WSR 11-05-078
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Medicaid Purchasing Administration)
[Filed February 15, 2011, 10:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-05-056.

Title of Rule and Other Identifying Information: New WAC 388-502-0002 Eligible provider types, 388-502-0003 Noneligible provider types, 388-502-0005 Core provider agreement (CPA), 388-502-0012 When the department does not enroll, 388-502-0014 Review and consideration of an applicant's history, 388-502-0016 Continuing requirements, 388-502-0018 Change of ownership, 388-502-0040 Termination of a provider agreement—For convenience, 388-502-0050 Provider dispute of a department decision and 388-502-0060 Reapplying for participation; and amending 388-502-0010 When the department enrolls, 388-502-0020 Healthcare record requirements, 388-502-0030 Termination of a provider agreement—For cause, and 388-502-0230 Provider payment reviews and dispute rights.

Hearing Location(s): Office Building 2, Auditorium, 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 April 5, 2011, at 10:00 a.m.

Date of Intended Adoption: Not sooner than April 6, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on April 5, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by March 22, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of social and health services' medicaid purchasing administration (MPA) is proposing to amend WAC 388-502-0010 Payment—Eligible providers defined, 388-502-0020 General requirements for providers, 388-502-0030 Denying, suspending, and terminating a provider's enrollment, and 388-502-0230 Provider review and appeal.

Reasons Supporting Proposal: These rule amendments and additions are intended to update, clarify, and ensure rules which protect the health and safety of DSHS clients and further ensure program integrity. This includes, but is not limited to, eligible provider types, noneligible provider types, core provider agreement, enrollment, review and consideration of an applicant's history, continuing requirements, change of ownership, healthcare record requirements, termination of a provider for cause or convenience, provider dispute of a department decision, reapplying for participation, and provider review and appeal.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.080, 74.09.290.

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, medicaid purchasing administration, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation: Barbara Lantz, P.O. Box 45530, Olympia, WA 98504-5530, (360) 725-1640; and Enforcement: Andi Hanson, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1615.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule amendments and determined that there are no new costs associated with these changes and they do not impose disproportionate costs on small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Andi Hanson, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1615, fax (360) 586-9727, e-mail Andi.Hanson@dshs.wa.gov.

February 7, 2011
Katherine I. Vasquez
Rules Coordinator

PROVIDER TYPES

NEW SECTION

WAC 388-502-0002 Eligible provider types. The following healthcare professionals, healthcare entities, suppliers or contractors of service may request enrollment with the Washington state department of social and health services to provide covered healthcare services to eligible clients. For the purposes of this chapter, healthcare services includes treatment, equipment, related supplies and drugs.

(1) Professionals:

(a) Advanced registered nurse practitioners;

(b) Anesthesiologists;

(c) Audiologists;

(d) Chemical dependency professionals:

(i) Mental health care providers; and

(ii) Peer counselors.

(e) Chiropractors;

(f) Dentists;

(g) Dental hygienists;

(h) Denturists;

(i) Dietitians or nutritionists;

(j) Hearing aid fitters/dispensers;

(k) Marriage and family therapists, only as provided in WAC 388-531-1400;

(l) Mental health counselors, only as provided in WAC 388-531-1400;

(m) Mental health care providers;

(n) Midwives;

(o) Nurse anesthetist;

(p) Occupational therapists;

(q) Ophthalmologists;

(r) Opticians;
(s) Optometrists;
(t) Orthodontists;
(u) Orthotist;
(v) Osteopathic physicians;
(w) Osteopathic physician assistants;
(x) Peer counselors;
(y) Podiatric physicians;
(z) Pharmacists;
(aa) Physicians;
(bb) Physician assistants;
(cc) Physical therapists;
(dd) Prosthetist;
(ee) Psychiatrists;
(ff) Psychologists;
(gg) Radiologists;
(hh) Registered nurse delegators;
(ii) Registered nurse first assistants;
(jj) Respiratory therapists;
(kk) Social workers, only as provided in WAC 388-531-1400; and
(ll) Speech/language pathologists.
(2) Agencies, centers and facilities:
(a) Adult day health centers;
(b) Ambulance services (ground and air);
(c) Ambulatory surgery centers (medicare-certified);
(d) Birthing centers (licensed by the department of health);
(e) Blood banks;
(f) Cardiac diagnostic centers;
(g) Case management agencies;
(h) Chemical dependency treatment facilities certified by the department of social and health services (DSHS) division of alcohol and substance abuse (DASA), and contracted through either:
(i) A county under chapter 388-810 WAC; or
(ii) DASA to provide chemical dependency treatment services.
(i) Centers for the detoxification of acute alcohol or other drug intoxication conditions (certified by DASA);
(j) Community AIDS services alternative agencies;
(k) Community mental health centers;
(l) Diagnostic centers;
(m) Early and periodic screening, diagnosis, and treatment (EPSDT) clinics;
(n) Family planning clinics;
(o) Federally qualified health centers (designated by the federal department of health and human services);
(p) Genetic counseling agencies;
(q) Health departments;
(r) Health maintenance organization (HMO)/managed care organization (MCO);
(s) HIV/AIDS case management;
(t) Home health agencies;
(u) Hospice agencies;
(v) Hospitals;
(w) Indian health service facilities/Tribal 638 facilities;
(x) Tribal or urban Indian clinics;
(y) Inpatient psychiatric facilities;
(z) Intermediate care facilities for the mentally retarded (ICF-MR);
(aa) Kidney centers;
(bb) Laboratories (CLIA certified);
(cc) Maternity support services agencies; maternity case managers; infant case management, first steps providers;
(dd) Neuromuscular and neurodevelopmental centers;
(ee) Nurse services/delegation;
(ff) Nursing facilities (approved by the DSHS aging and disability services administration);
(gg) Pathology laboratories;
(hh) Pharmacies;
(ii) Private duty nursing agencies;
(jj) Radiology - stand alone clinics;
(kk) Rural health clinics (medicare-certified);
(ll) School districts and educational service districts;
(mm) Sleep study centers; and
(nn) Washington state school districts and educational service districts.
(3) Suppliers of:
(a) Durable and nondurable medical equipment and supplies;
(b) Infusion therapy equipment and supplies;
(c) Prosthetics/orthotics;
(d) Hearing aids; and
(e) Oxygen equipment and supplies.
(4) Contractors:
(a) Transportation brokers;
(b) Spoken language interpreter services agencies;
(c) Independent sign language interpreters; and
(d) Eyeglass and contact lens providers.

NEW SECTION

WAC 388-502-0003 Noneligible provider types. The department does not enroll licensed or unlicensed healthcare practitioners not specifically listed in WAC 388-502-0002, including, but not limited to:
(1) Acupuncturists;
(2) Counselors, except as provided in WAC 388-531-1400;
(3) Sanipractors;
(4) Naturopaths;
(5) Homeopaths;
(6) Herbalists;
(7) Massage therapists;
(8) Social workers, except as provided in WAC 388-531-1400 and WAC 388-537-0350;
(9) Christian science practitioners, theological healers, and spiritual healers;
(10) Chemical dependency professional trainee (CDPT); and
(11) Mental health trainee (MHT).

ENROLLMENT

NEW SECTION

WAC 388-502-0005 Core provider agreement (CPA). (1) All healthcare professionals, healthcare entities, suppliers or contractors of service must have an approved

core provider agreement (CPA) or be enrolled as a performing provider on an approved CPA to provide healthcare services to an eligible medical assistance client; otherwise any request for payment will be denied.

(2) For services provided out-of-state refer to WAC 388-501-0180, 388-501-0182 and 388-501-0184.

(3) All performing providers of services to a medical assistance client must be enrolled under the billing provider's CPA.

(4) The department does not pay for services provided to clients during the CPA application process, regardless of whether the CPA is later approved or denied.

(5) Enrollment of a provider applicant is effective no earlier than the date of approval of the provider application.

(a) For federally-qualified health centers (FQHCs), see WAC 388-548-1200. For rural health clinics (RHCs), see WAC 388-549-1200.

(b) Any other exceptions must be requested in writing to the department by providing justification as to why the applicant's effective date should be back dated. Exceptions will only be considered for emergency services, department-approved out-of-state services or if the client was given retroactive eligibility. The requested effective date must be noted and must be covered by any applicable license or certification submitted with this application. This also applies to healthcare practitioners who join an established group or clinic as a performing provider, when the established group or clinic has an existing CPA.

AMENDATORY SECTION (Amending WSR 08-12-030, filed 5/29/08, effective 7/1/08)

WAC 388-502-0010 ((~~Payment—Eligible providers defined~~)) When the department enrolls. ((~~The department pays enrolled providers for covered healthcare services, equipment and supplies they provide to eligible clients.~~

~~(1) To be eligible for enrollment, a provider must:~~

~~(a) Be licensed, certified, accredited, or registered according to Washington state laws and rules; and~~

~~(b) Meet the conditions in this chapter and chapters regulating the specific type of provider, program, and/or service.~~

~~(2) To enroll, an eligible provider must sign a core provider agreement with the department and receive a unique provider number; a provider may also sign a contract to enroll. (Note: Section 13 of the core provider agreement, DSHS 09-048 (REV. 06/2002), is hereby rescinded. The department and each provider signing a core provider agreement will hold each other harmless from a legal action based on the negligent actions or omissions of either party under the terms of the agreement.)~~

~~(3) Eligible providers listed in this subsection may request enrollment. Out-of-state providers listed in this subsection are subject to conditions in chapter 388-502 WAC.~~

~~(a) Professionals:~~

~~(i) Advanced registered nurse practitioners;~~

~~(ii) Anesthesiologists;~~

~~(iii) Audiologists;~~

~~(iv) Chiropractors;~~

~~(v) Dentists;~~

~~(vi) Dental hygienists;~~

~~(vii) Denturists;~~

~~(viii) Dietitians or nutritionists;~~

~~(ix) Marriage and family therapists, only as provided in WAC 388-531-1400;~~

~~(x) Maternity case managers;~~

~~(xi) Mental health counselors, only as provided in WAC 388-531-1400;~~

~~(xii) Midwives;~~

~~(xiii) Occupational therapists;~~

~~(xiv) Ophthalmologists;~~

~~(xv) Opticians;~~

~~(xvi) Optometrists;~~

~~(xvii) Orthodontists;~~

~~(xviii) Osteopathic physicians;~~

~~(xix) Podiatric physicians;~~

~~(xx) Pharmacists;~~

~~(xxi) Physicians;~~

~~(xxii) Physical therapists;~~

~~(xxiii) Psychiatrists;~~

~~(xxiv) Psychologists;~~

~~(xxv) Registered nurse delegators;~~

~~(xxvi) Registered nurse first assistants;~~

~~(xxvii) Respiratory therapists;~~

~~(xxviii) Social workers, only as provided in WAC 388-531-1400 and 388-531-1600;~~

~~(xxix) Speech/language pathologists;~~

~~(xxx) Radiologists; and~~

~~(xxxi) Radiology technicians (technical only);~~

~~(b) Agencies, centers and facilities:~~

~~(i) Adult day health centers;~~

~~(ii) Ambulance services (ground and air);~~

~~(iii) Ambulatory surgery centers (medicare-certified);~~

~~(iv) Birthing centers (licensed by the department of health);~~

~~(v) Blood banks;~~

~~(vi) Chemical dependency treatment facilities certified by the department of social and health services (DSHS), division of alcohol and substance abuse (DASA), and contracted through either:~~

~~(A) A county under chapter 388-810 WAC; or~~

~~(B) DASA to provide chemical dependency treatment services;~~

~~(vii) Centers for the detoxification of acute alcohol or other drug intoxication conditions (certified by DASA);~~

~~(viii) Community AIDS services alternative agencies;~~

~~(ix) Community mental health centers;~~

~~(x) Early and periodic screening, diagnosis, and treatment (EPSDT) clinics;~~

~~(xi) Family planning clinics;~~

~~(xii) Federally qualified health centers (FQHC) (designated by the Centers for medicare and medicaid);~~

~~(xiii) Genetic counseling agencies;~~

~~(xiv) Health departments;~~

~~(xv) HIV/AIDS case management;~~

~~(xvi) Home health agencies;~~

~~(xvii) Hospice agencies;~~

~~(xviii) Hospitals;~~

~~(xix) Indian Health Service;~~

~~(xx) Tribal or urban Indian clinics;~~

~~(xxi) Inpatient psychiatric facilities;~~

~~(xxii) Intermediate care facilities for the mentally retarded (ICF-MR);~~

~~(xxiii) Kidney centers;~~

~~(xxiv) Laboratories (CLIA certified);~~

~~(xxv) Maternity support services agencies;~~

~~(xxvi) Neuromuscular and neurodevelopmental centers;~~

~~(xxvii) Nursing facilities (approved by DSHS aging and disability services);~~

~~(xxviii) Pharmacies;~~

~~(xxix) Private duty nursing agencies;~~

~~(xxx) Rural health clinics (medicare-certified);~~

~~(xxxi) Tribal mental health services (contracted through the DSHS mental health division); and~~

~~(xxxii) Washington state school districts and educational service districts.~~

~~(c) Suppliers of:~~

~~(i) Durable and nondurable medical equipment and supplies;~~

~~(ii) Infusion therapy equipment and supplies;~~

~~(iii) Prosthetics/orthotics;~~

~~(iv) Hearing aids; and~~

~~(v) Oxygen equipment and supplies;~~

~~(d) Contractors of:~~

~~(i) Transportation brokers;~~

~~(ii) Interpreter services agencies; and~~

~~(iii) Eyeglass and contact lens providers.~~

~~(4) Nothing in this chapter precludes the department from entering into other forms of written agreements to provide services to eligible clients.~~

~~(5) The department does not enroll licensed or unlicensed practitioners who are not specifically addressed in subsection (3) of this section. Ineligible providers include but are not limited to:~~

~~(a) Acupuncturists;~~

~~(b) Counselors, except as provided in WAC 388-531-1400;~~

~~(c) Sanipractors;~~

~~(d) Naturopaths;~~

~~(e) Homeopaths;~~

~~(f) Herbalists;~~

~~(g) Massage therapists;~~

~~(h) Social workers, except as provided in WAC 388-531-1400 and 388-531-1600; or~~

~~(i) Christian Science practitioners or theological healers~~)) Nothing in this chapter obligates the department to enroll any eligible healthcare professional, healthcare entity, supplier or contractor of service who requests enrollment.

(2) To enroll as a provider with the department, a healthcare professional, healthcare entity, supplier or contractor of service must, on the date of application:

(a) Be currently licensed, certified, accredited, or registered according to Washington state laws and rules. Persons or entities outside of Washington state, see WAC 388-502-0120;

(b) Have current professional liability coverage, individually or as a member of a group;

(c) Have a current federal drug enforcement agency (DEA) certificate, if applicable to the profession's scope of practice;

(d) Meet the conditions in this chapter and other chapters regulating the specific type of healthcare practitioner;

(e) Sign, without modification, a core provider agreement (CPA) and debarment form (DSHS 09-048) or a contract with the department. (Note: Section 13 of the CPA, DSHS 09-048 (REV. 08/2005), is hereby rescinded. The department and each provider signing a core provider agreement will hold each other harmless from a legal action based on the negligent actions or omissions of either party under the terms of the agreement.);

(f) Agree to accept the payment from the department as payment in full (in accordance with 42 C.F.R. § 447.15 acceptance of state payment as payment in full and WAC 388-502-0160 billing a client);

(g) Fully disclose ownership and control information requested by the department. If payment for services is to be made to a group practice, partnership, or corporation, the group, partnership, or corporation must enroll and obtain a CPA number to be used for submitting claims as the billing provider. All owners must be identified and fully disclosed in the application; and

(h) Have screened employees and contractors with whom they do business prior to hiring or contracting to assure that employees and contractors are not excluded from receiving federal funds as required by 42 U.S.C. 1320a-7 and 42.U.S.C. 1320c-5.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

NEW SECTION

WAC 388-502-0012 When the department does not enroll. (1) The department does not enroll a healthcare professional, healthcare entity, supplier or contractor of service for reasons which include, but are not limited to, the following:

(a) The department determines that:

(i) There is a quality of care issue with significant risk factors that may endanger client health and/or safety (see WAC 388-502-0030 (1)(a)); or

(ii) There are risk factors that affect the credibility, honesty, or veracity of the healthcare practitioner (see WAC 388-502-0030 (1)(b)).

(b) The healthcare professional, healthcare entity, supplier or contractor of service:

(i) Is excluded from participation in medicare, medicaid or any other federally-funded healthcare program;

(ii) Has a current formal or informal pending disciplinary action, statement of charges, or the equivalent from any state or federal professional disciplinary body at the time of initial application;

(iii) Has been disciplined based on allegation of sexual misconduct or admitted to sexual misconduct;

(iv) Has a suspended, terminated, revoked, or surrendered professional license as defined under chapter 18.130 RCW;

(v) Has a restricted, suspended, terminated, revoked, or surrendered professional license in any state;

(vi) Is noncompliant with the department of health's or other state health care agency's stipulation of informal disposition, agreed order, final order, or similar licensure restriction;

(vii) Is suspended or terminated by any agency within the state of Washington that arranges for the provision of healthcare;

(viii) Fails a background check performed by the department. See WAC 388-502-0014 and WAC 388-502-0016; or

(ix) Does not have sufficient liability insurance according to WAC 388-502-0016 for the scope of practice.

(2) The department may not pay for any healthcare service, drug, supply or equipment prescribed or ordered by a healthcare professional, healthcare entity, supplier or contractor of service whose application for a core provider agreement (CPA) has been denied or terminated.

(3) The department may not pay for any healthcare service, drug, supply, or equipment prescribed or ordered by a healthcare professional, healthcare entity, supplier or contractor of service who does not have a current CPA with the department when the department determines there is a potential danger to a client's health and/or safety.

(4) Nothing in this chapter precludes the department from entering into other forms of written agreements with a healthcare professional, healthcare entity, supplier or contractor of service.

(5) If the department denies an enrollment application, the applicant does not have any dispute rights within the department.

NEW SECTION

WAC 388-502-0014 Review and consideration of an applicant's history. (1) The department may consider enrolling a healthcare professional, healthcare entity, supplier or contractor of service for reasons which include, but are not limited to, the following:

(a) The department determines that:

(i) There is not a quality of care issue with significant risk factors that endanger client health and/or safety;

(ii) There are not risk factors that affect the credibility, honesty, or veracity of the applicant; and

(iii) The applicant is not likely to repeat the violation that led to a restriction or sanction.

(b) The healthcare professional, healthcare entity, supplier or contractor of service has:

(i) Been excluded from participation in medicare, medicaid, or any other federally-funded healthcare program but is not currently excluded; or

(ii) A history of probation, suspension, termination, revocation, or a surrendered professional license, certification, accreditation, or registration as defined under chapter 18.130 RCW but currently has an active license, certification, accreditation, or registration; or

(iii) A restricted or limited professional license, certification, accreditation, or registration as defined under RCW 18.130.160; or

(iv) A history of denial, limitation, suspension or termination of participation or privileges by any healthcare institution, plan, facility, clinic, or state agency for quality of care issues or inappropriate billing practices and the quality of care issue or inappropriate billing practices have been corrected to the department's satisfaction.

