction, reserve and document in arrangements with said party sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with the regulations and the terms, conditions, and assurances in this grant agreement and shall ensure that such arrangement also requires compliance therewith.

(e) Sponsors of commercial service airports will not permit or enter into any arrangement that allows an owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport.

(f) Sponsors of general aviation airports entering into any arrangement that allows an owner of residential real property adjacent to or near the airport must comply with the requirements set forth in Section 136 of Public Law 112-95.

(7) **Consistency with local plans.** Certify, to the department's satisfaction, that the project is consistent with plans (existing at the time of submission of this application) of public agencies that are authorized to plan for the development of the area surrounding the airport.

(8) **Consideration of local interest.** Certify, to the department's satisfaction, that it considered the interest of communities in or near where the project is located.

(9) **Consultation with users.** Certify to the department's satisfaction that when it made a decision to undertake any project, that it consulted with affected parties using the airport.

(10) **Public hearings.** In projects involving the location of an airport, an airport runway, or a major runway extension, it held public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the department, submit a copy of the transcript of such hearings to the department. Further, for such projects, its management board contain(s/ed) either voting representation from the communities where the project is located or it advised communities that they have the right to petition the department concerning a proposed project.

(11) **Air and water quality standards.** In projects involving airport location, a major runway extension, or runway location, it will provide the department appropriate written certification that the project will be located, designed, constructed, and operated so as to comply with applicable federal, state, and local air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the administrator of the Environmental Protection Agency, or the secretary of the Department of Ecology, certification shall be obtained. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the department.

(12) **Pavement preventive maintenance.** With respect to a project for the replacement or reconstruction of airport pavement, it assures or certifies to the department's satisfaction that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with state financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the department determines may be useful.

(13) **Accounting system, audit, and recordkeeping requirements.**

(a) It shall keep all project accounts and records which fully disclose the amount and disposition of the proceeds of

this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with RCW 43.09.200 and the Washington state budgetary, accounting, and reporting system (BARS) manuals and financial reporting packages.

(b) It shall make available to the department and the Washington state auditor's office, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The department may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the department not later than six months following the close of the fiscal year for which the audit was made.

(14) **Wage rates.** It shall include in all contracts in excess of two thousand five hundred dollars, or as outlined in WAC 296-127-050, for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages under the Washington State Prevailing Wages on Public Works Act, chapter 39.12 RCW, which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work. This shall be documented by a statement of intent to pay prevailing wages and an affidavit of wages paid.

(15) **Nondiscrimination requirements.** It shall prohibit discrimination in all phases of contracted employment, contracting activities and training pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Justice System Improvement Act of 1979, the Americans with Disabilities Act of 1990, the Civil Rights Restoration Act of 1987, 49 C.F.R. Part 21, chapter 49.60 RCW and other related laws and statutes.

(16) **Equal employment opportunity (EEO) responsibilities.** It shall comply with regulations relative to nondiscrimination in state-assisted programs of the department, which are herein incorporated by reference and made a part of this project. With regard to the work performed during the project, it shall not discriminate on the grounds of race, color, gender, creed, national origin, age, sexual orientation, gender identity, marital status, disability or veteran status in the selection and retention of contractors, consultants and service providers, including procurement of materials and leases of equipment.

(17) **Veteran's preference.** It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to ensure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to honorably discharged military personnel who are veterans of any war of the United States, or of any military campaign for which a campaign ribbon shall have been awarded, and their widows or widowers, shall be preferred for appointment and employment. Age, loss of limb, or other physical impairment, which does not in fact incapacitate, shall not be deemed to disqualify them, provided they possess the capacity necessary to discharge the duties of the position involved as defined in RCW 73.16.010. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

(18) **Conformity to plans and specifications.** It will execute the project subject to plans, specifications, and schedules approved by the department. Such plans, specifications, and schedules shall be submitted to the department prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the department, shall be incorporated into this grant agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the department, and incorporated into this grant agreement.

(19) **Construction inspection and approval.** It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the department for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the department and such work shall be in accordance with regulations and procedures prescribed by the department. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the department shall deem necessary.

(20) **Planning projects.** In carrying out planning projects:

(a) It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved by the department.

(b) It will furnish the department with reports pertaining to the planning project and planning work activities, as designated by the department.

(c) It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the state of Washington.

(d) It will make all material prepared in connection with this grant available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.

(e) It will give the department unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.

(f) It will grant the department the right to disapprove the sponsor's selection of specific consultants and their subcontractors to do all or any part of projects funded by this grant as well as the right to disapprove the proposed scope and cost of professional services.

(g) It will grant the department the right to disapprove the use of the sponsor's employees to do all or any part of the project.

(h) It understands and agrees that the department's approval of this project grant or the department's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the department to approve any pending or future application for an airport aid grant.

(21) **Operation and maintenance.** The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States or the state of Washington, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable federal, state, and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for nonaeronautical purposes must first be approved by the department. In furtherance of this assurance, the sponsor will have in effect arrangements for:

(a) Operating the airport's aeronautical facilities whenever required;

(b) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and

(c) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

(22) **Hazard removal and mitigation.** It assures that such terminal airspace under the appropriate category of Federal Air Regulation Part 77, 14 C.F.R. 77, as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards. Where hazards are on land owned by others, the sponsor will make every effort to coordinate with owners to mitigate airport hazards.

(23) **Compatible land use.** It shall, either by the acquisition and retention of property interest, in fee or easement, or by seeking enforcement of local zoning action, prevent the construction of any object which may constitute an incompatible land use such as residential encroachment, wildlife attractants, uses that emit smoke, steam, glare, or electromagnetic interference, and height hazards. Sponsor will take proactive measures to discourage incompatible land uses adjacent to the airport, to include a formal consultation with local jurisdictions on land use issues, and support and/or recommend land use regulations consistent with WSDOT best management practices found in WSDOT's *Airports and Compatible Land Use Guidebook*.

(24) **Economic nondiscrimination.**

(a) It will make the airport available as an airport for public use and without discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

(b) In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to:

(i) Furnish said services on a reasonable, nondiscriminatory, basis to all users thereof; and

(ii) Charge reasonable, and nondiscriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

(c) Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.

(d) Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.

(e) Each air carrier using such airport (whether as a tenant, nontenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or nontenants and signatory carriers and nonsignatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.

(f) It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to, maintenance, repair, and fueling) that it may choose to perform. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.

(g) The sponsor may establish such reasonable, and nondiscriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport. The sponsor may prohibit or limit any given type,

kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

(25) **Exclusive rights.** It will not grant exclusive right for the use of the airport to any person(s) providing, or intending to provide, aeronautical services to the public. For purposes of this subsection, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if the following apply:

(a) It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services;

(b) If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities including, but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity existing at such an airport before the grant of any assistance under RCW 47.68.090; and

(c) It has received approval from the department.

(26) **Fee and rental structure.** It will maintain a competitive fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account factors such as the volume of traffic and economy of collection. No part of the state share of an airport development or airport planning project for which a grant is made under RCW 47.68.090 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

(27) **Airport revenues.** All revenues generated by the airport and any local taxes established after December 30, 1987, on aviation fuel, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this subsection:

(a) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

(b) If the department approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a twenty-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.

(c) When requested by the department, the sponsor will obtain an audit that will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes, and indicate whether funds paid or transferred to the owner or operator were paid or transferred in a manner consistent with state law and any other applicable provision of law, including any regulation promulgated by the secretary. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with state law.

(28) **Reports and inspections.** It will:

(a) Submit to the department such annual or special financial and operations reports as the department may request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the department; for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the department upon request;

(b) In a format and time prescribed by the department, provide to the department and make available to the public following each of its fiscal years, an annual report listing in detail:

(i) All amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and

(ii) All services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

(29) **Use by government aircraft.** It will not charge the state or its agencies (except for those under contract), for limited but reasonable, nonroutine, search and rescue, law enforcement or public safety use of public landing and aircraft parking facilities. The sponsor may require written verification of an entity's official government business status, and notification prior to use of facilities.

(30) **Land for state facilities.** It will furnish without cost to the state of Washington for use in connection with any air traffic control or air navigation activities, or weather reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or for these same purposes, rights in buildings of the sponsor as the department considers necessary for construction, operation, and maintenance at state expense of space or facilities. Such

areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the department.

(31) **Airport layout plan.**

(a) It will provide airport layout plans (ALPs) as prescribed in WSDOT's *Aviation Grant Procedures Manual*. It will keep up-to-date at all times an airport layout plan of the airport showing:

(i) Boundaries of the airport and all proposed additions thereto, together with the boundaries of all off-site areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;

(ii) The location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, and roads), including all proposed extensions and reductions of existing airport facilities;

(iii) The location of all existing and proposed nonaviation areas and of all existing improvements thereon; and

(iv) All proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the department which approval shall be evidenced by the signature of a duly authorized representative of the department on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations to the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the department and which might, in the opinion of the department, adversely affect the safety, utility, or efficiency of the airport.