(2) The department may conduct a background check on any applicant applying for a core provider agreement (CPA).

(3) The department's response to a review of a request for enrollment is based on the information available to the department at the time of application.

PROVIDER REQUIREMENTS

NEW SECTION

WAC 388-502-0016 Continuing requirements. (1) To continue to provide services for eligible clients and be paid for those services, a provider must:

(a) Provide all services without discriminating on the grounds of race, creed, color, age, sex, sexual orientation, religion, national origin, marital status, the presence of any sensory, mental or physical handicap, or the use of a trained dog guide or service animal by a person with a disability;

(b) Provide all services according to federal and state laws and rules, department billing instructions, numbered memoranda issued by the department, and other written directives from the department;

(c) Inform the department of any changes to the provider's application or contract, including but not limited to, changes in:

(i) Ownership (see WAC 388-502-0018);

(ii) Address or telephone number;

(iii) Professional practicing under the billing provider number; or

(iv) Business name.

(d) Retain a current professional state license, registration, certification and/or applicable business license for the service being provided, and update the department of all changes;

(e) Inform the department in writing within seven calendar days of changes applicable to the provider's clinical privileges;

(f) Inform the department in writing within seven business days of receiving any informal or formal disciplinary order, decision, disciplinary action or other action(s), including, but not limited to, restrictions, limitations, conditions and suspensions resulting from the practitioner's acts, omissions, or conduct against the provider's license, registration, or certification in any state;

(g) Screen employees and contractors with whom they do business prior to hiring or contracting, and on a monthly ongoing basis thereafter, to assure that employees and contractors are not excluded from receiving federal funds as required by 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5.

(h) Report immediately to the department any information discovered regarding an employee's or contractor's exclusion from receiving federal funds in accordance with 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5. See WAC 388-502-0010 (2)(j);

(i) Pass a background check, when the department requires such information to fully evaluate a provider;

(j) Maintain professional and general liability coverage requirements, if not covered under agency, center or facility, in the amounts identified by the department;

(k) Not surrender, voluntarily or involuntarily, his or her professional state license, registration, or certification in any state while under investigation by that state or due to findings by that state resulting from the practitioner's acts, omissions, or conduct; and

(l) Furnish documentation or other assurances as determined by the department in cases where a provider has an alcohol or chemical dependency problem, to adequately safeguard the health and safety of medical assistance clients that the provider:

(i) Is complying with all conditions, limitations, or restrictions to the provider's practice both public and private; and

(ii) Is receiving treatment adequate to ensure that the dependency problem will not affect the quality of the provider's practice.

(2) A provider may contact the department with questions regarding its programs. However, the department's response is based solely on the information provided to the department's representative at the time of inquiry, and in no way exempts a provider from following the laws and rules that govern the department's programs.

(3) The department may refer the provider to the appropriate state health professions quality assurance commission.

NEW SECTION

WAC 388-502-0018 Change of ownership. (1) A provider must notify the department in writing within seven calendar days of ownership or control changes of any kind. An entity is considered to have an ownership or control interest in another entity if it has direct or indirect ownership of five percent or more, or is a managing employee (e.g., a general manager, business manager, administrator, or director) who exercises operational or managerial control over the entity or who directly or indirectly conducts day-to-day operations of the entity. The department determines whether a new core provider agreement (CPA) must be completed for the new entity.

(2) When a provider obtains a new federal tax identification (ID) following a change of ownership, the department terminates the provider's CPA as of the date of the change in federal tax ID. The provider may reapply for a new CPA.

(3) All new ownership enrollments are subject to the requirements in WAC 388-502-0010. In addition to those requirements, the applicant must:

(a) Complete a change of ownership form;

(b) Provide the department with a copy of the contract of sale identifying previous and current owners; and

(c) Provide the department with a list of all provider numbers affected by the change of ownership.

AMENDATORY SECTION (Amending WSR 01-07-076, filed 3/20/01, effective 4/20/01)

WAC 388-502-0020 ((~~General requirements for providers~~)) Healthcare record requirements. (((~~(1) Enrolled providers must:~~

~~(a) Keep legible, accurate, and complete charts and records to justify the services provided to each client, including, but not limited to:~~

~~(i) Patient's name and date of birth;~~

~~(ii) Dates of services;~~

~~(iii) Name and title of person performing the service, if other than the billing practitioner;~~

~~(iv) Chief complaint or reason for each visit;~~

~~(v) Pertinent medical history;~~

~~(vi) Pertinent findings on examination;~~

~~(vii) Medications, equipment, and/or supplies prescribed or provided;~~

~~(viii) Description of treatment (when applicable);~~

~~(ix) Recommendations for additional treatments, procedures, or consultations;~~

~~(x) X rays, tests, and results;~~

~~(xi) Dental photographs and teeth models;~~

~~(xii) Plan of treatment and/or care, and outcome; and~~

~~(xiii) Specific claims and payments received for services.~~

~~(b) Assure charts are authenticated by the person who gave the order, provided the care, or performed the observation, examination, assessment, treatment or other service to which the entry pertains;~~

~~(c) Make charts and records available to DSHS, its contractors, and the US Department of Health and Human Services upon request, for six years from the date of service or longer if required specifically by federal or state law or regulation;~~

~~(d) Bill the department according to department rules and billing instructions;~~

~~(e) Accept the payment from the department as payment in full;~~

~~(f) Follow the requirements in WAC 388-502-0160 and 388-538-095 about billing clients;~~

~~(g) Fully disclose ownership and control information requested by the department;~~

~~(h) Provide all services without discriminating on the grounds of race, creed, color, age, sex, religion, national origin, marital status, or the presence of any sensory, mental or physical handicap; and~~

~~(i) Provide all services according to federal and state laws and rules, and billing instructions issued by the department.~~

~~(2) A provider may contact MAA with questions regarding its programs. However, MAA's response is based solely on the information provided to MAA's representative at the time of inquiry, and in no way exempts a provider from following the laws and rules that govern the department's programs~~)) This section applies to providers, as defined under WAC 388-500-0005 and under WAC 388-538-050. Providers must:

(1) Maintain documentation in the client's medical or healthcare records to verify the level, type, and extent of services provided to each client to fully justify the services and billing, including, but not limited to:

(a) Client's name and date of birth;

(b) Dates of services;

(c) Name and title of person performing the service;

(d) Chief complaint or reason for each visit;

(e) Pertinent past and present medical history;

(f) Pertinent findings on examination at each visit;

(g) Medication(s) or treatment prescribed and/or administered;

(h) Name and title of individual prescribing or administering medication(s);

(i) Equipment and/or supplies prescribed or provided;

(j) Name and title of individual prescribing or providing equipment and/or supplies;

(k) Detailed description of treatment provided;

(l) Subjective and objective findings;

(m) Clinical assessment and diagnosis;

(n) Recommendations for additional treatments, procedures, or consultations;

(o) Radiographs (x-rays), diagnostic tests and results;

(p) Plan of treatment and/or care, and outcome;

(q) Specific claims and payments received for services;

(r) Correspondence pertaining to client dismissal or termination of healthcare practitioner/patient relationship;

(s) Advance directives, when required under WAC 388-501-0125;

(t) Patient treatment agreements (examples: Opioid agreement, medication and treatment compliance agreements); and

(u) Informed consent documentation.

(2) Keep legible, accurate, and complete charts and records;

(3) Meet any additional record requirements of the department of health (DOH);

(4) Assure charts are authenticated by the person who gave the order, provided the care, or performed the observation, examination, assessment, treatment or other service to which the entry pertains;

(5) Make charts and records available to the department, its contractors or designees, and the United States Department of Health and Human Services (DHHS) upon request, for six years from the date of service or longer if required specifically by federal or state law or regulation. The department does not separately reimburse for copying of healthcare records, reports, client charts and/or radiographs, and related copying expenses; and

(6) Permit the department access to its physical facilities and its records to enable the department to conduct audits, inspections or reviews without prior announcement.

TERMINATION OF PROVIDER

AMENDATORY SECTION (Amending WSR 00-15-050, filed 7/17/00, effective 8/17/00)

WAC 388-502-0030 ((~~Denying, suspending, and terminating a provider's enrollment~~)) Termination of a provider agreement—For cause. (1) ((~~The department terminates enrollment or does not enroll or reenroll a provider if, in the department's judgement, it may be a danger to the health or safety of clients.~~

~~(2) Except as noted in subsection (3) of this section, the department does not enroll or reenroll a provider to whom any of the following apply:~~

~~(a) Has a restricted professional license;~~

~~(b) Has been terminated, excluded, or suspended from medicare/medicaid; or~~

~~(c) Has been terminated by the department for quality of care issues or inappropriate billing practices.~~

~~(3) The department may choose to enroll or reenroll a provider who meets the conditions in subsection (2) of this section if all of the following apply:~~

~~(a) The department determines the provider is not likely to repeat the violation that led to the restriction or sanction;~~

~~(b) The provider has not been convicted of other offenses related to the delivery of professional or other medical services in addition to those considered in the previous sanction; and~~

~~(c) If the United States Department of Health and Human Services (DHHS) or medicare suspended the provider from medicare, DHHS or medicare notifies the department that the provider may be reinstated.~~

~~(4) The department gives thirty days written notice before suspending or terminating a provider's enrollment. However, the department suspends or terminates enrollment immediately if any one of the following situations apply:~~

~~(a) The provider is convicted of a criminal offense related to participation in the medicare/medicaid program;~~

~~(b) The provider's license, certification, accreditation, or registration is suspended or revoked;~~

~~(c) Federal funding is revoked;~~

~~(d) By investigation, the department documents a violation of law or contract;~~

~~(e) The MAA medical director or designee determines the quality of care provided endangers the health and safety of one or more clients; or~~

~~(f) The department determines the provider has intentionally used inappropriate billing practices.~~

~~(5) The department may terminate a provider's number if:~~

~~(a) The provider does not disclose ownership or control information;~~

~~(b) The provider does not submit a claim to the department for twenty-four consecutive months;~~

~~(c) The provider's address on file with the department is incorrect;~~

~~(d) The provider requests a new provider number (e.g., change in tax identification number or ownership); or~~

~~(e) The provider voluntarily withdraws from participation in the medical assistance program.~~

~~(6) Nothing in this chapter obligates the department to enroll all eligible providers who request enrollment~~)) The department may immediately terminate a provider's core provider agreement (CPA) for any one or more of the following reasons, each of which constitutes cause:

(a) Provider exhibits significant risk factors that endanger client health and/or safety. These factors include, but are not limited to:

(i) Moral turpitude;

(ii) Sexual misconduct as defined in WAC 246-934-100 or in profession specific rules of the department of health (DOH);

(iii) A statement of allegations or statement of charges by DOH;

(iv) Restrictions placed by DOH on provider's current practice such as chaperone required for rendering treatment, preceptor required to review practice, or prescriptive limitations;

(v) Limitations, restrictions, or loss of hospital privileges or participation in any healthcare plan and/or failure to disclose the reasons to the department;

(vi) Negligence, incompetence, inadequate or inappropriate treatment, or lack of appropriate follow-up treatment;

(vii) Patient drug mismanagement and/or failure to identify substance abuse/addiction or failure to refer the patient for substance abuse treatment once abuse/addiction is identified;

(viii) Use of healthcare providers or healthcare staff who are unlicensed to practice or who provide healthcare services which are outside their recognized scope of practice or the standard of practice in the state of Washington;

(ix) Failure of the healthcare provider to comply with the requirements of WAC 388-502-0016;

(x) Failure of the healthcare practitioner with an alcohol or chemical dependency to furnish documentation or other assurances as determined by the department to adequately safeguard the health and safety of medical assistance clients that the provider:

(A) Is complying with all conditions, limitations, or restrictions to the provider's practice both public and private; and

(B) Is receiving treatment adequate to ensure that the dependency problem will not affect the quality of the provider's practice.

(xi) Infection control deficiencies;

(xii) Failure to maintain adequate professional malpractice coverage;

(xiii) Medical malpractice claims or professional liability claims that constitute a pattern of questionable or inadequate treatment, or contain any gross or flagrant incident of malpractice; or

(xiv) Any other act which the department determines is contrary to the health and safety of its clients.

(b) Provider exhibits significant risk factors that affect the provider's credibility or honesty. These factors include, but are not limited to:

(i) Failure to meet the requirements in WAC 388-502-0010 and WAC 388-502-0020;

(ii) Dishonesty or other unprofessional conduct;

(iii) Investigatory (e.g. audit), civil, or criminal finding of fraudulent or abusive billing practices;

(iv) Exclusion from participation in medicare, medicaid, or any other federally-funded healthcare program;

(v) Any conviction, no contest plea, or guilty plea relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct;

(vi) Any conviction, no contest plea, or guilty plea of a criminal offense;

(vii) Failure to comply with a DOH request for information or an on-going DOH investigation;

(viii) Noncompliance with a DOH or other state healthcare agency's stipulation to disposition, agreed order, final order, or other similar licensure restriction;

(ix) Misrepresentation or failure to disclose information on the enrollment application for a core provider agreement (CPA), failure to supply requested information, or failure to update CPA as required;

(x) Failure to comply with a department request for information;

(xi) Failure to cooperate with a department investigation, audit or review;

(xii) Providing healthcare services which are outside the provider's recognized scope of practice or the standard of practice in the state of Washington;

(xiii) Unnecessary medical/dental or other healthcare procedures;

(xiv) Discriminating in the furnishing of healthcare services, supplies, or equipment as prohibited by 42 U.S.C. § 2000d; and

(xv) Any other dishonest or discreditable act which the department determines is contrary to the interest of the department or its clients.

(2) If a provider is terminated for cause, the department pays for authorized services provided up to the date of termination only.

(3) If the department terminates a provider who is also a full or partial owner of a group practice, the department also terminates all providers linked to the group practice. The remaining practitioners in the group practice may reapply for participation with the department subject to WAC 388-502-0010(2).

(4) A provider who is terminated for cause may dispute a department decision under the process in WAC 388-502-0050.

NEW SECTION

WAC 388-502-0040 Termination of a provider agreement—For convenience. (1) Either the department or the provider may terminate the provider's participation with the department for convenience with thirty calendar days written notice served upon the other party in a manner which provides proof of receipt or proof of valid attempt to deliver.

(2) Terminations for convenience are not eligible for the dispute resolution process described in WAC 388-502-0050.

(3) If a provider is terminated for convenience, the department pays for authorized services provided up to the date of termination only.

INFORMAL DISPUTE RESOLUTION PROCESS

NEW SECTION

WAC 388-502-0050 Provider dispute of a department action. The process described in this section applies only when department rules allow a provider to dispute a department decision under this section.

(1) In order for the department to review a decision previously made by the department, a provider must submit the request to review the decision:

(a) Within twenty-eight calendar days of the date on the department's decision notice;

(b) To the address listed in the decision notice; and

(c) In a manner that provides proof of receipt.

(2) A provider's dispute request must:

(a) Be in writing;

(b) Specify the department decision that the provider is disputing;

(c) State the basis for disputing the department's decision; and

(d) Include documentation to support the provider's position.

(3) The department may request additional information or documentation. The provider must submit the additional information or documentation to the department within twenty-eight calendar days of the date on the department's request.

(4) The department closes the dispute without issuing a decision and with no right to further review under subsection (6) of this section when the provider:

(a) Fails to comply with any requirement of subsections (2), (3), and (4) of this section;

(b) Fails to cooperate with, or unduly delays, the dispute process; or

(c) Withdraws the dispute request in writing.

(5) The department will send the provider a written notice of dispute closure or written dispute decision.

(6) The provider may request the deputy assistant secretary of the medicaid purchasing administration (MPA) or designee to review the written dispute decision according to the process in WAC 388-502-0270.

(7) This section does not apply to disputes regarding overpayment. For disputes regarding overpayment, see WAC 388-502-0230.

REAPPLYING FOR PARTICIPATION

NEW SECTION

WAC 388-502-0060 Reapplying for participation. (1) Providers who are denied enrollment or removed from participation are not eligible to reapply for participation with the department for five years from the date of denial or termination.

(2) Providers who are denied enrollment or removed from participation due to sexual misconduct as defined in chapter 246-16 WAC or in profession-specific rules of the department of health (DOH) are not eligible to be enrolled for participation with the department.

(3) Providers who are denied enrollment or removed from participation more than once are not eligible to reapply for participation with the department.

PROVIDER PAYMENT REVIEWS AND DISPUTE RIGHTS

AMENDATORY SECTION (Amending WSR 00-22-017, filed 10/20/00, effective 11/20/00)

WAC 388-502-0230 Provider payment reviews and ((~~appeal~~)) dispute rights. (1) As authorized by chapters 43.20B and 74.09 RCW, the ((~~medical assistance administration (MAA)~~)) department monitors and reviews all providers who furnish ((~~medical, dental, or other~~)) healthcare services, drugs, equipment and/or related supplies to eligible ((~~medical assistance~~)) clients. ((~~MAA~~)) The department may review all documentation and/or data related to payments made to providers for healthcare services, drugs, equipment and/or supplies for eligible clients and determine((~~s~~)) whether the providers are complying with the rules and regulations of the program(s) ((~~and providing appropriate quality of care, and recovers any identified overpayments~~)). Examples of provider reviews are:

(a) A review of all ((~~billing/medical/dental/service~~)) records and/or payments for medical assistance clients;

(b) A ((~~statistical~~)) random sampling of billing((~~/medical/dental/service~~)) and/or records for medical assistance clients((~~, extrapolated per WAC 388-502-0240 (9), (10), and (11)~~)); and/or

(c) A review focused on selected ((~~billing/medical/dental/service~~)) records for medical assistance clients.

(2) ((~~The Washington State Health Professions Quality Assurance Commissions serve in an advisory capacity to MAA in conducting provider reviews and monitoring.~~

~~(3) MAA~~)) The department may determine that a provider's billing does not comply with program rules and regulations ((~~or the provider is not meeting quality of care practices~~)). ((~~MAA may do, but is not limited to,~~)) As a result of that determination, the department may take any of the following actions, or others as appropriate:

(a) Conduct prepay reviews of all claims the provider submits to ((~~MAA~~)) the department;

(b) Refer the provider to ((~~MAA's~~)) the department's auditors (see ((~~WAC 388-502-0240~~)) chapter 388-502A WAC);

(c) Refer the provider to ((~~medicaid's~~)) The Washington state medicaid fraud control unit;

(d) Refer the provider to the appropriate state health professions quality assurance commission;

(e) ((~~Impose provisional stipulations for the provider to continue participation in medical assistance programs;~~

~~(f)~~)) Terminate the provider's participation in medical assistance programs (see WAC 388-502-0030);

((~~(g)~~)) (f) Assess a civil penalty against the provider, per RCW 74.09.210; and

((~~(h)~~)) (g) Recover any moneys that the provider received as a result of ((~~inappropriate~~)) overpayments as authorized under chapter 43.20B RCW.