(b) If a change or alteration in the airport or the facilities is made which the department determines adversely affects the safety, utility, or efficiency of any state-owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the department, the owner or operator will, if requested, by the department.

(i) Eliminate such adverse effect in a manner approved by the department; or

(ii) Bear all costs of relocating such property (or replacement thereof) to a site acceptable to the department and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the department's design standards beyond the control of the airport sponsor.

(32) **Disposal of land.**

(a) For land purchased under a grant for airport development purposes, it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the department an amount equal to the states' proportionate share of the fair market value of the land. The portion of the proceeds proportionate to the states' share of the cost of acquisition of such land will, upon application to the department, be reinvested or transferred to another eligible airport as prescribed by the department. The department shall give preference to the following, in descending order:

(i) Payment to the state of Washington for deposit in the aeronautics account; or

(ii) Reinvestment in an approved project that is eligible for grant funding under RCW 47.68.090.

(b) Land shall be considered to be needed for airport purposes under this assurance if:

(i) It may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land; and

(ii) The revenue from interim uses of such land contributes to the financial self-sufficiency of the airport.

(c) Disposition of such land will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

(33) **Engineering and design services.** It will award each contract, or subcontract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under WSDOT *Consultant Services Manual M-27-50.02* or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

(34) **Foreign market restrictions.** It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States trade representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction. Sponsors are encouraged to "Buy American" whenever feasible and appropriate.

(35) **Policies, standards, and specifications.** It will carry out the project in accordance with policies, standards, and specifications approved by the department and included in this grant, and in accordance with applicable state policies, standards, and specifications.

(36) **Relocation and real property acquisition.** It will be guided in acquiring real property, to the greatest extent practicable under state law, by the land acquisition policies in RCW 8.26.180.

(37) **Disadvantaged business enterprises.** The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any department-assisted contract or in the administration of its DBE program or the requirements of Governor's Executive Order 12-02.

(38) **Hangar construction.** If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long-term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose. For the purpose of this section, a long-term lease is defined as not to exceed fifty years.

WSR 13-04-090
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Community Services Division)
[Filed February 6, 2013, 9:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-08-063.

Title of Rule and Other Identifying Information: The department is amending WAC 388-418-0011 What is a mid-certification review, and do I have to complete one in order to keep receiving benefits?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html), on March 12, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 12, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. March 12, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by February 19, 2013, 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 community services division is proposing to amend WAC 388-418-0011 to remove references to medical assistance programs. Health care authority (HCA) is proposing to eliminate mid-certification review requirements for medical programs effective June 1, 2013.

Reasons Supporting Proposal: This amendment is necessary to comply with 2E2SHB 1738, Laws of 2011, which designated HCA as the single state agency responsible for the administration and supervision of Washington's medicaid program.

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

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.08.090, and 74.04.510.

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: Leslie Kozak, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4589.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not have an economic impact on small businesses.

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."

February 4, 2013
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-02-053, filed 12/28/07, effective 2/1/08)

WAC 388-418-0011 What is a mid-certification review, and do I have to complete one in order to keep receiving benefits? (1) A **mid-certification review** (MCR) is a form we send you to ask about your current circumstances. We use the answers you give us to decide if you are still eligible for benefits and to calculate your monthly benefits.

(2) If you receive cash assistance((~~, family-related medical,~~)) or Basic Food benefits, you must complete a mid-certification review unless you meet one of the exceptions below:

(a) You **do not** have to complete a mid-certification review for cash assistance if you:

(i) Only receive Refugee Cash Assistance as described under WAC 388-400-0030; or

(ii) Have a review period of six months or less.

(b) You **do not** have to complete a mid-certification review for Basic food if:

(i) Your assistance unit has a certification period of six months or less; or

(ii) All adults in your assistance unit are elderly or disabled and have no earned income.

(3) **When we send the review form:**

If you must complete a MCR ...	We send your review form ...
(a) For one program such as Basic Food ((~~or Family Medical~~)).	In the fifth month of your certification or review period. You must complete your review by the 10th day of month six.
(b) For two or more programs, and all programs have a 12-month certification or review period.	In the fifth month of your certification or review period. You must complete your review by the 10th day of month six.
(c) For Basic Food and another program when either program has a certification or review period between six and twelve months.	In the fifth month of your Basic Food certification period when you receive Basic Food and another program. You must complete your review by the 10th day of month six of your Basic Food certification.

(4) If you must complete a mid-certification review, we send you the review form with questions about your current circumstances. You can choose to complete the review in one of the following ways:

(a) **Complete the form and return it to us.** For us to count your mid-certification review as complete, you must take all of the steps below:

(i) Complete the review form, telling us about changes in your circumstances we ask about;

(ii) Sign and date the form;

(iii) Give us proof of any changes you report. If you report a change that will increase your benefits without giving proof of this change, we will not increase your benefits;

(iv) ((~~If you receive family medical benefits, give us proof of your income even if it has not changed;~~

~~(v)~~)) If you receive temporary assistance for needy families and you are working or self-employed, you must give us proof of your income even if it has not changed; and

(((~~(vi)~~))) (v) Mail or turn in the completed form and any required proof to us by the due date on the review.

(b) **Complete the mid-certification review over the phone.** For us to count your mid-certification review as complete, you must take all of the steps below:

(i) Contact us at the phone number on the review form, telling us about changes in your circumstances we ask about;

(ii) Give us proof of any changes you report. We may be able to verify some information over the phone. If you report a change that will increase your benefits without giving proof of this change, we will not increase your benefits;

(iii) ((~~If you receive family medical benefits, give us proof of your income even if it has not changed;~~

~~(iv)~~)) If you receive temporary assistance for needy families and you are working or self-employed, you must give us proof of your income even if it has not changed; and

(((~~(v)~~))) (iv) Mail or turn in any required proof to us by the due date on the review.

(c) **Complete the application process for another program.** If we approve an application for another program in the month you must complete your mid-certification review, we use the application to complete your review when the same person is head of household for the application and the mid-certification review.

(5) If your benefits change because of what we learned in your mid-certification review, the change takes effect the next month even if this does not give you ten days notice before we change your benefits.

(6) If you do not complete your required mid-certification review, we stop your benefits at the end of the month the review was due.

(7) **Late reviews.** If you complete the mid-certification review after the last day of the month the review was due, we process the review as described below based on when we receive the review:

(a) **Mid-certification reviews you complete by the last day of the month after the month the review was due:** We determine your eligibility for ongoing benefits. If you are eligible, we reinstate your benefits based on the information in the review.

(b) **Mid-certification reviews you complete after the last day of the month after the month the review was due:** We treat this review as a request to send you an application. For us to determine if you are eligible for benefits, you must complete the application process as described in chapter 388-406 WAC.

WSR 13-04-099
PROPOSED RULES
LIQUOR CONTROL BOARD
[Filed February 6, 2013, 10:50 a.m.]

Supplemental Notice to WSR 13-01-045.

Title of Rule and Other Identifying Information: WAC 314-02-105 What is a beer and/or wine specialty store license?

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on March 13, 2013, at 10:00 a.m.

Date of Intended Adoption: March 20, 2013.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by March 13, 2013.

Assistance for Persons with Disabilities: Contact Karen McCall by March 13, 2013, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The passage of Initiative 1183 has created an issue for beer/wine specialty store licensees that hold a spirits retail license. Beer/wine specialty store licensees are allowed to conduct tastings if over fifty percent of their gross sales are beer and wine. By adding spirits sales to their business it is impossible to sell more than fifty percent beer and wine. Tastings are a large part of promoting Washington wineries and their business. The rule needs to be amended to allow tastings to continue.

Stakeholders also requested the board to amend this rule to allow a greater number of tastings per customer visit and to require employees conducting the tastings to be MAST trained.

Statutory Authority for Adoption: RCW 66.24.371, 66.08.030.

Statute Being Implemented: RCW 66.24.371.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

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.

February 6, 2013
Sharon Foster
Chairman

AMENDATORY SECTION (Amending WSR 11-23-045, filed 11/9/11, effective 12/10/11)

WAC 314-02-105 What is a beer and/or wine specialty store license? (1) Per RCW 66.24.371, a beer and/or wine specialty store license allows a licensee to sell beer and/or wine for off-premises consumption.

(2) The annual fee for this license is one hundred dollars.

(3) Qualifications for license - To obtain and maintain a beer and/or wine specialty store license, the premises must be stocked with an inventory of beer and/or wine in excess of three thousand dollars wholesale value. This inventory must be:

(a) Stocked within the confines of the licensed premises; and

(b) Maintained on the premises at all times the premises is licensed, with the exception of beginning and closing inventory for seasonal operations or when the inventory is being sold out immediately prior to discontinuing or selling the business.