((~~(4) When any part of the time period that is reviewed or monitored falls on or before June 30, 1998, the following process applies. A provider who disagrees with a department action regarding overpayment recovery may request an administrative review hearing to dispute the action(s).~~

~~(a) The request for an administrative review hearing must be in writing and:~~

~~(i) Be sent within twenty-eight days of the date of the notice of action(s);~~

~~(ii) State the reason(s) why the provider thinks the action(s) are incorrect;~~

~~(iii) Be sent by certified mail (return receipt) or other means that provides proof of delivery to:~~

~~The Medical Assistance Administration~~
~~Attn: Deputy Assistant Secretary~~
~~P.O. Box 45500~~
~~Olympia WA 98504-5500~~

~~(b) The administrative review hearing consists of a review by MAA's deputy assistant secretary of all documents submitted by the provider and MAA. At the deputy assistant secretary's discretion, the administrative review hearing may be conducted in person, as a telephone conference, in written submissions, or a combination thereof.~~

~~(c) When a final decision is issued, the office of financial recovery collects any amount the provider is ordered to repay.~~

~~(d) The administrative review hearing referenced in this subsection is the final level of administrative review.~~

~~(5) When the entire time period that is reviewed or monitored falls on or after July 1, 1998, the following process applies.~~))

(3) A provider who disagrees with a department action regarding overpayment recovery may request a hearing to dispute the action(s) per RCW 43.20B.675.

(a) The request for hearing must be in writing and;

(i) ((~~Be sent~~)) Must be received by the department within twenty-eight days of the date of the notice of action(s), by certified mail (return receipt) or other means that provides proof of delivery to:

((~~The~~)) Office of Financial Recovery

P.O. Box 9501

Olympia, WA 98507-5501; and

(ii) State the reason(s) why the provider thinks the action(s) are incorrect.

(b) The office of administrative hearings schedules and conducts the hearing under the Washington Administrative Procedure Act, chapter 34.05 RCW, and chapter 388-02 WAC. ((~~MAA~~)) The department offers a pre-hearing/alternative dispute conference prior to the hearing.

(c) The office of financial recovery collects any amount the provider is ordered to repay.

((~~(6) A provider who disagrees with a department action regarding termination may appeal the action per WAC 388-502-0260. The provider may request a dispute conference; the request must be:~~

~~(a) In writing;~~

~~(b) Sent within thirty days of the date the provider received the termination notice;~~

~~(c) Include a statement of the action(s) appealed and supporting justification; and~~

~~(d) Sent to:~~

~~DSHS Central Contract Services~~

~~P.O. Box 45811~~

~~Olympia, WA 98504-5811~~

~~(7) See WAC 388-502-0220 for rate reimbursement appeals. See WAC 388-502-0240 for appeals of audit findings. See WAC 388-502-0260 for appeals related to contracts other than MAA's core provider agreements.~~))

WSR 11-06-002

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed February 16, 2011, 3:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-01-062.

Title of Rule and Other Identifying Information: WAC 392-126-032, 392-126-075, 392-126-090, 392-126-099, and 392-126-101, Finance—Shared leave.

Hearing Location(s): Old Capitol Building, Wanamaker Conference Room, 600 South Washington Street, P.O. Box 47200,

Olympia, WA 98504-7200, on April 5, 2011, at 10:00 a.m.

Date of Intended Adoption: April 5, 2011.

Submit Written Comments to: Daniel Lunghofer, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail Daniel.lunghofer@k12.wa.us, fax (360) 664-3683, by April 4, 2011.

Assistance for Persons with Disabilities: Contact Wanda Griffin, by April 4, 2011, TTY (360) 664-3631 or (360) 725-6132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rule revisions modify the rules for school district employees to share and receive leave with employees of other school districts or state agencies.

Reasons Supporting Proposal: ESSB 6724 (chapter 168, Laws of 2010) modified the statutes pertaining to shared leave for school district employees. Prior to the bill's passage, school district employees could only share leave with employees of the same district. This bill changed those laws, giving school districts the option of allowing their employees to share leave with employees of other school districts, as well as educational service districts, institutions of higher education, and state agencies. In addition, the maximum number of shared leave days that an employee may receive was increased from two hundred sixty-one to five hundred twenty-two.

Statutory Authority for Adoption: RCW 28A.400.380.

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

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Daniel Lunghofer, Office of Superintendent of Public Instruction, (360) 725-6303; Implementation: Calvin W. Brodie, Office of Superintendent of Public Instruction, (360) 725-6301; and Enforcement: Shawn Lewis, Office of Superintendent of Public Instruction, (360) 725-6292.

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

A cost-benefit analysis is not required under RCW 34.05.328. The superintendent of public instruction is not subject to RCW 34.05.328 per subsection (5)(a)(i). Addition-

ally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

February 16, 2011
Randy Dorn
Superintendent of
Public Instruction

NEW SECTION

WAC 392-126-032 Definition—Agency. As used in this chapter, "agency" means departments, offices, agencies, or institutions of state government, the legislature, and institutions of higher education.

AMENDATORY SECTION (Amending Order 98-11, filed 11/24/98, effective 12/25/98)

WAC 392-126-075 Eligibility. In the event a district implements a shared leave program, an employee shall be eligible to receive shared leave under the following conditions:

(1) The employee's job is one in which annual leave, sick leave, or personal holiday can be used and accrued.

(2) The employee is not eligible for time loss compensation under chapter 51.32 RCW.

(3) The employee has abided by district policies regarding the use of sick leave.

(4) The employee has exhausted, or will exhaust, his or her annual leave, sick leave and personal holiday.

(5) The condition has caused, or is likely to cause, the employee to go on leave without pay or terminate district employment.

(6) ((~~Leave sharing is limited to transfers from employees within the same employing district.~~)) Districts shall have the option of allowing their employees to share leave with:

(a) Employees of the same employing district, as outlined in WAC 392-126-099; or

(b) Employees of other districts or agencies, as outlined in WAC 392-126-101.

AMENDATORY SECTION (Amending Order 98-11, filed 11/24/98, effective 12/25/98)

WAC 392-126-090 Maximum amount. The district shall determine the amount of shared leave a ((~~leave~~)) recipient may receive and may only authorize an employee to use up to a maximum of ((~~two hundred sixty-one~~)) five hundred twenty-two days of shared leave during total district employment. All forms of paid leave available for use by the recipient must be used prior to using shared leave.

AMENDATORY SECTION (Amending Order 25, filed 8/21/90, effective 9/21/90)

WAC 392-126-099 Calculation of shared leave benefit—Proration. Shared leave between employees of the same district shall be calculated as follows:

(1) The leave recipient shall be paid his or her regular rate of pay; therefore, one hour of shared leave may cover more or less than one hour of the recipient's salary. The dollar value of the leave shall be converted from the donor to the recipient. The leave received shall be coded as shared leave and shall be maintained separately from all other leave balances.

(2) In the alternative the dollar value of the leave donated shall be ignored and the leave shall be calculated on a day donated and day received basis.

(3) Regardless of which basis is used to calculate and account for shared leave, in the event the district determines that unused shared leave should be returned to leave donors, the district shall develop a plan for prorated return of both annual and sick leave.

NEW SECTION

WAC 392-126-101 Shared leave benefits—Transfers between districts—Calculations of donated leave amounts. (1) Districts, as a matter of board policy, may allow their employees to share leave with employees of other districts or agencies, or to receive leave from employees of other districts or agencies.

(2) The leave recipient shall be paid his or her regular rate of pay; therefore, one hour of shared leave may cover more or less than one hour of the recipient's salary.

(3) Leave shared between districts and/or agencies shall be calculated in a format designated by the office of superintendent of public instruction. Shared leave shall be transferred between districts and/or agencies based on the dollar equivalent computed under this section.

(4) Leave received shall be coded as shared leave and shall be maintained separately from all other leave balances.

(5) In the event the district determines that unused shared leave should be returned to leave donors, the district shall develop a plan for prorated return of any unused leave.

WSR 11-06-014
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed February 23, 2011, 7:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-20-142.

Title of Rule and Other Identifying Information: Electronic eligibility database (EED), allows the use of electronic transfer of a real estate license applicant's school information to the testing provider.

Hearing Location(s): 2000 4th Avenue West, 2nd Floor Conference Room, Olympia, WA, on April 5, 2011, at 1:30 p.m.

Date of Intended Adoption: April 5, 2011, or after.

Submit Written Comments to: Jerry McDonald, 2000 4th Avenue West, Olympia, WA 98507, e-mail jmcdonald@dol.wa.gov, fax (360) 570-7051, by April 4, 2011.

Assistance for Persons with Disabilities: Contact Sally Adams by April 4, 2011, TTY (360) 664-0116 or (360) 664-6526.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This will allow real estate license applicants to schedule to take their real

estate exam without having to obtain and bring certificates to the testing site.

Reasons Supporting Proposal: This will reduce the number of applicants turned away from the testing site because they forgot or did not secure the paper approval form.

Statutory Authority for Adoption: RCW 18.85.041.

Statute Being Implemented: RCW 18.85.361.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jerry McDonald, 2000 4th Avenue West, Olympia, WA, (360) 664-6525.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules are for individual licensees. The department of licensing and the real estate commission utilized stakeholders to participate in the rule-making process.

A cost-benefit analysis is not required under RCW 34.05.328. The department of licensing is exempt from the provisions of this chapter.

February 23, 2011

Walt Fahrer

Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124A-705 Application examination process. (1) Any person desiring to take an examination for a broker or a managing broker license must((~~:~~

~~(a)~~)) contact the testing service at least one business day prior to the desired test date to schedule and pay for an examination((~~.~~

~~(b) On the day of the examination, the candidate shall submit a completed examination application together with any supporting documents, including evidence satisfactory to the department of having successfully completed an approved sixty clock hour fundamentals course, and a thirty-hour practices course approved by the real estate program to the testing service~~)) after receiving written notice that the requirements have been met.

(2) Any person desiring to take a broker or managing broker license examination who received clock hours in another jurisdiction must((~~:~~

~~(a)~~)) submit proof of education to be substituted for clock hours required under WAC 308-124A-755. After receiving written notice that the qualifications for the examination have been ((~~verified by the department~~)) met, the candidate shall contact the testing service at least one business day prior to the desired test date to schedule and pay for an examination.

((~~(b) Provide a completed examination application to the testing service on the day of the examination.~~))

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124A-707 Exam scheduling. (1) Candidates requesting a morning or afternoon exam will be scheduled immediately for an examination and will be provided a registration number confirming their reservation. ((~~On the day of the examination, the candidate shall submit the approved completed examination application to the testing service.~~))

(2) A candidate shall be assessed the full examination fee for any examination in which the candidate fails to provide two days notice to the testing service for changing their examination date or for failing to arrive and take an examination at the time the examination is scheduled or rescheduled.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124A-720 Application for real estate examination, licensed in another jurisdiction. (1) Any person applying for a broker or managing broker examination who is actively licensed in the same or greater capacity in another jurisdiction and has maintained his or her license in good standing or who was actively licensed in the same or greater capacity in good standing within the preceding six months is only required to take the Washington law portion of the examination.

(2) Any person applying to take the examination under this section shall submit evidence of licensure in another jurisdiction by a license verification form completed by the licensure authority in such jurisdiction.

(3) After receiving notification that the qualifications for the examination have been verified by the department, the candidate shall contact the testing service at least one day prior to the desired test date to schedule and pay for an examination. Candidates requesting a morning or afternoon exam shall be scheduled immediately for an examination and will be provided with a registration number confirming their reservation. ((~~On the day of the examination, the candidate shall submit at the test site the approved examination application and any supporting documents required by the department.~~))

(4) The director, upon advice of the Washington state real estate commission, may consider entering into written recognition agreements with other jurisdictions which license brokers and managing brokers similarly to Washington state. The recognition agreement(s) shall require the other jurisdiction to grant the same licensing process to licensees of Washington state as is offered by Washington state to license applicants from other jurisdictions.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124A-750 Application for managing broker license examination—Clock hour requirements. (1) Applicants for the managing broker's examination shall have successfully completed ninety clock hours of approved real estate instruction in addition to any other clock hours completed and used to satisfy requirements of chapter 18.85 RCW. Instruction must include a course in advanced real estate law, a course in real estate brokerage management, and

a course in business management. All courses completed to satisfy this requirement must be approved subject matter as defined in WAC 308-124H-820 and be at least thirty clock hours in length and include a comprehensive examination. Courses must be completed within three years prior to applying for the managing broker's examination.

(2) Courses in advanced real estate law, real estate brokerage management, and business management, used to satisfy continuing education requirements within three years of applying for the managing broker's examination shall satisfy the requirements of subsection (1) of this section provided the applicant successfully completed a comprehensive examination. Licensees will be required to provide additional approved course work if they have submitted advanced real estate law, brokerage management, or business management education classes to satisfy any other continuing educational requirements.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124A-790 Continuing education clock hour requirements. A licensee shall submit to the department evidence of satisfactory completion of clock hours, pursuant to RCW 18.85.211, in the manner and on forms prescribed by the department.

(1) A licensee applying for renewal of an active license shall submit evidence of completion of at least thirty clock hours of instruction in a course(s) approved by the real estate program and commenced within thirty-six months of a licensee's renewal date. A minimum of fifteen clock hours must be completed within twenty-four months of the licensee's current renewal date, and a portion of that fifteen must include three hours of the prescribed core curriculum defined in WAC 308-124A-800. Up to fifteen clock hours of instruction beyond the thirty clock hours submitted for a previous renewal date may be carried forward to the following renewal date. Failure to report successful completion of the prescribed core curriculum clock hours shall result in denial of license renewal.

(2) The thirty clock hours shall be satisfied by evidence of completion of approved real estate courses as defined in WAC 308-124H-820. A portion of the thirty clock hours of continuing education must include three clock hours of prescribed core curriculum defined in WAC 308-124A-800 and three clock hours of prescribed transition course pursuant to RCW 18.85.481(2).

(3) Courses for continuing education clock hour credit shall be commenced after issuance of a first license.

(4) A licensee shall not place a license on inactive status to avoid the continuing education requirement or the post-licensing requirements. A licensee shall submit evidence of completion of continuing education clock hours to activate a license if activation occurs within one year after the license had been placed on inactive status and the last renewal of the license had been as an inactive license. A licensee shall submit evidence of completing the post-licensing requirements if not previously satisfied upon returning to active status.

(5) Approved courses may be repeated for continuing education credit in subsequent renewal periods.

(6) Clock hour credit for continuing education shall not be accepted if:

(a) The course is not approved pursuant to chapter 308-124H WAC and chapter 18.85 RCW;

(b) Course(s) was taken to activate an inactive license pursuant to RCW 18.85.265(3);

(c) Course(s) submitted to satisfy the requirements of RCW 18.85.101 (1)(c), broker's license, RCW 18.85.211, 18.85.111, managing broker's license and WAC 308-124A-780, reinstatement.

(7) Instructors shall not receive clock hour credit for teaching or course development.

WSR 11-06-018
PROPOSED RULES
HORSE RACING COMMISSION

[Filed February 23, 2011, 10:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-01-137.

Title of Rule and Other Identifying Information: Chapter 260-44 WAC, Weights and equipment.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on April 15, 2011, at 9:30 a.m.

Date of Intended Adoption: April 15, 2011.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by April 11, 2011.

Assistance for Persons with Disabilities: Contact Patty Sorby by April 11, 2011, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Allows trainers to run horses either completely or partially unshod with certain requirements.

Reasons Supporting Proposal: Trainers may wish to race a horse without shoes depending on individual horses.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [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 23, 2011
Douglas L. Moore
Deputy Secretary

AMENDATORY SECTION (Amending WSR 09-03-011, filed 1/8/09, effective 2/8/09)

WAC 260-44-150 Horseshoes. (1) A horse starting in a race must be fully shod with racing plates, unless approval, as described in this subsection, is obtained to allow for any other condition relating to horseshoes. Horses racing partially, or completely unshod, must be approved by the official veterinarian, declared at time of entry and noted in the official program.

(2) During off-track conditions the trainer is required to report any additional traction devices to the board of stewards or designee.

(3) For turf racing, horses must be shod with racing plates approved by the association.

(4) Toe grabs with a height greater than two millimeters, worn on the front shoes of thoroughbred horses while racing or training on any surface or conditions are prohibited.

WSR 11-06-029
PROPOSED RULES
DEPARTMENT OF CORRECTIONS

[Filed February 25, 2011, 11:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-24-021.

Title of Rule and Other Identifying Information: New chapter 137-30 WAC, Earned release time for offenders.

Hearing Location(s): DOC Headquarters Building, 7345 Linderson Way S.W., Room 1028 B/C, Tumwater, WA 98501-6504, on April 7, 2011, at 10 a.m.

Date of Intended Adoption: May 9, 2011.

Submit Written Comments to: John Nispel, P.O. Box 41114, Olympia, WA 98504-1114, e-mail john.nispel@doc.wa.gov, fax (360) 664-2009, by April 4, 2011.

Assistance for Persons with Disabilities: Contact John Nispel by April 4, 2011, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To codify the system for awarding earned release time to offenders in WAC. This new rule will not change existing WACs.

Reasons Supporting Proposal: To comply with a court order.

Statutory Authority for Adoption: RCW 72.09.130 and 72.01.090.

Statute Being Implemented: RCW 9.95.070.

Rule is necessary because of state court decision, *Holmberg v. DOC*, Pierce Co. 05-2-12962-5.

Name of Proponent: Bernie Warner, prisons director, governmental.

Name of Agency Personnel Responsible for Drafting: John Nispel, Tumwater, Washington, (360) 725-8365; Implementation: Scott Blonien, Tumwater, Washington, (360) 725-8889; and Enforcement: Bernie Warner, Tumwater, Washington, (360) 725-8792.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules have no impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this rule adoption as the agency is not named in RCW 34.05.328 (5)(a)(i).

February 25, 2011
Eldon Vail
Secretary

Chapter 137-30 WAC

Earned Release Time

NEW SECTION

WAC 137-30-010 Purpose. The rules in this chapter provide a standardized system to award Earned Release Time to offenders committed to Department facilities.

NEW SECTION

WAC 137-30-020 Definitions. For purposes of this chapter, the following words mean:

Community Custody - An offender's supervision status in the community under the authority of the Department where the Department has the legal responsibility for adjudicating violations.

CCS - Community Corrections Supervisor.

CRS - Correctional Records Supervisor.

Earned Time - That portion of time an offender is eligible to earn for program participation approved by the classification process and consistent with his/her case management plan.

Earned Release Time (ERT) - The combined earned time and good conduct time credit an offender is eligible to earn off the minimum term established by the indeterminate sentence review board or the sentencing court.

Good conduct time - That portion of an inmate's potential reduction to minimum term which is authorized by RCW 9.95.070 and 72.09.130 and which may be lost by receiving serious infractions.

ISRB - The Indeterminate Sentence Review Board.

NEW SECTION

WAC 137-30-030 Eligibility.

ERT.

The following offenders may receive ERT:

(1) Offenders convicted of a serious violent offense or a Class A felony sex offense, committed after June 30, 1990, and before July 1, 2003, the ERT may not exceed fifteen percent of their sentence.

(2) Offenders convicted of a serious violent offense, or a Class A felony sex offense, committed after June 30, 2003, the ERT may not exceed ten percent of their sentence.

(3) Regardless of the date of offense or the date of sentencing, offenders convicted before July 2, 2010, who are classified as Moderate or Low Risk, may earn ERT up to fifty percent of their sentence: PROVIDED THAT, they have not been convicted of or have a prior conviction of a:

(a) Sex offense;

(b) Violent offense;

(c) Crime against a person, including Identity Theft in the first or second degree, committed on or after June 7, 2006;

(d) Felony domestic violence;

(e) Residential burglary;

(f) Violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture of, delivery of, or possession with intent to deliver, methamphetamine;

(g) Violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(h) Gross misdemeanor stalking;

(i) Violation of a domestic violence court order, including gross misdemeanors; or

(j) Any felony committed while under community supervision.

(4) Offenders may earn ERT up to 1/3 of the sentence in all other cases not identified in this section.

(5) An offender who has transferred from one sentence within a cause number to the next sentence, or from one cause number to the next cause number, may lose ERT associated with the previous sentence or cause. ERT may be taken on a consecutive sentence that is not yet being served.

(6) Offenders found guilty of Infractions 557 or 810 (WAC 137-25-030) will lose available ERT and privileges as outlined by DOC Policy 320.150 - Disciplinary Sanctions and will lose their fifty percent eligibility. Offenders found guilty of Infraction 813, related to employment or programming while in Work Release, will also lose available ERT and privileges

Good Conduct Time.

(1) All offenders will be eligible for good conduct time, except:

a. Offenders sentenced to death or Life Without Parole, and

b. Offenders serving the mandatory enhancement portion of their sentences.

(2) Good conduct time will be applicable to all Class A, B, and C felonies, except that:

a. Indeterminate offenders cannot earn good conduct time if their minimum term has expired and they have not been paroled or transferred to a consecutive sentence.

b. Any good conduct time earned or denied will be addressed to the correct sentence after the parole/transfer date is determined.

(3) Offenders may fail to earn good conduct time if found guilty of serious infractions listed in WAC 137-25-030 and sanctioned per DOC Policy 320.150 Disciplinary Sanctions.

(4) A sentence reduction based on good conduct time will be established for each offender and computed on a pro rata basis for every 30 day period served, as allowed by the offender's crime category.

(5) The following offenders may lose their good conduct time if found guilty of a serious infraction:

a. Indeterminate offenders whose time has not been adopted by the Indeterminate Sentence Review Board (ISRB);

b. Determinate offenders

c. The amount of time lost will be determined by the Disciplinary Hearing Officer/Community Hearing Officer/ISRB.

Earned Time.

(1) Offenders who participate in approved programs, including work and school, are eligible for earned time for each calendar month as follows:

(a) Earned Time eligible under 10 percent rule - one and eleven one-hundredth days;

(b) Earned Time eligible under 15 percent rule - one and seventy-six one-hundredth days;

(c) Earned Time eligible under 33 percent rule - five days;

(d) Earned Time eligible under 50 percent rule - ten days.

(2) An offender who disagrees with the risk assessment results has the right to appeal to the Superintendent of the facility where the decision was made within 48 hours of notification per DOC 320.400 Risk Assessment Process.

(3) Offenders are not eligible for earned time if:

(a) They are serving an Indeterminate Sentence and:

(i) The cause has been extended to the maximum term by the ISRB; or

(ii) The ISRB has previously denied future earned time.

(b) They are not involved in mandatory programming as determined through the classification process and consistent with their Custody Facility Plan. This includes refusing a mandatory work/school/program assignment or being terminated from a mandatory work/school/program for documented negative or substandard performance.

• Offenders previously determined qualified to receive 50% earned time will participate in programming or activities targeted in the Custody Facility Plan. The offender will not be penalized if programs and activities not available.

(c) They refuse any transfer, excluding Work Release. No earned time, at the appropriate earned time percentage as allowed by crime category, will be granted for each calendar month the offender refuses assignment.

(d) They serve 20 days or more in one calendar month in Administrative Segregation/Intensive Management status or disciplinary segregation. Loss of earned time will be calculated as allowed per crime category. The offender is not eligible to begin earning earned time until the Superintendent approves placement in general population. Offenders who are approved for transfer to general population and are scheduled for release to the community within 60 days will not lose earned time unless found guilty of Infraction 557 or 810, or of an Infraction 813 related to employment or programming while in Work Release. For other than negative behavior, offenders on Administrative Segregation/Intensive Management Status will continue to earn earned time at the rate allowed by crime category.

(e) They are serving the mandatory minimum portion of their sentence, except indeterminate offenders sentenced for crimes committed before July 1, 1984.

(f) At a classification hearing where earned time will be addressed, the offender will receive a written record of his/her earned time at least 24 hours prior to the scheduled classification review if earned time is not earned. Action taken by the committee is final and cannot be appealed.

(g) Earned time not earned as a result of Infraction 557 or 810, or of an Infraction 813 related to employment or programming while in Work Release, cannot be restored.

(h) Offenders will receive a written record of all earned time denials.

(4) Offenders are not eligible for 50% earned time if the offender's risk management level is changed to High Risk Violent or High Risk Non Violent; High Risk Violent or High Risk Non Violent offenders may earn up to 1/3 of the sentence.

NEW SECTION

WAC 137-30-040 County jail earned release time. (1) For offenders transferred from a county jail to the Department, the jail administrator will certify to the Department the amount of jail time spent in custody at the jail and the amount of ERT.

(a) If no certification has been provided, the CRS/designee will send a request to the jail administrator requesting s/he provide a jail certification.

(i) If the jail administrator certifies jail time credits to consecutive sentences for the same time period and the Judgment and Sentence does not address jail time credits, the CRS will correct the jail certification by deducting any duplicate jail time credits and jail earned release time credits from the jail certification totals and applying the remaining credits.

(ii) In the case of a Department sanction, if the jail administrator certifies jail credits to a consecutive sentence that includes credits for time served on the Department sanction and the Judgment and Sentence does not address jail time credits, the CRS will deduct the sanction days served from the jail credits and the jail earned release time for sanction time served and apply the remaining credits to the consecutive sentence.

(iii) The CRS will send a request to the jail administrator requesting an amended jail certification, unless the jail administrator has requested that the Department not send a letter. The CRS does not need to wait for the amended jail certification to apply the proper credits.

(b) The CRS will send the offender DOC 09-261 Court of Appeals Decision - Jail Time Credits, informing him/her of the Department's authority to correct the jail certification when there is a manifest error of law in the jail's certification.

(c) If the court orders jail time credits for the same time period on consecutive sentences with the same intake date to Prison, the Judgment and Sentence must be followed and the jail time credits will be applied accordingly. The Department may contest the court's calculations by way of the Post Sentence Petition process.

(d) If the court orders jail time credits for the same time period on consecutive sentences with different intake dates to Prison, the CRS will apply the credits from the Judgment and Sentence and then apply Wickert time (i.e., out time applied to a period of confinement when the offender is required to serve a consecutive period of confinement starting before the current confinement is complete) for that same time period.

(e) Credit for Time Served/Re-Sentenced on Previous Conviction. Offenders who are re-sentenced on a previous conviction are entitled to receive credit for the original jail time, original jail earned release time, Department time served, and ERT on the Department time served. All time the offender served for the conviction offense, as well as the ERT at the appropriate percentage, will be applied. Any good conduct time lost due to infractions, or earned time not earned during the time served on the original sentence, must be deducted from the Department ERT.

NEW SECTION

WAC 137-30-050 Persistent prison misbehavior. (1) An offender serving a sentence for an offense committed after July 31, 1995, may have his/her earned time credits taken away as part of a disciplinary sanction, when s/he has lost all good conduct time credits for the current commitment.

(2) Offenders serving a sentence for an offense committed after July 31, 1995, who have a record of being a persistent management/disciplinary problem may also have earned time credits taken away.

(3) Earned or future ERT credits may be reduced for offenders serving a sentence for an offense committed after July 31, 1995.

NEW SECTION

WAC 137-30-060 Release date. (1) To calculate an offender's release date on a determinate sentence, the jail time and jail earned release time are deducted from the total sentence. The earned release time applicable per statute is applied to the adjusted sentence.

(2) A determinate offender held beyond his/her Earned Release Date (ERD) may have available ERT taken if found guilty of a serious infraction as defined in WAC 137-25-030.

(3) An offender with an established release date who receives a Category A Infraction after a community release plan has been approved will have the release date suspended until adjudication of the infraction and all time loss and sanctions are completed..

(4) The staff responsible for entering the sanction information will notify the CRS or designee immediately by telephone and via email if the release date changes, when the offender is denied earned time or loses good conduct time or when time is restored and the ERD is in less than 120 days.

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 137-30-070 Restoration of good conduct time. (1) For indeterminate sentences, once the good conduct time denial is addressed or adopted by the ISRB, it cannot be returned to the offender without prior approval of the ISRB.

(2) At a regularly scheduled review, offenders may request restoration of good conduct time from the Superintendent/CCS where the offender is housed.

(3) When the decision is made by the Superintendent/CCS where the offender is housed, that decision is final and the offender may not request subsequent reviews for the same infractions.

(4) The unit team may recommend approval provided:

(a) The good conduct time has not been adopted by the ISRB, if the case requires an ISRB hearing for release;

(b) The offender has been free of serious infractions violations for at least one year from the date of the last serious infraction;

(c) The offender is not within 6 months of his/her ERD and the restoration will not put the offender less than 120 days to release;

(d) During the current incarceration, for the period of 10 years prior to the request for restoration the offender has not committed a Category A Infraction.

(e) During the current incarceration, for the period of 5 years prior to the request for restoration, the offender has not committed a Category A Infraction 601 or 602.

(f) During the current incarceration, for the period of 3 years prior to the request for restoration, the offender has not committed a Category A Infraction 507, 603, 650, or 651.

(5) Review:

(a) The Director or the Deputy Director may review and restore good conduct time for Category A violations. This decision cannot be delegated below the Deputy Director level.

(b) The Superintendent/CCS may review and restore good conduct time for Category B and C violations.

(6) Good conduct time lost as the result of Infraction 557, 810, 813 (related to employment or programming while in work release) or 857 will not be restored.

(7) When making the decision whether to restore good conduct time, the Director/Deputy Director, or the Superintendent/CCS will consider:

(a) Length of positive program participation;

(b) Period of Infraction free behavior;

(c) Nature of infractions;

(d) Overall behavior during the commitment period, and

(e) Unit team recommendation.

NEW SECTION

WAC 137-30-080 Community custody. (1) Offenders with orders of community custody per RCW 9.94A.701 may have their sentences reduced by ERT

(2) Community Custody Violators confined in a Department facility for sanction time are eligible for ERT good time credits at the rate of 1/3 of the sanction.

(3) Community Custody Returns/Terminates: During community custody, if an offender has not completed his/her maximum term of total confinement and is subject to a third violation hearing for any violation of community custody and is found to have committed the violation, the Department may return the offender to total confinement to serve the remainder of the prison term.

(a) This applies solely to offenders who were not held to their maximum expiration date prior to release to community custody.

(b) All jail ERT and DOC ERT applied to the sentence before early release becomes return time.

(c) When determining the length of return time, the Department must credit the offender with all community custody time successfully served and with all periods of prehearing time spent in confinement pending all prior and current community custody violation hearings for that cause.

(d) The date the offender was placed in jail on the most recent violation will be the return start date.

(e) The offender is not entitled to any ERT during the return time.

(f) Upon release from total confinement, after serving the return time the offender will resume serving the community custody portion of the sentence for any time remaining on community custody.

WSR 11-06-037
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed February 28, 2011, 9:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-14-092.

Title of Rule and Other Identifying Information: Clarify the director's procedures on investigation and auditing. Time, place and manner.

Hearing Location(s): 2000 4th Avenue West, 2nd Floor Conference Room, Olympia, WA, on April 5, 2011, at 3:00 p.m.

Date of Intended Adoption: April 5 or after.

Submit Written Comments to: Jerry McDonald, 2000 4th Avenue West, Olympia, WA 98507, e-mail jmcdonald@dol.wa.gov, fax (360) 570-7051, by April 4, 2011.

Assistance for Persons with Disabilities: Contact Sally Adams by April 4, 2011, TTY (360) 664-0116 or (360) 664-6526.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Licensees have duties and responsibilities regarding the maintenance and production of records and statements to the department. These rules will give licensees safeguards and outline the licensee's responsibility to cooperate with an investigation or audit.

Reasons Supporting Proposal: These rules will outline licensee responsibilities.

Statutory Authority for Adoption: RCW 18.85.041.

Statute Being Implemented: RCW 18.85.361.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jerry McDonald, 2000 4th Avenue West, Olympia, WA, (360) 664-6525.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules are for individual licensees. The department of licensing and the real estate commission utilized stakeholders to participate in the rule-making process.

A cost-benefit analysis is not required under RCW 34.05.328. The department of licensing is exempt from the provisions of this chapter.

February 28, 2011
Walt Fahrer
Rules Coordinator

Chapter 308-124I WAC

REAL ESTATE—AUDIT/INVESTIGATION PROCEDURES

NEW SECTION

WAC 308-124I-010 Purpose. (1) The director regulates the practice of real estate brokerage for the safety of consumers. Real estate purchases and sales are frequently the largest financial transactions in a consumer's lifetime.

(2) A real estate license is a privilege granted by the state to those persons meeting licensing requirements, maintaining required records, and complying with all laws governing the practice of real estate, including cooperation with an audit/investigation of a licensee's real estate brokerage activities.

(3) The standard of practice for real estate licensees is that of an attorney when completing real estate brokerage transaction documents for consumers.

(4) The director utilizes two primary methods of enforcement regarding the practice of real estate brokerage:

(a) Audits; and

(b) Investigations.

(5) These rules are designed to promote efficiency in conducting audits and investigations and to give licensees notice of what is required of them with respect to audits, investigations, and producing records to the department.

NEW SECTION

WAC 308-124I-020 Recordkeeping. (1) Licensees are required to create and maintain records of their real estate brokerage activities for the regulatory purpose of this chapter.

(2) Records must be maintained by the licensee and made available to the director for three years from the conclusion of the related services or transaction.

(3) Licensees have no privacy interest in the records they are required to maintain by statute or rule.

NEW SECTION

WAC 308-124I-030 Licensee statements and explanations. (1) During the course of an investigation or audit, licensees may be required to provide written statements, and/or explanations.

(2) A request for a written statement or explanation can only be issued by an authorized representative of the director, such as an investigator, auditor, program staff, or other designee.

NEW SECTION

WAC 308-124I-040 Review of complaints of unprofessional conduct. (1) Complaints are reviewed to determine if the allegations in the complaint describe an apparent violation of the laws the department administers. Staff may perform some fact-finding for the purposes of determining whether the complaint likely has merit. Even if the complaint is deemed to have merit, the department may decide not to investigate it for reasons such as the gravity of the alleged violation or the resources and priorities of the department.

(2) Department-initiated complaints will be referred to the investigation or audit section. If the complaint is deemed to merit further review, it will be assigned to an investigator or auditor.

(3) During the course of an investigation or audit, if the department's auditor or investigator discovers evidence of additional violations outside the allegations of the complaint, the auditor or investigator may investigate and request records and detailed explanations from the licensee regarding those additional violations.

NEW SECTION

WAC 308-124I-050 Audits. (1) Real estate firms are subject to routine audits. Routine audits are scheduled approximately every three years.

(2) Audits will be conducted at the location the real estate firm is licensed to conduct real estate brokerage activity or a facility chosen by the department.

(3) All requests for records will be issued by an authorized representative of the director, such as auditors, investigators, program staff or other designee.

(4) An audit can be initiated at any time based upon the results of the previous audit or complaint.

(5) Audits are not scheduled, but they are normally done between the hours of 8:00 a.m. and 5:30 p.m., Monday through Friday, excluding state holidays. An auditor may not forcibly enter a licensed business location unless accompanied by law enforcement personnel pursuant to a valid search warrant. Licensees are advised that refusal to permit access may result in disciplinary action under chapters 18.85 and 18.235 RCW.

(6) An auditor may appear at a licensed business location, unannounced, during the hours described above. A licensee may be required to produce to the auditor at that time all records the licensee is required to keep by the statutes and rules governing licensees. Licensees are advised that refusal to permit access may result in disciplinary action under chapters 18.85 and 18.235 RCW.

(7) The department may not charge for the cost of routine audits to the licensee. Audit costs may be charged to the licensee pursuant to RCW 18.235.110(2) when the department has audited pursuant to a complaint, violations have been found, and the director has issued an order imposing any of the sanctions described in RCW 18.235.110(1).

(8) An auditor and licensee may mutually agree to complete or continue an audit outside the time and date limitations.

NEW SECTION

WAC 308-124I-060 Investigations. (1) All requests for records will be issued by an authorized representative of the director, such as auditors, investigators, program staff, or other designee.

(2) Requests for records, documents or detailed explanations shall be in writing, by regular mail, facsimile, electronic mail, or in person pursuant to an investigation.

(3) The investigator will not request documents or explanations by telephone unless the telephone request is followed by a request in writing. In the case of a request for records or documents, a licensee will not be charged for failure to cooperate with the department unless the investigator has made a written request for records or documents that the licensee is required to keep, and has described the records or documents with sufficient specificity to notify the licensee of what records or documents are being sought.

(4) An investigator may inspect a licensee's licensed business location and records without a warrant pursuant to an investigation approved or assigned by the director or designee between the hours of 8:00 a.m. and 5:30 p.m., Monday through Friday, excluding state holidays, or during the hours of an appointment agreed to with the licensee. Licensees are advised that refusal to permit access may result in disciplinary action under chapters 18.85 and 18.235 RCW. An investigator may not forcibly enter a licensed business location unless accompanied by law enforcement personnel pursuant to a valid search warrant.

WSR 11-06-045
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF AGRICULTURE
(By the Code Reviser's Office)

[Filed March 1, 2011, 8:56 a.m.]

WAC 16-610-140, proposed by the department of agriculture in WSR 10-17-123 appearing in issue 10-17 of the State Register, which was distributed on September 1, 2010, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 11-06-055
PROPOSED RULES
BOARD OF PILOTAGE COMMISSIONERS
[Filed March 1, 2011, 1:27 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 363-116-300 Pilotage rates for the Puget Sound pilotage district.

Hearing Location(s): 2901 Third Avenue, 1st Floor, Agate Conference Room, Seattle, WA 98121, on April 7, 2011, at 9:30 a.m.

Date of Intended Adoption: April 7, 2011.

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 31, 2011.

Assistance for Persons with Disabilities: Contact Shawna Erickson by April 4, 2011, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to extend the expiration date of the current Puget Sound pilotage district tariff beyond June 30, 2011.