(4) Qualifications to sample - A beer and/or wine specialty store licensee may allow customers to sample beer and wine for the purpose of sales promotion, if the primary business is the sale of beer and/or wine at retail, and the licensee meets the requirements outlined in either (a) or (b) of this subsection:

(a) A licensee's gross retail sales of ((~~beer and/or wine~~)) alcohol exceeds fifty percent of all annual gross sales for the entire business; or

(b) The licensed premises is a beer and/or wine specialty store that conducts bona fide cooking classes for the purpose of pairing beer and/or wine with food, under the following conditions:

(i) The licensee must establish to the satisfaction of the board that the classes are bona fide cooking courses. The licensee must charge participants a fee for the course(s).

(ii) The sampling must be limited to a clearly defined area of the premises.

(iii) The licensee must receive prior approval from the board's licensing and regulation division before conducting sampling with cooking classes.

(iv) Once approved for sampling, the licensee must provide the board's enforcement and education division a list of all scheduled cooking classes during which beer and/or wine samples will be served. The licensee must notify the board's enforcement and education division at least forty-eight hours in advance if classes are added.

(5) Licensees who qualify for sampling under subsection (4) of this ((~~rule~~)) section may sample under the following conditions:

(a) Employees conducting sampling must hold a class 12 alcohol server permit;

(b) No more than a total of ((~~eight~~)) ten ounces of alcohol may be provided to a customer during any one visit to the premises;

(((~~(b)~~))) (c) Each sample must be two ounces or less((~~; and~~

~~(c) No more than one sample of any single brand and type of beer or wine may be provided to a customer during any one visit to the premises~~)).

(6) A beer and/or wine specialty store licensee may sell beer in kegs or other containers holding at least four gallons of beer. See WAC 314-02-115 regarding keg registration requirements.

(7) A beer and/or wine specialty store licensee may receive an endorsement to permit the sale of beer to a purchaser in a sanitary container brought to the premises by the purchaser, or provided by the licensee or manufacturer, and filled at the tap by the licensee at the time of sale under the following conditions:

(a) The beer and/or wine specialty store sales must exceed fifty percent of their total sales; or

(b) The board may waive the fifty percent beer and/or wine sale criteria if the beer and/or wine specialty store maintains a wholesale alcohol inventory that exceeds fifteen thousand dollars.

WSR 13-04-100
PROPOSED RULES
DEPARTMENT OF EARLY LEARNING

[Filed February 6, 2013, 10:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-01-060 [13-01-060].

Title of Rule and Other Identifying Information: WAC 170-296A-2950, regarding carbon monoxide detectors.

Hearing Location(s): Department of Early Learning (DEL), Republic Building, 505 East Union Avenue S.E., Suite 300, Olympia, WA 98501, on March 12, 2013, at 6:00 p.m.

Date of Intended Adoption: Not earlier than April 9, 2013.

Submit Written Comments to: Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, online at https://apps.del.wa.gov/PolicyProposalComment/Detail.aspx, e-mail Rules@del.wa.gov, fax (360) 586-0533, by midnight on March 12, 2013.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by February 26, 2013, (360) 407-1971.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify WAC 170-296A-2950, regarding carbon monoxide detector requirements.

Reasons Supporting Proposal: The proposed rules clarify the requirement for carbon monoxide detectors in licensed family home child care settings.

Statutory Authority for Adoption: RCW 43.215.070 and 43.215.060, chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW.

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

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Lynne Shanafelt, Licensing Administrator, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 407-1962; Implementation and Enforcement: DEL licensing offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to impose new costs on businesses that are required to comply. If the rules result in costs, those costs are not expected to be "more than minor" as defined in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

February 6, 2013
Bette Hyde
Director

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-2950 Smoke and carbon monoxide detectors. (1)(a) The licensee must have and maintain working smoke detectors in the home.

(b) At least one smoke detector must be located:

(i) In each licensed sleeping area; and

(ii) On each level of the home.

(c) Smoke detectors must be placed on the ceiling or wall, but not on the wall above any door.

(2) ((~~To comply with~~)) The licensee must have and maintain working carbon monoxide detectors in the home as provided in RCW 19.27.530 and WAC 51-51-0315((~~, if the licensee's home was built on or after July 1, 2010, a working carbon monoxide detector must be installed in each area licensed for sleeping or napping. The licensee may use combination smoke/carbon monoxide detectors~~)).

(3) One extra battery for each smoke detector and each carbon monoxide detector must be kept on the premises.