The proposed rule reflects a range of expiration dates between June 30, 2011, and December 31, 2011.

Reasons Supporting Proposal: RCW 88.16.035 requires that a tariff be set annually. Representatives of the Puget Sound pilots and the Pacific Merchant Shipping Association concur with the board that the need exists to extend the expiration date of the current Puget Sound pilotage district tariff due to the board's deviation from its customary tariff setting timeline. It has been determined that the public hearing concerning this tariff may occur in June, rather than May, which necessitates an extension of the current tariff.

Statutory Authority for Adoption: RCW 88.16.035.

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 current 2010-2011 tariff for the Puget Sound pilotage district expires on June 30, 2011.

The board is delaying the public hearing at which the 2011-2012 tariff will be set and therefore needs to extend the expiration date of the current 2010-2011 tariff.

Name of Proponent: Board of pilotage commissioners, governmental.

Name of Agency Personnel Responsible for Drafting: Peggy Larson, 2901 Third Avenue, Seattle, WA 98121, (206) 515-3904; 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 proposed rule is being considered in the context of the required annual review of the rates charged for pilotage services.

The application of the range of proposed dates is clear in the description of the proposal and its anticipated effects as well as the proposed tariff shown below.

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

February 24, 2011
Peggy Larson
Administrator

AMENDATORY SECTION (Amending WSR 10-24-085, filed 11/30/10, effective 12/31/10)

WAC 363-116-300 Pilotage rates for the Puget Sound pilotage district. Effective 0001 hours July 1, 2010, through 2400 hours June 30, 2011 or a subsequent date on or before December 31, 2011.

CLASSIFICATION	RATE
Ship length overall (LOA)	
Charges:	
Per LOA rate schedule in this section.	
Boarding charge:	$48.00
Per each boarding/deboarding at the Port Angeles pilot station.	
Harbor shift - Live ship (Seattle Port)	LOA Zone I
Harbor shift - Live ship (other than Seattle Port)	LOA Zone I
Harbor shift - Dead ship	Double LOA Zone I
Towing charge - Dead ship:	Double LOA Zone
LOA of tug + LOA of tow + beam of tow	

Any tow exceeding seven hours, two pilots are mandatory. Harbor shifts shall constitute and be limited to those services in moving vessels from dock to dock, from anchorage to dock, from dock to anchorage, or from anchorage to anchorage in the same port after all other applicable tariff charges for pilotage services have been recognized as payable.

Compass Adjustment	$349.00
Radio Direction Finder Calibration	$349.00
Launching Vessels	$524.00
Trial Trips, 6 hours or less (minimum $984.00)	$164.00 per hour
Trial Trips, over 6 hours (two pilots)	$328.00 per hour
Shilshole Bay – Salmon Bay	$205.00
Salmon Bay – Lake Union	$159.00
Lake Union – Lake Washington (plus LOA zone from Webster Point)	$205.00
Cancellation Charge	LOA Zone I
Cancellation Charge – Port Angeles:	LOA Zone II

(When a pilot is ordered and vessel proceeds to a port outside the Puget Sound pilotage district without stopping for a pilot or when a pilot order is canceled less than twelve hours prior to the original ETA.)

Waterway and Bridge Charges:

Ships up to 90' beam:

A charge of $258.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle, south of Eleventh Street in any of the Tacoma waterways, in Port Gamble, or in the Snohomish River. Any vessel movements required to transit through bridges shall have an additional charge of $123.00 per bridge.

Ships 90' beam and/or over:

A charge of $350.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle and south of Eleventh Street in any of the Tacoma waterways. Any vessel movements required to transit through bridges shall have an additional charge of $244.00 per bridge.

(The above charges shall not apply to transit of vessels from Shilshole Bay to the limits of Lake Washington.)

Two or three pilots required:

In a case where two or three pilots are employed for a single vessel waterway or bridge transit, the second and/or third pilot charge shall include the bridge and waterway charge in addition to the harbor shift rate.

Docking Delay After Anchoring:

Applicable harbor shift rate to apply, plus $266.00 per hour standby. No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is $266.00 for every hour or fraction thereof.

Sailing Delay:

No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is $266.00 for every hour or fraction thereof. The assessment of the standby charge shall not exceed a period of twelve hours in any twenty-four-hour period.

Slowdown:

When a vessel chooses not to maintain its normal speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater, from the predicted arrival time had the vessel maintained its normal speed capabilities, a charge of $266.00 per hour, and each fraction thereof, will be assessed for the resultant difference in arrival time.

Delayed Arrival – Port Angeles:

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the vessel does not arrive within two hours of its ETA, or its ETA is amended less than six hours prior to the original ETA, a charge of $266.00 for each hour delay, or fraction thereof, shall be assessed in addition to all other appropriate charges.

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the ETA is delayed to six hours or more beyond the original ETA, a cancellation charge shall be assessed, in addition to all other appropriate charges, if the ETA was not amended at least twelve hours prior to the original ETA.

Tonnage Charges:

0 to 20,000 gross tons:

Additional charge to LOA zone mileage of $0.0082 a gross ton for all gross tonnage up to 20,000 gross tons.

20,000 to 50,000 gross tons:

Additional charge to LOA zone mileage of $0.0846 a gross ton for all gross tonnage in excess of 20,000 gross tons up to 50,000 gross tons.

50,000 gross tons and up:

In excess of 50,000 gross tons, the charge shall be $0.1012 per gross ton.

For vessels where a certificate of international gross tonnage is required, the appropriate international gross tonnage shall apply.

Transportation to Vessels on Puget Sound:

March Point or Anacortes	$195.00
Bangor	190.00
Bellingham	225.00
Bremerton	167.50
Cherry Point	260.00
Dupont	120.00
Edmonds	42.50
Everett	72.50
Ferndale	247.50
Manchester	162.50
Mukilteo	65.00
Olympia	155.00
Point Wells	42.50
Port Gamble	230.00
Port Townsend (Indian Island)	277.50
Seattle	18.75
Tacoma	87.50

(a) Intraharbor transportation for the Port Angeles port area: Transportation between Port Angeles pilot station and Port Angeles harbor docks - $15.00.

(b) Interport shifts: Transportation paid to and from both points.

(c) Intraharbor shifts: Transportation to be paid both ways. If intraharbor shift is canceled on or before scheduled reporting time, transportation paid one way only.

(d) Cancellation: Transportation both ways unless notice of cancellation is received prior to scheduled reporting time in which case transportation need only be paid one way.

(e) Any new facilities or other seldom used terminals, not covered above, shall be based on mileage x $2.00 per mile.

Delinquent Payment Charge:

1 1/2% per month after 30 days from first billing.

Nonuse of Pilots:

Ships taking and discharging pilots without using their services through all Puget Sound and adjacent inland waters shall pay full pilotage charges on the LOA zone mileage basis from Port Angeles to destination, from place of departure to Port Angeles, or for entire distance between two ports on Puget Sound and adjacent inland waters.

British Columbia Direct Transit Charge:

In the event that a pilot consents to board or deboard a vessel at a British Columbia port, which consent shall not unreasonably be withheld, the following additional charges shall apply in addition to the normal LOA, tonnage and other charges provided in this tariff that apply to the portion of the transit in U.S. waters:

Direct Transit Charge	$2,107.00
Sailing Delay Charge. Shall be levied for each hour or fraction thereof that the vessel departure is delayed beyond its scheduled departure from a British Columbia port, provided that no charge will be levied for delays of one hour or less and further provided that the charge shall not exceed a period of 12 hours in any 24 hour period.	$283.00 per hour
Slow Down Charge. Shall be levied for each hour or fraction thereof that a vessel's arrival at a U.S. or BC port is delayed when a vessel chooses not to maintain its normal safe speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater from the arrival time had the vessel maintained its normal safe speed capabilities.	$283.00 per hour
Cancellation Charge. Shall be levied when a pilot arrives at a vessel for departure from a British Columbia port and the job is canceled. The charge is in addition to the applicable direct transit charge, standby, transportation and expenses.	$525.00

Transportation Charge Vancouver Area. Vessels departing or arriving at ports in the Vancouver-Victoria-New Westminster Range of British Columbia.	$499.00
Transportation Charge Outports. Vessels departing or arriving at British Columbia ports other than those in the Vancouver-Victoria-New Westminster Range.	$630.00

Training Surcharge:
On January 1, 2011, a surcharge of $15.00 for each pilot trainee then receiving a stipend pursuant to the training program provided in WAC 363-116-078 shall be added to each pilotage assignment.

LOA Rate Schedule:
The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile and includes retirement fund contributions.

LOA (Length Overall)	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
UP to 449	255	396	675	1,006	1,354	1,757
450 - 459	266	403	679	1,021	1,376	1,766
460 - 469	268	407	690	1,038	1,395	1,774
470 - 479	277	419	698	1,059	1,399	1,777
480 - 489	285	426	701	1,078	1,408	1,785
490 - 499	289	432	712	1,098	1,424	1,794
500 - 509	304	440	722	1,110	1,436	1,805
510 - 519	306	448	729	1,127	1,451	1,812
520 - 529	310	464	740	1,132	1,464	1,826
530 - 539	319	470	749	1,145	1,487	1,847
540 - 549	324	476	766	1,157	1,510	1,864
550 - 559	331	492	771	1,174	1,522	1,882
560 - 569	343	512	786	1,185	1,536	1,899
570 - 579	350	516	789	1,190	1,552	1,912
580 - 589	365	524	808	1,199	1,561	1,931
590 - 599	382	536	813	1,205	1,584	1,954
600 - 609	396	552	824	1,209	1,604	1,963
610 - 619	418	557	838	1,214	1,619	1,981
620 - 629	434	564	846	1,229	1,638	2,004
630 - 639	454	574	855	1,232	1,652	2,021
640 - 649	472	587	864	1,234	1,666	2,036
650 - 659	505	597	880	1,244	1,686	2,057
660 - 669	515	605	887	1,251	1,705	2,073
670 - 679	534	620	896	1,274	1,724	2,086
680 - 689	541	630	908	1,284	1,739	2,106
690 - 699	557	640	922	1,307	1,757	2,150
700 - 719	582	661	939	1,324	1,791	2,174
720 - 739	616	679	963	1,342	1,826	2,210
740 - 759	640	712	982	1,354	1,864	2,250
760 - 779	665	734	1,006	1,376	1,899	2,279
780 - 799	698	767	1,021	1,395	1,931	2,320
800 - 819	726	789	1,041	1,402	1,963	2,355
820 - 839	749	818	1,065	1,424	2,004	2,382
840 - 859	781	851	1,086	1,441	2,034	2,423
860 - 879	810	880	1,105	1,478	2,073	2,458

LOA (Length Overall)	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
880 - 899	838	905	1,127	1,512	2,106	2,494
900 - 919	863	935	1,146	1,551	2,150	2,528
920 - 939	890	963	1,174	1,584	2,172	2,563
940 - 959	922	988	1,191	1,619	2,210	2,594
960 - 979	943	1,017	1,212	1,652	2,250	2,633
980 - 999	974	1,041	1,233	1,686	2,279	2,667
1000 - 1019	1,034	1,108	1,288	1,776	2,387	2,782
1020 - 1039	1,062	1,141	1,328	1,826	2,459	2,863
1040 - 1059	1,094	1,169	1,367	1,882	2,529	2,948
1060 - 1079	1,127	1,210	1,407	1,938	2,608	3,035
1080 - 1099	1,161	1,244	1,448	1,994	2,684	3,127
1100 - 1119	1,194	1,282	1,492	2,056	2,765	3,221
1120 - 1139	1,231	1,323	1,538	2,116	2,848	3,317
1140 - 1159	1,266	1,360	1,582	2,179	2,934	3,418
1160 - 1179	1,304	1,399	1,632	2,245	3,021	3,518
1180 - 1199	1,344	1,442	1,679	2,312	3,113	3,625
1200 - 1219	1,385	1,485	1,728	2,382	3,206	3,732
1220 - 1239	1,424	1,530	1,779	2,453	3,300	3,844
1240 - 1259	1,467	1,575	1,831	2,526	3,400	3,958
1260 - 1279	1,510	1,621	1,887	2,602	3,503	4,077
1280 - 1299	1,555	1,671	1,945	2,680	3,605	4,200
1300 - 1319	1,603	1,718	2,001	2,759	3,714	4,324
1320 - 1339	1,651	1,771	2,063	2,842	3,824	4,455
1340 - 1359	1,698	1,824	2,124	2,926	3,939	4,589
1360 - 1379	1,750	1,877	2,187	3,016	4,055	4,724
1380 - 1399	1,801	1,933	2,254	3,104	4,178	4,868
1400 - 1419	1,856	1,992	2,319	3,196	4,302	5,013
1420 - 1439	1,911	2,052	2,389	3,293	4,433	5,163
1440 - 1459	1,970	2,114	2,462	3,391	4,565	5,317
1460 - 1479	2,025	2,175	2,534	3,492	4,702	5,474
1480 - 1499	2,087	2,240	2,609	3,596	4,841	5,639
1500 & Over	2,150	2,308	2,686	3,706	4,985	5,807

WSR 11-06-056
PROPOSED RULES
BOARD OF PILOTAGE COMMISSIONERS

[Filed March 1, 2011, 1:29 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 363-116-185 Pilotage rates for the Grays Harbor pilotage district.

Hearing Location(s): 2901 Third Avenue, 1st Floor, Agate Conference Room, Seattle, WA 98121, on April 7, 2011, at 9:30 a.m.

Date of Intended Adoption: April 7, 2011.

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 31, 2011.

Assistance for Persons with Disabilities: Contact Shawna Erickson by April 4, 2011, (206) 515-3647.

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

the proposal is to extend the expiration date of the current Grays Harbor pilotage district tariff beyond July 31, 2011.

The proposed rule reflects a range of expiration dates between July 31, 2011, and December 31, 2011.

Reasons Supporting Proposal: RCW 88.16.035 requires that a tariff be set annually. Representatives of the Grays Harbor pilots and the Pacific Merchant Shipping Association concur with the board that the need exists to extend the expiration date of the current Grays Harbor pilotage district tariff due to the board's deviation from its customary tariff setting timeline. It has been determined that the public hearing concerning this tariff may occur in July, rather than June, which necessitates an extension of the current tariff.

Statutory Authority for Adoption: RCW 88.16.035.

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 current 2010-2011 tariff for the Grays Harbor pilotage district expires on July 31, 2011.

The board is delaying the public hearing at which the 2011-2012 tariff will be set and therefore needs to extend the expiration date of the current 2010-2011 tariff.

Name of Proponent: Board of pilotage commissioners, governmental.

Name of Agency Personnel Responsible for Drafting: Peggy Larson, 2901 Third Avenue, Seattle, WA 98121, (206) 515-3904; 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 proposed rule is being considered in the context of the required annual review of the rates charged for pilotage services.

The application of the range of proposed dates is clear in the description of the proposal and its anticipated effects as well as the proposed tariff shown below.

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

February 24, 2011

Peggy Larson

Administrator

AMENDATORY SECTION (Amending WSR 10-13-084, filed 6/15/10, effective 8/1/10)

WAC 363-116-185 Pilotage rates for the Grays Harbor pilotage district. Effective 0001 hours August 1, 2010, through 2400 hours July 31, 2011 or a subsequent date on or before December 31, 2011.

CLASSIFICATION	RATE
Charges for piloting of vessels in the inland waters and tributaries of Grays Harbor shall consist of the following:	
Draft and Tonnage Charges:	
Each vessel shall be charged according to its draft and tonnage for each vessel movement inbound to the Grays Harbor pilotage district, and for each movement outbound from the district.	
Draft	$100.12 per meter or $30.51 per foot
Tonnage	$0.287 per net registered ton
Minimum Net Registered Tonnage	$1,004.00
Extra Vessel (in case of tow)	$562.00
Provided that, due to unique circumstances in the Grays Harbor pilotage district, vessels that call, and load or discharge cargo, at Port of Grays Harbor Terminal No. 2 shall be charged $5,562.00 per movement for each vessel movement inbound to the district for vessels that go directly to Terminal No. 2, or that go to anchor and then go directly to Terminal No. 2, or because Terminal No. 2 is not available upon arrival that go to layberth at Terminal No. 4 (without loading or discharging cargo) and then go directly to Terminal No. 2, and for each vessel movement outbound from the district from Terminal No. 2, and that this charge shall be in lieu of only the draft and tonnage charges listed above.	
Boarding Charge:	
Per each boarding/deboarding from a boat or helicopter	$1,030.00
Harbor Shifts:	
For each shift from dock to dock, dock to anchorage, anchorage to dock, or anchorage to anchorage	$699.00
Delays per hour	$164.00
Cancellation charge (pilot only)	$274.00
Cancellation charge (boat or helicopter only)	$822.00

CLASSIFICATION	RATE
Two Pilots Required:	
When two pilots are employed for a single vessel transit, the second pilot charge shall include the harbor shift charge of $699.00 and in addition, when a bridge is transited the bridge transit charge of $301.00 shall apply.	
Pension Charge:	
Charge per pilotage assignment, including cancellations	$271.00
Travel Allowance:	
Transportation charge per assignment	$100.00
Pilot when traveling to an outlying port to join a vessel or returning through an outlying port from a vessel which has been piloted to sea shall be paid $931.00 for each day or fraction thereof, and the travel expense incurred.	
Bridge Transit:	
Charge for each bridge transited	$301.00
Additional surcharge for each bridge transited for vessels in excess of 27.5 meters in beam	$833.00
Miscellaneous:	
The balance of amounts due for pilotage rates not paid within 30 days of invoice will be assessed at 1 1/2% per month late charge.	

WSR 11-06-057
PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Order 10-04—Filed March 1, 2011, 1:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-09-102.

Title of Rule and Other Identifying Information: Revision of chapter 173-455 WAC, Air quality fee rule. The amendments will change the fee schedule for permitting activities covered under the federal and state new source review program. These fees by law must support the cost of issuing a permit. The legislature authorized these fee increases and cut our general fund subsidy by the amount ecology estimated the fee increases will generate. This action is revenue neutral. The department of ecology's (ecology) air quality program will not expand its program nor hire additional staff because of the increased fees. We are also making a few housekeeping changes.

Hearing Location(s): Department of Ecology, 300 Desmond Drive, Lacey, on April 5, 2011, open house at 6 p.m., hearing at 7 p.m.; at the Hal Holmes Center, 209 North Ruby Street, Ellensburg, on April 6, 2011, open house at 5:30 p.m., hearing at 6:30 p.m.; and at the Department of Ecology, 4601 North Monroe Street, Spokane, on April 7, 2011, open house at 5:30 p.m., hearing at 6:30 p.m.

Date of Intended Adoption: May 23, 2011.

Submit Written Comments to: Elena Guilfoil, Air Quality Fee Rule Comments, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, e-mail AQComments@ecy.wa.gov, fax (360) 407-7534, by April 15, 2011.

Assistance for Persons with Disabilities: Contact Tami Dahlgren at (360) 407-6830, by April 1, 2011. Persons with hearing loss, call 711 for Washington relay service. Persons with a speech disability, call 877-833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to update permitting fees in chapter 173-455 WAC to make Washington's new source review process more financially self-sufficient. The proposal increases fees to cover the costs of processing a new source review permit, as authorized by the legislature, and provides incentives to streamline permitting. The rule proposal also:

- Changes the name of a reseller certificate to a reseller permit to be consistent with the department of revenue (WAC 173-455-060); and
- Updates portable and temporary portable source permit fee provisions for consistency with 2011 revisions to chapter 173-400 WAC (WAC 173-455-140).

Reasons Supporting Proposal: The revenue from fees under our preconstruction permitting program does not cover the cost of operating the program. The 2009 legislature authorized these fee increases and cut our general fund subsidy, effective July 1, 2011, by the amount ecology estimated the fee increases will generate. The 2011 legislature reauthorized the fee increases with the passage of chapter 5, Laws of 2011, on February 18, 2011. This action is revenue neutral; ecology's air quality program will not expand its program nor hire additional staff because of the increased fees. We need the new fee structure in place by July 1, 2011, to make up the general fund reduction. Ecology evaluated our fee structure to determine the most appropriate method for assessing fees. If fees are not increased, there will be considerable delays in permitting approval due to lack of agency resources. With this fee structure, ecology attempts to maximize taxpayer dollars by making the permit applicant cover the full costs of issuing the permit. The more complete the information a business provides in its application, the more efficient ecology's review will be, resulting in a lower total fee for that permit.

Statutory Authority for Adoption: RCW 70.94.152 and section 301(28), chapter 5, Laws of 2011 (ESHB 1086). RCW 43.135.055 requires a majority vote of the legislature to raise or add fees. Legislative authority granted in 2009 to adopt fee changes became invalid when the voters passed Initiative 1053 in November 2010. On February 18, 2011, the legislature reauthorized ecology to increase fees.

Statute Being Implemented: RCW 70.94.152.

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: This rule making contains references to chapter 173-400 WAC. Chapter 173-400 WAC is also being updated through rule making (AO 09-01). This proposed fee rule references rule language and the numbering system in the revisions to chapter 173-400 WAC. Ecology will coordinate both rule makings to prevent inconsistencies between the final rules.

For more information about the chapter 173-400 WAC rule making see http://www.ecy.wa.gov/laws-rules/wac173400/0901.html.

Name of Proponent: Department of ecology, air quality program, governmental.

Name of Agency Personnel Responsible for Drafting: Elena Guilfoil, Air Quality Program, Olympia, (360) 407-6855; Implementation and Enforcement (both unless noted): Garin Schrieve, Industrial Section, Waste 2 Resources, Olympia, (360) 407-6868; Doug Hendrickson, Nuclear Waste Program, Richland, (509) 531-0727; Sue Billings, Central Regional Office, Yakima, (509) 575-2486; Eastern Regional Office, Greg Flibbert, implementation and Karen Wood, enforcement, Spokane, (509) 329-3469; David Ogulei, implementation of PSD program and air toxics review, Olympia, (360) 407-6803; and Enforcement of PSD permit or air toxics review lies with permitting agency with jurisdiction over applicant: Benton Clean Air Agency, Robin Priddy, Kennewick, (509) 783-1304; Northwest Clean Air Agency, Mark Buford, Mount Vernon, (360) 428-1617; Olympic Region Clean Air Agency, Mark Goodin, Olympia, 1-800-422-5623; Puget Sound Clean Air Agency, Steve Van Slyke, Seattle, 1-800-552-3565; Southwest Clean Air Agency, Paul Mairose, Vancouver, 1-800-633-0709; Spokane Regional Clean Air Agency, Ron Edgar, Spokane, (509) 477-4727; and ecology offices and staff noted above.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Executive Summary: In this rule making, ecology is updating chapter 173-455 WAC, Air quality fee rule. This rule covers fees associated with permit actions in ecology's new source review program in air quality.

New source review is a program ecology uses to issue preconstruction permits for new sources of air pollution. Washington air quality law and rules require new sources of air pollution to have preconstruction review and approval before beginning construction on a proposed project.

The changes to the fee schedule include:

Increase many permit fees to cover more of the costs of administering and enforcing the permit programs.

Allocate amounts of time and support offered for different permit actions, with hourly fees for additional time.

Make housekeeping changes to facilitate clarity and compliance.

Probable benefits include:

Reduction in permit fees for some applicants.

Avoided increased [increases] in the time it takes to process permit applications and administer the program.

Clarification and improved compliance.

Probable net quantified costs include: $96 thousand per year in total increased permit fees.

Ecology calculated cost-to-employment ratios to examine the relative impacts of the proposed rule on small versus large businesses. Ecology also considered the impacts of the proposed rule on local governments and other small public entities, to reflect the requirements in the Governor's Executive Order 10-06.[1] Other measures of businesses' ability to cope with compliance costs (sales, hours of labor) were not sufficiently available for the representative set of permittees.

At the median per-employee impact across various permit actions, ecology expects small businesses to pay at least three hundred sixty times the compliance costs of the largest ten percent of businesses. Looking at the ranges of possible per-employee compliance cost impacts, based on permit type, the ranges of small and large business impacts overlap, but this is largely due to some businesses experiencing possible fee reductions under the proposed rule. It is clear from these ratios at the median that the proposed rule creates a disproportionate impact on small business, as based on employment rolls. This means ecology must make reasonable effort to mitigate these disproportionate impacts.

Ecology made decisions in the course of rule making intended to reduce disproportionate impacts on small businesses, including changing proposed fees that were likely to affect more small businesses. The proposed rule also includes existing text reducing compliance costs and providing hardship and economic considerations for small businesses in altering their compliance costs.

Based on the Washington state office of financial management's input-output model of the state economy, ecology calculated that the proposed rule may result in up to two jobs being lost in the economy permanently over the next twenty years.

Section 1: Introduction and Background.

Based on research and analysis required by the Regulatory Fairness Act, RCW 19.85.070, ecology has determined the proposed rule amendments (chapter 173-455 WAC) likely have a disproportionate impact on small business. Therefore, ecology included cost-minimizing features in the rule where it is legal and feasible to do so.

This document presents the:

Background for the analysis of impacts on small business relative to other businesses.

Results of the analysis.

Cost-mitigating action taken by ecology.

It is intended to be read with the associated cost-benefit analysis (Ecology publication #11-02-008), which contains more in-depth discussion of the analyses.

A small business is defined as having fifty or fewer employees. Estimated impacts are determined as compared to the existing regulatory environment - the way air quality fees would be regulated in the absence of the proposed rule amendments.

The existing regulatory environment is called the "baseline" in this document. It includes only existing regulation through laws and rules at federal, state, and local levels. It does not include elements such as guidance or unofficial standard practices in industry or business.

History: Air pollution control in Washington is based on federal, state and local laws and regulations. The federal Environmental Protection Agency, ecology, and local clean air agencies, all regulate air quality. Ecology implements and enforces air quality regulations in counties without a local clean air agency. Ecology also has statewide jurisdiction over primary aluminum plants, pulp mills, large commercial and industrial facilities subject to the federal prevention of significant deterioration (PSD) program, and emissions of specific toxic air pollutants that exceed specified levels.

New source review is a program ecology uses to issue preconstruction permits for new sources of air pollution. Washington air quality law and rules require new sources of air pollution to have preconstruction review and approval before beginning construction on a proposed project.

New source review is a program ecology uses to issue and manage preconstruction permits for new sources of air pollution. This program also applies to existing sources that replace or modify their equipment, if that action results in increased emissions. Washington air quality law and rules require new or modified sources of air pollution to undergo preconstruction review and get approval before beginning construction on a proposed project.

Ecology's new source review program has four parts:

Minor new source review applies to smaller sources that are located in counties under ecology's jurisdiction.

PSD is a federal program for permitting large commercial and industrial sources.

Nonattainment new source review applies to large commercial and industrial sources located in nonattainment areas under ecology's jurisdiction.

Second and third tier review is a process used to review toxic air emissions that are higher than a specified level.

Ecology issues multiple air-quality-related permits related to new or modified sources of air pollution, including but not limited to:

Air operating permits.

Notice of construction permits.

General orders of approval for particular industries or types of operation.

Chapter 173-455 WAC, Air quality fee regulation, identifies the fees for different permits and permit actions. WAC 173-455-120 contains the new source review related fees.

Regulatory baseline: The regulatory baseline is the way air quality permit fees would be assigned if the proposed rule is not adopted - that is, based on existing laws and rules. The baseline does not include guidance and practices commonly used in existing permit fee determination and behavior if they are not required by a law, rule, permit, etc. For a full summary of baseline fees, see the associated cost-benefit analysis, Table 1.

Changes under the proposed rule:

In this rule making, ecology is proposing amendments to chapter 173-455 WAC that would:

Increase many permit fees to cover more of the costs of processing an application.

Allocate amounts of time and support offered for different permit actions, with hourly fees for additional time.

Make housekeeping changes to facilitate clarity and compliance.

RCW 43.135.055 (Initiative 960) requires an agency to receive specific legislative approval to increase fees. Section 301(10) of the 2009 budget bill directs ecology to "increase [air emissions new source review] … fees in the 2009-2011 biennium as necessary to meet the actual costs of conducting business…." to cover the cost of conducting business…." See ESHB 1244(2009). RCW 70.94.152 provides authority for ecology to establish notice of construction and other review fees. The statute limits the scope of these fees to direct and indirect costs associated with processing the request.

New fees and changes to time allotted: According to an internal review of budget records, past fees covered only about half of the costs to administer and enforce the new source review and PSD components of air quality regulation. Increasing fees will bring the program closer to cost recovery. Since the state's general fund deficit could limit the amount of money available to subsidize the program and permitting actions that pay for themselves may prevent cuts to the program. This would, in turn, limit resulting cuts to services provided to individuals, businesses, and the public in enforcing air quality law. For a full summary of proposed fees, see the associated cost-benefit analysis, Table 2.

Clarification and reorganization: Ecology clarified the rule language and reorganized the structure of the proposed rule to improve understanding of the requirements, and in turn, improve compliance with the rule.

Section 2: Compliance Costs for Business and Local Government.

The proposed rule likely generates costs through direct fee increases to some permittees. This cost is discussed further below, with additional discussion of how it was considered in this analysis - qualitatively, or whether it could be evaluated quantitatively as well.

Increased permit costs for some permittees:

The set of fees included in the proposed rule likely result in increased fees for some permittees.

For others, ecology does not expect total permit fees to change, and for others they may decrease.

Ecology included this cost quantitatively in its analysis. See chapter 3 for complete discussion of how this cost was quantified.

Reduction of permit fees for some applicants: Because permit fees and the time allocated for reviewing and approving permit applications are based on typical permit cases, some permittees and permit applicants may experience a

reduction in individual fees for particular permit applications or permit actions.

Ecology quantified the most likely costs and benefits of the proposed rule, where possible with reasonable certainty, given available data. To quantitatively estimate the costs and benefits likely resulting from the proposed rule, ecology analyzed the likely impact of increased fees for some permittees, and reduced fees for others, and where there was no change.

Model inputs.

Existing permit data.

Ecology collected existing permit data for current new source review permit actions and historic data on the types of businesses that incur fees for permit actions. This data included the type of permit action, as well as permittee information.

Baseline fees: Baseline fees assigned to each type of permittee were based on the set of fees delineated by the existing rule. For consistency in comparison, ecology used permittees for whom tracking information was available to also estimate proposed fees. This generated a range of fees from $500 to $10 thousand across all permittees with traceable actions.

Proposed fees: Ecology based the likely fees for each type of permittee based on the new set of fees in the proposed rule. This generated a range of fees from $200 to over $21 thousand across all permittees with traceable actions.

Industry and employment numbers: Ecology categorized businesses by industry and size, using the North American industry classification system (NAICS) and employment numbers associated with those industries from the Washington state employment security department.

Section 3: Quantification of Costs and Ratios.

For each existing type of permittee (representing likely future permittees), ecology calculated the difference between the fee paid under the existing baseline rule, and the estimated fee based on the proposed rule. For those types of permit actions that did not have data on time consumed, ecology:

Conservatively assumed existing "moderate" complexity new source review actions would fall under the "high" complexity category under the proposed rule. While this will not be the case (they will fall in the hourly "low" complexity category, and be charged hourly rates), ecology could not confidently estimate the number of hours such actions would take overall, and so took the most conservative approach of assuming overestimated costs.

Averaged fee changes, by permit action type, across available existing actions, and applied average values to the average number of each permit action per year over the previous four fiscal years.

This generated a range of impacts between a nearly $2 thousand cost savings, and a $11 thousand increase for highly complex permit action and analysis, at the individual permit level. Ecology then multiplied these fee cost impacts by the number of expected permittees and permit applicants requiring action, by type, each year. This accounted for fee increases, decreases, and fees not changing for different permittees.

TABLE 1: Compliance cost per employee under various scenarios

PERMIT ACTION	AT MIN COST		AT MAX COST		CORRELATING COSTS TO SIZE	
	Small Businesses	Largest Ten Percent	Small Businesses	Largest Ten Percent	Small Businesses	Largest Ten Percent
New Minor	$25.00	$0.01	$584.55	$0.31	$25.00	$0.31
New Major	$200.00	$0.11	$200.00	$0.11	$200.00	$0.11
Revised Minor	-$42.50	-$0.02	$72.50	$0.04	-$42.50	$0.04
Revised Major	$200.00	$0.11	$200.00	$0.11	$200.00	$0.11
Tier II Review	$1,108.65	$0.59	$1,108.65	$0.59	$1,108.65	$0.59
PSD: Admin Revision	$40.00	$0.02	$82.75	$0.04	$40.00	$0.04
PSD: Other	-$199.65	-$0.11	-$199.65	-$0.11	-$199.65	-$0.11

The ranges of costs per employee for small versus the largest businesses likely impacted overlap under all three scenarios, but not to a degree sufficient to eliminate the possibility of disproportionate impacts on small businesses. This means ecology must undertake legal and feasible actions in the rule making to reduce this disproportionate impact.

Section 4: Action Taken to Reduce Small Business Impacts:

Ecology was limited to the goals and objectives of this rule making in its ability to reduce costs to small business further than the system of paying for ecology work needed already does under the proposed rule. Ecology did, however, take actions to reduce compliance costs to small businesses in particular (and for all businesses in general; see least burdensome alternative analysis in cost-benefit analysis). In addition, ecology provides compliance assistance and rules provide for hardship considerations in small businesses' ability to meet compliance costs.

While ecology strove to make costs meet permit application processing and assistance expenditures, and to reduce compliance costs for all businesses, particular note was made during the rule making about simple minor permitting actions. These actions are likely to be for small businesses. Ecology originally suggested a fee of $1750 for a new permit application falling in the simple fee category. Based on stakeholders comments that our data shows that this fee has the potential to unfairly affect some small business, we reduced our initial fee by $250.

WAC 173-455-040(6) in the rule makes special considerations for small businesses complying with the proposed

rule. It also accounts for economic conditions affecting the ability to afford compliance costs. In particular, it states: "Fee reductions for economic hardships. If a small business owner believes the registration fee results in an extreme economic hardship, the small business owner may request an extreme hardship fee reduction. The owner or operator must provide sufficient evidence to support a claim of an extreme hardship. The factors which ecology may consider in determining whether an owner or operator has special economic circumstances and in setting the extreme hardship fee include: Annual sales; labor force size; market conditions which affect the owner's or operator's ability to pass the cost of the registration fee through to customers; average annual profits; and cumulative effects of multiple site ownership. In no case will a registration fee be reduced below two hundred dollars."

WAC 173-455-100(6) makes similar considerations: "Small business fee reduction. The RACT analysis and determination fee identified in subsections (2) through (5) of this section may be reduced for a small business.

(a) To qualify for the small business RACT fee reduction, a business must meet the requirements of "small business" as defined in RCW 43.31.025.

(b) To receive a fee reduction, the owner or operator of a small business must include information in an application demonstrating that the conditions of (a) of this subsection have been met. The application must be signed:

(i) By an authorized corporate officer in the case of a corporation;

(ii) By an authorized partner in the case of a limited or general partnership; or

(iii) By the proprietor in the case of a sole proprietorship.

(c) Ecology may verify the application information and if the owner or operator has made false statements, deny the fee reduction request and revoke previously granted fee reductions.

(d) For small businesses determined to be eligible under (a) of this subsection, the RACT analysis and determination fee shall be reduced to the greater of:

(i) Fifty percent of the RACT analysis and determination fee; or

(ii) Two hundred fifty dollars.

(e) If due to special economic circumstances, the fee reduction determined under (d) of this subsection imposes an extreme hardship on a small business, the small business may request an extreme hardship fee reduction. The owner or operator must provide sufficient evidence to support a claim of an extreme hardship. The factors which ecology may consider in determining whether an owner or operator has special economic circumstances and in setting the extreme hardship fee include: Annual sales; labor force size; market conditions which affect the owner's or operator's ability to pass the cost of the RACT analysis and determination fees through to customers; and average annual profits. In no case will a RACT analysis and determination fee be reduced below one hundred dollars."

WAC 173-455-120 states: "Small business fee reduction. The new source review fee identified in subsections (2) and (3) of this section may be reduced for a small business.

(a) To qualify for the small business new source review fee reduction, a business must meet the requirements of "small business" as defined in RCW 19.85.020. In RCW 19.85.020, "small business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees.

(b) To receive a fee reduction, the owner or operator of a small business must include information in the application demonstrating that the conditions of (a) of this subsection have been met. The application must be signed:

(i) By an authorized corporate officer in the case of a corporation;

(ii) By an authorized partner in the case of a limited or general partnership; or

(iii) By the proprietor in the case of a sole proprietorship.

(c) Ecology may verify the application information and, if the owner or operator has made false statements, deny the fee reduction request and revoke previously granted fee reductions.

(d) For small businesses determined to be eligible under (a) of this subsection, the new source review fee shall be reduced to the greater of:

(i) Fifty percent of the new source review fee; or

(ii) Two hundred fifty dollars.

(e) If, due to special economic circumstances, the fee reduction determined under (d) of this subsection imposes an extreme hardship on a small business, the small business may request an extreme hardship fee reduction. The owner or operator must provide sufficient evidence to support a claim of an extreme hardship. The factors which ecology may consider in determining whether an owner or operator has special economic circumstances and in setting the extreme hardship fee include: Annual sales; labor force size; market conditions which affect the owner's or operator's ability to pass the cost of the new source review fees through to customers; and average annual profits. In no case will a new source review fee be reduced below one hundred dollars."

Section 5: Small Business and Government Involvement:

Ecology worked with stakeholders, who had the opportunity to comment on the draft fee schedule. Ecology sent a mailing to those potentially impacted by the rule change, including all parties who have previously obtained a permit, and registration sources that might need a permit in the future. To explain the elements of the proposed fee schedule, ecology distributed information via a press release, mailing and e-mail.

Small businesses particularly participating to a greater degree in the stakeholder process included a cement company and two construction material and service businesses.[2] The Independent Business Association was also represented, with focus on the dry cleaning sector.

Section 6: NAICS Codes of Impacted Industries:

This section lists NAICS codes for industries ecology expects to be impacted by the proposed rule.[3] These include:

Table 4: Likely affected NAICS					
111339	311119	324121	423310	486110	622110
212319	311225	325311	423320	511210	812210

Table 4: Likely affected NAICS					
212399	311412	327320	423810	541310	812320
221122	311611	327390	424480	541330	812910
236115	311999	333414	424490	541711	922140
236220	321912	333923	424610	541890	926130
237310	322110	336411	424690	541940	
238110	322121	336612	424720	541990	
238210	322221	337110	424910	561110	
238910	324110	339112	444190	562212	

Section 7: Impact on Jobs:

Ecology used the Washington state office of financial management's 2002 Washington input-output model.[4] The model accounts for interindustry impacts and spending multipliers of earned income and changes in output. Based on the net fee increase, apportioned across industry groups based on prevalence in the previous three years' permits, the model estimates between one and two jobs permanently lost in the state, over the next twenty years. This result does not account for where fee payments are respent by government, as it would on interindustry transfer payments.

[1]http://www.governor.wa.gov/news/Executive_Order_10-06.pdf.

[2]Ellensburg Cement, Hooker Creek Companies, Granite Northwest.

[3]North American industry classification system (NAICS) codes have largely taken the place of standard industry classification (SIC) codes in the categorization of industries.

[4]See the Washington state office of financial management's site for more information on the input-output model, http://www.ofm.wa.gov/economy/io/2002/default.asp.

A copy of the statement may be obtained by contacting Kasia Patora, Economics and Regulatory Research, Department of Ecology, P.O. Box 47600, Lacey, WA 98504-7600, phone (360) 407- 6184, fax (360) 407-6989, e-mail kasia.patora@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kasia Patora, Economics and Regulatory Research, Department of Ecology, P.O. Box 47600, Lacey, WA 98504-7600, phone (360) 407- 6184, fax (360) 407-6989, e-mail kasia.patora@ecy.wa.gov.

March 1, 2011
Polly Zehm
Deputy Director

AMENDATORY SECTION (Amending Order 06-14, filed 5/3/07, effective 6/3/07)

WAC 173-455-060 Solid fuel retail sales fee. (1) A person selling a solid fuel burning device at retail shall collect a fee from the buyer, pursuant to RCW 70.94.483.

(2) The fee shall be:

(a) Set at a minimum of thirty dollars on January 1, 1992. Thereafter, ecology may annually adjust the fee to account for inflation as determined by the office of the state economic and revenue forecast council. Adjustments in the fee should be rounded down to the nearest dollar.

(b) Applicable to all new and used solid fuel burning devices.

(c) Procedures for masonry fireplaces. Generally, contractors will collect, pay, and report the fee to the department of revenue on the combined excise tax return for the tax reporting period during which the retail sales tax is billed to the customer for the construction of the masonry fireplace. (See WAC 458-20-170 for a detailed explanation.) Collection and payment of the fee by contractors shall be in accordance with the following:

(i) A masonry contractor or other subcontractor who builds a masonry fireplace. The retail sale occurs at the time the general or prime contractor or customer is billed for the work. The masonry contractor or other subcontractor must collect the fee and pay it to the department of revenue, unless the masonry contractor or other subcontractor has received a ((~~resale certificate~~)) reseller permit from the general or prime contractor. The fee shall be reported on the combined excise tax return.

(ii) A general or prime contractor building a custom building. The retail sale occurs at the time the customer is billed for the construction. The fee is charged and reported with the first progress payment after the masonry fireplace has been substantially completed. If a general or prime contractor subcontracts the work on a custom building to a masonry or other contractor, the general or prime contractor may give the masonry or other subcontractor a ((~~resale certificate~~)) reseller permit. The general or prime contractor is responsible to collect the fee and pay it to the department of revenue. The fee is reported on the combined excise tax return.

(iii) A general or prime contractor building a speculation building. The fee is required to be paid at the time the fireplace is complete. The fee must be reported to the department of revenue on a combined excise tax return and paid to the department of revenue. If the prime or general contractor subcontracts the building of the masonry fireplace to a masonry contractor or other subcontractor, the general or prime contractor may not give a ((~~resale certificate~~)) reseller permit to the masonry or other subcontractor. The masonry or other subcontractor must collect and pay the fee to the department of revenue as provided in (c)(i) of this subsection.

(d) Procedures for all other solid fuel burning devices. Collected by the retailer at the time of sale and remitted to the department of revenue in conjunction with the retail sales tax under chapter 82.08 RCW.

(3) If the retailer or contractor fails to collect and remit the fee to the department of revenue as prescribed in chapter 82.08 RCW, the retailer or contractor shall be personally liable to the state for the amount of the fee, with subsequent actions taken in accordance with the collection provisions of chapter 82.32 RCW.

(4) Beginning July 1, 1990, and each calendar quarter thereafter, the funds collected under RCW 70.94.483 shall be used solely for the purposes of public education and enforcement of the solid fuel burning device program. The department shall distribute the funds from the woodstove education and enforcement account as follows:

(a) Sixty-six percent of the funds shall be distributed to those local air authorities with enforcement programs, based upon the fraction of the total state population residing in the counties within their respective jurisdictions. Population figures used to establish this fraction shall be determined by the office of financial management. Where an activated local air

authority does not exist or does not implement an enforcement program, or elects not to receive the funds, ecology shall retain the funds that would otherwise be distributed under this subsection; and

(b) Thirty-four percent of the funds shall be distributed to ecology for the purposes of enforcement and educating the public about:

(i) The effects of solid fuel burning device emissions upon health and air quality; and

(ii) Methods of achieving better efficiency and emission performance from solid fuel burning devices.

AMENDATORY SECTION (Amending Order 06-14, filed 5/3/07, effective 6/3/07)

WAC 173-455-120 New source review fees. ((~~(1) Applicability. Every person required to submit a notice of construction application to the department of ecology as authorized in RCW 70.94.152 for establishment of any proposed new source or emissions unit(s) shall pay fees as set forth in subsections (2) and (3) of this section. Persons required to submit a notice of construction application to a local air authority may be required to pay a fee as required by the local permitting authority. Persons required to submit a notice of construction application to a local air authority may be required to pay a fee to ecology to cover the costs of review pursuant to WAC 173-400-720, second tier analysis pursuant to WAC 173-460-090, and risk management decisions pursuant to WAC 173-460-100 as set forth in subsection (3) of this section. Fees assessed under this section shall apply without regard to whether an order of approval is issued or denied.~~

~~(2) Basic review fees. All owners or operators of proposed new sources are required to pay a basic review fee. The basic review fee covers the costs associated with preapplication assistance, completeness determination, BACT determination, technical review, public involvement and approval/denial orders. Complexity determination shall be based on the project described in the notice of construction application. The basic review fees are either (a) or (b) of this subsection:~~

~~(a) Basic new source review fees.~~

~~Source type~~	~~Clarifying criteria~~	~~Fee~~
~~Basic Review Fees~~		
~~Low complexity source~~	~~Emissions increase of individual pollutants are all less than one-half of the levels established in the definition of "emission threshold" in WAC 173-400-030, or emissions increase of individual toxic air pollutants are all less than 2.0 tons/year~~	~~$1250~~
~~Moderate complexity~~	~~Emissions increase of one or more individual pollutants are greater than one-half of, and less than, the levels established in the definition of "emission threshold" in WAC 173-400-030, or emissions increase of one or more toxic air pollutants are greater than 2.0 tons/year and less than 10.0 tons/year~~	~~$8000~~
~~High complexity~~	~~Emissions increase of one or more pollutants are greater than the levels established in the definition of "emission threshold" in WAC 173-400-030, or emissions increase of one or more toxic air pollutants are greater than 10.0 tons/year~~	~~$18,000~~

~~(b) New source review fees for specific source categories.~~

~~Source type~~		~~Clarifying criteria~~	~~Fee~~
~~Dry cleaners~~			~~$250~~
~~Gasoline stations~~			~~$250~~
~~Storage tanks~~			
	~~< 20,000 gallons~~		~~$250~~
	~~20,000 - 100,000 gallons~~		~~$650~~
	~~> 100,000 gallons~~		~~$900~~
~~Chromic acid plating and anodizing identified in WAC 173-460-060~~			~~$250~~
~~Solvent metal cleaners identified in WAC 173-460-060~~			~~$250~~
~~Abrasive blasting identified in WAC 173-460-060~~			~~$250~~

~~Source type~~	~~Clarifying criteria~~	~~Fee~~
~~New emission units or activities that qualify as insignificant emission units under WAC 173-401-530 whether located at a chapter 173-401 WAC source or nonchapter 173-401 WAC source~~		~~$250~~
~~Application for coverage under a general order of approval~~	~~WAC 173-400-560 and criteria included in a specific general order of approval~~	~~$500~~
~~Nonroad engines~~		
~~Less than a total of 500 installed horsepower~~		~~$500~~
~~More than 500 horsepower and less than a total of 2000 installed horsepower~~		~~$900~~
~~More than 2000 horsepower and less than a total of 5000 installed horsepower~~		~~$2000~~
~~More than 5000 horsepower and less than a total of 10,000 installed horsepower~~		~~$4000~~
~~More than a total of 10,000 installed horsepower~~		~~$7500~~

~~(c) Additional units. An owner or operator proposing to build more than one identical emission unit shall be charged a fee for the additional units equal to one-third the basic review fee of the first unit.~~

~~(3) Additional charges. In addition to those fees required under subsection (2)(a) through (c) of this section, the following fees will be required as applicable:~~

~~(a) Major NSR actions under WAC 173-400-720 and 173-400-112.~~

~~Activity~~	~~Clarifying criteria~~	~~Fee~~
~~Prevention of significant deterioration review or increase in a PAL limitation~~	~~WAC 173-400-720~~	~~$15,000~~
~~Establishing LAER and offset requirements~~	~~WAC 173-400-112~~	~~$10,000~~
~~Establishing or renewal of clean unit status~~	~~Per 40 CFR 52.21(y)~~	~~$1500~~
~~Pollution control project approval~~	~~Per 40 CFR 52.21(z)~~	~~$1500~~
~~Establishment of a PAL~~	~~Per 40 CFR 52.21(aa)~~	~~$4000~~
~~Renewal of a PAL~~	~~Per 40 CFR 52.21(aa)~~	~~$4000~~
~~Expiration of a PAL~~	~~Per 40 CFR 52.21(aa)~~	~~$12,000~~
~~PSD permit revisions~~		
~~All except administrative~~	~~WAC 173-400-750~~	~~$10,000~~
~~Administrative revisions~~	~~WAC 173-400-750~~	~~$1500~~

~~(b) Other actions.~~

~~Activity~~	~~Clarifying criteria~~	~~Fee~~
~~Tier II toxic air pollutant impact review~~		~~$10,000~~
~~Tier III toxic air pollutant impact review~~		~~$10,000~~
~~Case-by-case MACT determinations~~		~~$12,500~~
~~Fossil-fueled electric generating unit~~	~~Applicability criteria found in chapter 80.70 RCW~~	~~Fees listed in rule implementing RCW 70.94.892 and chapter 80.70 RCW~~
~~Changes to existing orders of approval, Tier I review, Tier II review, or other action identified above.~~		
~~Activity~~		~~Fee~~
~~Modification to order of approval~~		~~50% of the fee charged in WAC 173-455-120 (2)(a)~~
~~Modification of Tier II approval~~		~~50% of the fee charged in WAC 173-455-120 (2)(b)~~

~~(4)~~)) (1) General requirements.

(a) The fees in this section apply to:

(i) Permit applications received on or after July 1, 2011.

(ii) Requests for ecology review of other actions covered by this section received by ecology on or after July 1, 2011.

(b) Components of permitting fees. Permit fees include initial fees and may include an hourly fee. The initial fee covers up to the number of review hours specified in each fee in this section.

(c) A project may be subject to multiple fees. For example, a project may be subject to both minor and major new source review permit fees and second or third tier review.

(d) An applicant must submit initial fees with an application, notice, or request. An application is incomplete until any permit application fee has been paid.

(i) For purposes of WAC 173-400-111(1), initial fees are considered application fees.

(ii) If ecology determines a project is complex after an applicant submitted the basic project initial fee, then the application is incomplete until the applicant pays the initial complex project fee.

(iii) If ecology determines that a higher initial fee is due after an applicant submitted an application or request, the application or request is considered incomplete until the applicant pays the new initial fee.

(e) If the initial fee paid by an applicant does not cover the cost of processing the application, notice or request, then ecology shall assess a fee based on the actual costs for review in excess of the hours specified in each fee. The assessed fee must be a rate of ninety-five dollars per hour of ecology staff time expended.

(f) Ecology cannot approve an order of approval or make a final determination under this chapter until all fees are paid. (WAC 173-400-111(3))

(g) An applicant must pay fees that are due by invoice from ecology within thirty days from the date of the invoice. Ecology will cease processing all applications for which the required fees have not been received within thirty days of an invoice.

(h) At the time of filing, an applicant must pay all delinquent air quality fees associated with the facility. This is in addition to the fees required by this section. Delinquent fees may include, but are not limited to, registration fees, civil penalties awarded to ecology, or other outstanding fees due under this section.

(i) All fees collected under this rule must be made payable to the department of ecology.

(j) Fees assessed under this section apply without regard to whether ecology approves or denies a request.

Permit fees.

Minor new source review.

(2) Review of new source or modification of an existing source with an emissions increase. (WAC 173-400-110 and 173-400-110(3).)

(a) Basic project: One thousand five hundred dollars plus an hourly rate of ninety-five dollars after sixteen hours.

This fee covers up to sixteen hours of staff time to review the application and make a final determination. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above sixteen hours.

(b) Complex project: Ten thousand dollars plus an hourly rate of ninety-five dollars after one hundred six hours.

(i) This fee covers up to one hundred six hours of staff time to review the application and make a final determination. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above one hundred six hours.

(ii) An application is considered complex if the emissions associated with the application include at least one pollutant for which emissions increases are greater than the levels in the following table:

Emission threshold table (WAC 173-400-030).

Air Contaminant	Annual Emission Rate
Carbon monoxide	100 tons per year
Nitrogen oxides	40 tons per year
Sulfur dioxide	40 tons per year
Particulate matter (PM)	25 tons per year of PM emissions
	15 tons per year of PM_{10} emissions
	10 tons per year of $PM_{2.5}$ emissions
Volatile organic compounds	40 tons per year
Fluorides	3 tons per year
Lead	0.6 tons per year
Sulfuric acid mist	7 tons per year
Hydrogen sulfide (H_2S)	10 tons per year
Total reduced sulfur (including H_2S)	10 tons per year
Reduced sulfur compounds (including H_2S)	10 tons per year

(iii) Ecology may determine that a project is complex based on consideration of factors that include, but are not limited to:

(A) Number and complexity of emission units;

(B) Volume of emissions;

(C) Amount and complexity of modeling; or

(D) Number and kind of applicable state and federal requirements.

(3) Change to an existing order of approval. (WAC 173-400-111(8).)

(a) Ecology will not charge a fee for correcting a mistake by ecology in a permit.

(b) Simple change: Two hundred dollars plus an hourly rate of ninety-five dollars after three hours.

(i) This fee covers up to three hours of staff time to review the request and make a final determination. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above three hours.

(ii) A simple change means:

(A) An action not subject to a mandatory public comment period in WAC 173-400-171; and

(B) The reissued approval order requires minimal engineering evaluation and no physical modification of equipment; and

(C) Changes in permit conditions are based on actual operating conditions and the operating conditions require minimal engineering evaluation and the change does not cause a change in allowable emissions.

(c) All other changes: Eight hundred seventy-five dollars plus an hourly rate of ninety-five dollars after ten hours.

(i) This fee covers up to ten hours of staff time to review the request and make a final determination. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above ten hours.

(ii) This fee excludes a simple change and changes to an existing permit that result in an emissions increase.

(iii) Examples of all other changes include, but are not limited to:

(A) Changes requiring more than minimal engineering review;

(B) Consolidation of permits not allowed under simple change;

(C) Request for review of a permit action that is exempt under WAC 173-400-110(5) (Table 110(5) emission-based exemption levels); or

(D) Changes requiring mandatory public comment under WAC 173-400-171.

(d) The fee for a permit modification (as defined in WAC 173-400-030) is located in subsection (2)(a) or (b) of this section.

(4) Request to extend approval to construct or modify a stationary source issued under minor new source review that is set to expire (WAC 173-400-111(7)): One hundred dollars.

An applicant may request an eighteen-month extension of an approval to construct.

(5) Review of general order of approval (WAC 173-400-560).

(a) Category A general order.

(i) SEPA review complete: Five hundred dollars.

(ii) SEPA review required: Seven hundred eighty-five dollars.

(iii) Category A consists of the following general order of approval, including any subsequent updating or replacement:

(A) Concrete batch plants (No. 08-AQG-002);

(B) Diesel-powered emergency electrical generators (No. 06-AQG-006);

(C) Rich burn, spark ignition, gaseous fossil fuel-powered emergency electrical generators (No. 06-AQG-005);

(D) Perchloroethylene dry cleaners using less than 2100 gallons per year (No. 06-AQG-003);

(E) Rock crusher, stationary (06-AQG-004);

(F) Rock crusher, portable (07-AQG-001);

(G) Small water heaters and steam generating boilers (No. 08-AQG-003); and

(H) Automobile body repair and refinishing shops (No. 08-AQG-001).

(b) Category B general order.

(i) SEPA review complete: Eight hundred seventy-five dollars.

(ii) SEPA review required: One thousand one hundred sixty dollars.

(iii) Category B includes a general order of approval developed on or after January 1, 2011. This covers, but is not limited to, portable and stationary asphalt plants (No. 10AQ-G0-01).

(6) Review of relocation notice (WAC 173-400-036) or notification form (WAC 183-400-560).

(a) This fee applies to a portable source with an approval order from another permitting agency who intends to relocate in ecology's jurisdiction.

(i) Relocation notice - SEPA review complete: One hundred fifty dollars.

(ii) Relocation notice - SEPA review required: Four hundred thirty-five dollars.

(b) This fee applies to a portable source operating under an ecology issued approval order or through coverage under an ecology issued general order of approval.

(i) Air quality notification form - SEPA review complete: No fee.

(ii) Air quality notification form - SEPA review required: Two hundred eighty-five dollars.

(7) Request to establish a voluntary emission limit (WAC 173-400-091): Five hundred dollars plus an hourly rate of ninety-five dollars after six hours.

(a) This fee covers up to six hours of staff time to review the request and make a final determination. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above six hours.

(b) This fee applies to a regulatory order issued under WAC 173-400-091 that places a limit on emissions.

(i) This fee applies to a request to establish the emission limit in a stand-alone regulatory order.

(ii) This fee does not apply when an emission limit is included as one of many conditions in an approval order for a notice of construction application.

(8) Request to replace or substantially alter control technology: Refer to WAC 173-455-100(4) for fee schedule.

Major new source review preapplication and permit fees.

(9) Request for a written prevention of significant deterioration applicability determination (WAC 173-400-720): Five hundred dollars plus an hourly rate of ninety-five dollars after six hours.

This fee covers up to six hours of staff time to review the request and make a final determination. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above six hours.

(10) Prevention of significant deterioration (PSD) (WAC 173-400-720 and 173-400-730).

(a) PSD permit application: Fifteen thousand dollars plus an hourly rate of ninety-five dollars after one hundred fifty-eight hours.

This fee covers one hundred fifty-eight hours of staff time to review the application and make a final determination. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above one hundred fifty-eight hours.

(b) PSD permit application where greenhouse gases are the sole PSD pollutant being reviewed: Seven thousand five hundred dollars plus an hourly rate of ninety-five dollars after seventy-nine hours.

This fee covers seventy-nine hours of staff time to review the application and make a final determination. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above seventy-nine hours.

(11) Revision to a prevention of significant deterioration permit (WAC 173-400-750).

(a) Administrative revision as defined in WAC 173-400-750(3): One thousand nine hundred dollars plus an hourly rate of ninety-five dollars after twenty hours.

This fee covers twenty hours of staff time to review the application and make a final determination. Ecology will bill

the applicant ninety-five dollars per hour for each additional hour spent on the application above twenty hours.

(b) All other revisions (except major modification): Seven thousand five hundred dollars plus an hourly rate of ninety-five dollars after seventy-nine hours.

This fee covers seventy-nine hours of staff time to review the application and make a final determination. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above seventy-nine hours.

(c) The fee for a major modification of a PSD permit (as defined in WAC 173-400-720) is located in subsection (10)(a) of this section.

(12) Request to extend the following major source approvals that are set to expire: Five hundred dollars. This provision applies to each of the following:

(a) PSD permit, including a major modification;

(b) PSD permit revision;

(c) Approval order for major source nonattainment area permitting; and

(d) A change to an approval order for major source nonattainment area permitting.

(13) Nonattainment area major new source review.

(a) A notice of construction application subject to major source nonattainment area permitting requirements in WAC 173-400-830: Fifteen thousand dollars plus an hourly rate of ninety-five dollars after one hundred fifty-eight hours.

This fee covers one hundred fifty-eight hours of staff time to review the application and make a final determination. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above one hundred fifty-eight hours.

(b) Change to an approval order issued under major source nonattainment area major permitting requirements (WAC 173-400-111 (3)(c) and 173-400-830):

(i) Request to change permit conditions under WAC 173-400-111(8) that is not subject to mandatory public comment in WAC 173-400-171: One thousand nine hundred dollars plus an hourly rate of ninety-five dollars after twenty hours.

This fee covers twenty hours of staff time to review the application and make a final determination. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above twenty hours.

(ii) All other permit changes (except major modification): Seven thousand five hundred dollars plus an hourly rate of ninety-five dollars after seventy-nine hours.

This fee covers seventy-nine hours of staff time to review the application and make a final determination. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the application above seventy-nine hours.

(iii) The fee for a major modification (as defined in WAC 173-400-810) of an approval order is located in subsection (13)(a) of this section.

(14) Plant-wide applicability limits (WAC 173-400-720).

(a) Request to establish new plant-wide applicability limits: Fifteen thousand dollars plus an hourly rate of ninety-five dollars after one hundred fifty-eight hours.

This fee covers up to one hundred fifty-eight hours of staff time to review the request and establish a plant-wide applicability limit. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above one hundred fifty-eight hours.

(b) All other requests, such as increase or renew plant-wide applicability limits; or process an expired plant-wide applicability limit: Seven thousand five hundred dollars plus an hourly rate of ninety-five dollars after seventy-nine hours.

This fee covers up to seventy-nine hours of staff time to increase, renew or process a retired plant-wide applicability limit. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the request above seventy-nine hours.

Other fees.

(15) Second tier review (WAC 173-460-090): Ten thousand dollars plus an hourly rate of ninety-five dollars after one hundred six hours.

(a) This fee covers up to one hundred six hours of staff time to evaluate the health impact assessment protocol and second tier petition, and make a final recommendation. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the second tier petition above one hundred six hours.

(b) A second tier petition that becomes subject to third tier review during the course of evaluation continues as a second tier petition for billing purposes. Staff must sum the time spent on this petition and bill the applicant if the total hours exceed one hundred six hours.

(16) Third tier review (WAC 173-460-100): Ten thousand dollars plus an hourly rate of ninety-five dollars after one hundred six hours.

(a) This fee covers up to one hundred six hours of staff time to evaluate the health impact assessment protocol and third tier petition, and make a final recommendation. Ecology will bill the applicant ninety-five dollars per hour for each additional hour spent on the second tier petition above one hundred six hours.

(b) This fee does not apply to a second tier petition that becomes a third tier petition.

(17) Ecology may enter into a written cost-reimbursement agreement with an applicant as provided in RCW 70.94.085. Ecology will be reimbursed at a rate of ninety-five dollars per hour.

(18) Small business fee reduction. The new source review fee identified in subsections (2) ((~~and (3)~~)) through (7) of this section may be reduced for a small business.

(a) To qualify for the small business new source review fee reduction, a business must meet the requirements of "small business" as defined in RCW 19.85.020. In RCW 19.85.020, "small business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees.

(b) To receive a fee reduction, the owner or operator of a small business must include information in the application demonstrating that the conditions of (a) of this subsection have been met. The application must be signed:

(i) By an authorized corporate officer in the case of a corporation;

(ii) By an authorized partner in the case of a limited or general partnership; or

(iii) By the proprietor in the case of a sole proprietorship.

(c) Ecology may verify the application information and, if the owner or operator has made false statements, deny the fee reduction request and revoke previously granted fee reductions.

(d) For small businesses determined to be eligible under (a) of this subsection, the new source review fee shall be reduced to the greater of:

(i) Fifty percent of the new source review fee; or

(ii) Two hundred fifty dollars.

(e) If, due to special economic circumstances, the fee reduction determined under (d) of this subsection imposes an extreme hardship on a small business, the small business may request an extreme hardship fee reduction. The owner or operator must provide sufficient evidence to support a claim of an extreme hardship. The factors which ecology may consider in determining whether an owner or operator has special economic circumstances and in setting the extreme hardship fee include: Annual sales; labor force size; market conditions which affect the owner's or operator's ability to pass the cost of the new source review fees through to customers; and average annual profits. In no case will a new source review fee be reduced below one hundred dollars.

((~~(5)~~)) (19) Fee reductions for pollution prevention initiatives. Ecology may reduce the fees defined in subsections (2) ((~~and (3)~~)) through (7) of this section where the owner or operator of the proposed source demonstrates that approved pollution prevention measures will be used.

((~~(6) Fee payments. Fees specified in subsections (2) through (5) of this section shall be paid at the time a notice of construction application is submitted to the department. A notice of construction application is considered incomplete until ecology has received the appropriate new source review payment. Additional charges assessed pursuant to subsection (3) of this section shall be due thirty days after receipt of an ecology billing statement. All fees collected under this regulation shall be made payable to the Washington department of ecology.~~

~~(7) Dedicated account. All new source review fees collected by the department shall be deposited in the air pollution control account.~~

~~(8)~~)) (20) Tracking revenues, time, and expenditures. Ecology ((~~shall~~)) must track revenues collected under this subsection on a source-specific basis. ((~~Ecology shall track time and expenditures on the basis of complexity categories.~~

~~(9)~~)) (21) Periodic review. To ensure that fees cover the cost of processing the actions in this section, ecology shall review and((~~, as appropriate,~~)) update this section ((~~at least once every two years~~)) as necessary.

AMENDATORY SECTION (Amending Order 06-14, filed 5/3/07, effective 6/3/07)

WAC 173-455-140 ((~~Portable and temporary source~~)) Nonroad engine permit fee. The department shall charge a fee of ((~~sixty-five~~)) ninety-five dollars per hour to process and write ((~~a portable or temporary source permit~~)) an approval to operate for a nonroad engine issued under WAC 173-400-035.

WSR 11-06-066
PROPOSED RULES
WASHINGTON STATE UNIVERSITY
[Filed March 2, 2011, 8:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-02-058.

Title of Rule and Other Identifying Information: The university is updating the standards of conduct for students, chapter 504-26 WAC.

Hearing Location(s): Lighty 401, WSU Pullman, Pullman, Washington, on April 6, 2011, at 4:00 p.m.

Date of Intended Adoption: May 6, 2011.

Submit Written Comments to: Ralph Jenks, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, e-mail jenks@wsu.edu, fax (509) 335-3969, by April 6, 2011.

Assistance for Persons with Disabilities: Contact Deborah Bartlett, (509) 335-2005, by April 4, 2011.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update and clarify the standards of conduct for students WACs including, but not limited to, student conduct hearings, appeals, sanctions, students studying abroad, and distribution of records.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: Washington State University, public.

Name of Agency Personnel Responsible for Drafting and Implementation: Bernadette Buchanan, Director, Student Standards and Accountability, Lighty Services 260, Pullman, Washington 99164-1064, (509) 335-4532; and Enforcement: John Fraire, Vice-President for Student Affairs and Enrollment, Lighty Services 360, Pullman, Washington 99164-1066, (509) 335-5900.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule has no impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider this rule to be a significant legislative rule.

March 2, 2011
Ralph T. Jenks, Director
Procedures, Records, and Forms
and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-001 Preamble. Washington State University, a community dedicated to the advancement of knowledge, expects all students to behave in a manner consistent

with its high standards of scholarship and conduct. Students are expected to uphold and be accountable for these standards both on and off campus and acknowledge the university's authority to take disciplinary action. The purpose of these standards and processes is to educate students and protect the welfare of the community.

AMENDATORY SECTION (Amending WSR 07-11-030, filed 5/8/07, effective 6/8/07)

WAC 504-26-010 Definitions. (1) The term "accused student" means any student accused of violating the standards of conduct for students (this chapter).

(2) The term "appellate board" means any person or persons authorized by the vice-president for student affairs to consider an appeal from a ((~~student~~)) university conduct board's determination as to whether a student has violated the standards of conduct for students or from the sanctions imposed by the student conduct officer.

(3) The term "cheating" includes, but is not limited to:

(a) Use of unauthorized materials in taking quizzes, tests, or examinations, or giving or receiving unauthorized assistance by any means, including talking, copying information from another student, using electronic devices, or taking an examination for another student.

(b) Use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments.

(c) Acquisition or possession of tests or other academic material belonging to a member of the university faculty or staff when acquired without the permission of the university faculty or staff member.

(d) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes, but is not limited to:

(i) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact;

(ii) Counterfeiting a record of internship or practicum experiences;

(iii) Submitting a false excuse for absence or tardiness or a false explanation for failing to complete a class requirement or scheduled examination at the appointed date and time.

(e) Engaging in any behavior for the purpose of gaining an unfair advantage specifically prohibited by a faculty member in the course syllabus or class discussion.

(f) Scientific misconduct. Falsification, fabrication, plagiarism, or other forms of dishonesty in scientific and scholarly research are prohibited. Complaints and inquiries involving cases of scientific misconduct are managed according to the university's policy for responding to allegations of scientific misconduct. A finding of scientific misconduct is subject to sanctions by the office of student ((~~conduct~~)) standards and accountability. The policy for responding to allegations of scientific misconduct may be reviewed by contacting the ((~~vice-provost~~)) vice-president for research.

(g) Unauthorized collaboration on assignments.

(h) Intentionally obtaining unauthorized knowledge of examination materials.

(i) Plagiarism. Presenting the information, ideas, or phrasing of another person as the student's own work without proper acknowledgment of the source. This includes submitting a commercially prepared paper or research project or submitting for academic credit any work done by someone else. The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(j) Unauthorized multiple submission of the same work.

(k) Sabotage of others' work.

(l) Tampering with or falsifying records.

(4) The term "complainant" means any person who submits a charge alleging that a student violated the standards of conduct for students.

(5) The term "faculty member" for purposes of this chapter, means any person hired by the university to conduct classroom or teaching activities or who is otherwise considered by the university to be a member of its faculty.

(6) The term "gender identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to the person at birth.

(7) The term "may" is used in the permissive sense.

(8) The term "member of the university community" includes any person who is a student, faculty member, university official, or any other person employed by the university. A person's status in a particular situation is determined by the vice-president for student affairs.

(9) The term "organization" means any number of persons who have complied with the formal requirements for university recognition.

(10) The term "policy" means the written regulations of the university as found in, but not limited to, the standards of conduct for students, residence life handbook, the university web page and computer use policy, and graduate/undergraduate catalogs.

(11) The term "shall" is used in the imperative sense.

(12) The term "student" includes all persons taking courses at the university, either full-time or part-time, pursuing undergraduate, graduate, or professional studies. Persons who withdraw after allegedly violating the standards of conduct for students, who are not officially enrolled for a particular term but who have a continuing relationship with the university (including suspended students) or who have been notified of their acceptance for admission are considered "students" as are persons who are living in university residence halls, although not enrolled in this institution.

(13) The term "student conduct officer" means a university official authorized by the vice-president for student affairs to manage conduct complaints including the imposition of sanctions upon any student(s) found to have violated the standards of conduct for students.

(14) The term "university" means all locations of Washington State University.

(15) The term "university conduct board" means those persons who, collectively, have been authorized by the vice-president for student affairs to determine whether a student

has violated the standards of conduct for students and to impose sanctions when a rules violation has been committed.

(16) The term "academic integrity hearing board" means those teaching faculty who, collectively, have been authorized by the university or college to review an instructor's determination that a student violated university academic integrity policies and whether or not the outcome proposed by the instructor is in keeping with the instructor's published policies.

(17) The term "university official" includes any person employed by the university, performing assigned administrative or professional responsibilities.

(18) The term "university premises" includes all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the university (including adjacent streets and sidewalks).

(19) The vice-president for student affairs is that person designated by the university president to be responsible for the administration of the standards of conduct for students.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-101 Convening boards. The student conduct officer convenes boards from the appointed board membership for each conduct matter and for appeals of decisions.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-102 Policies. The vice-president for student affairs or designee shall develop policies for the administration of the ((~~student~~)) standards of conduct for students system and procedural rules for the conduct of ((~~student~~)) university conduct board hearings that are consistent with provisions of the standards of conduct for students.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-103 Decisions. Decisions made by a ((~~student~~)) university conduct board and/or student conduct officer become final twenty-one days after the date the decision is signed, unless an appeal is filed prior to that date.

AMENDATORY SECTION (Amending WSR 08-05-001, filed 2/6/08, effective 3/8/08)

WAC 504-26-200 Jurisdiction of the university standards of conduct for students. The university standards of conduct for students shall apply to conduct that occurs on university premises, at university sponsored activities, and to off-campus conduct that adversely affects the university community and/or the pursuit of its objectives. Each student is responsible and accountable for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from school while a disciplinary matter is pending. The university has sole discretion to determine what conduct occurring off campus adversely impacts the university community and/or the pursuit of university objectives.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-209 Violation of university policy, rule, or regulation. Violation of any university policy, rule, or regulation published ((~~in hard copy or available~~)) electronically on the university web site or in hard copy.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-223 Stalking. Intentionally and repeatedly harassing or following a person and intentionally or unintentionally placing the person being followed or harassed in fear of physical harm to one's self or property or physical harm to another person or another's property. This includes, but is not limited to, conduct occurring in person, electronically, or through a third party.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-301 Malicious intent. If a student is found responsible for violating any provision of ((~~this code~~)) the standards of conduct for students as a result of causing injury to another or to another's property, or as a result of placing another in reasonable fear of injury to self or property, and if the responsible student is found to have intentionally selected the victim based upon the responsible student's perception of the victim's race, color, religion, ancestry, national or ethnic origin, age, gender, marital status, veteran status, sexual orientation, gender identity, or mental, physical, or sensory disability, such finding is considered an aggravating factor in determining a sanction for such conduct.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-303 ((~~Students studying abroad.~~)) International and national exchange programs. Students who participate in any university-sponsored or sanctioned ((~~foreign country~~)) international or national study program shall observe the following rules and regulations:

(1) The laws of the host country and/or state;

(2) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying; and

(3) Any other agreements related to the student's study program ((~~in a foreign country~~)).

AMENDATORY SECTION (Amending WSR 08-05-001, filed 2/6/08, effective 3/8/08)

WAC 504-26-304 Group conduct. Sororities, fraternities, and recognized groups shall comply with the standards of conduct for students and with university policies. When a member or members of a student organization violates the

standards of conduct for students, the student organization and/or individual members may be subject to appropriate sanctions authorized by these standards.

ARTICLE IV
((~~STUDENT~~)) STANDARDS OF CONDUCT ((~~CODE~~)) FOR STUDENTS PROCEDURES

AMENDATORY SECTION (Amending WSR 08-05-001, filed 2/6/08, effective 3/8/08)

WAC 504-26-401 Complaints and student conduct process. (1) Any member of the university community may file a complaint against a student for violations of the standards of conduct for students. A complaint is prepared in writing and directed to a student conduct officer. Any complaint is to be submitted as soon as possible after the event takes place, preferably within thirty days.

(2) A student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the ((~~code~~)) standards of conduct for students. If a conduct officer determines that a complaint appears to state a violation of the ((~~student code~~)) standards of conduct, she or he considers whether the matter might be resolved through agreement with the accused or through alternative dispute resolution proceedings involving the complainant and the accused. The complainant and the accused are informed of university options for alternative dispute resolution and may request that the matter be addressed using alternative dispute resolution techniques. Generally, the accused and complainant must agree to the use of alternative dispute resolution techniques. If the accused and the student conduct officer reach an agreed resolution of the complaint, the disposition is final; there is no right to appeal from an agreed disposition.

(3) If the conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or alternative dispute resolution, the matter is handled through either a conduct officer hearing or as a university conduct board hearing.

(a) When the allegation involves harm or threat of harm to any person or person's property and the accused disputes the facts and/or denies responsibility, the matter may be referred to the university conduct board for resolution.

(b) If the possible or recommended sanction is expulsion or suspension, the matter is referred to the university conduct board.

(c) Matters other than those listed in (a) and (b) of this subsection are heard by a conduct officer, unless the conduct officer exercises his or her discretion to refer the matter to a conduct board at any time before a decision is issued. A student may request that a conduct board hear the case, but the final decision to refer the matter to the university conduct board for hearing is made by the university conduct officer and such decision is not subject to appeal.

(4) The student conduct officer provides complainants who have been targets of alleged misconduct or who feel victimized thereby with names of university and community advocates or resources who may be able to help the complainant address his or her concerns about the behaviors and provide support to the complainant throughout the conduct process. Upon request, a university advisor from the office of the dean of students is available to the complainant and the accused student to assist in understanding the student conduct process. Due to federal privacy law, the university may not disclose to the complainant any sanctions taken against the accused student, unless the complainant was the victim of a violent crime for which the accused was found responsible as defined under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 CFR Part 99), or the accused student consents to such disclosure.

AMENDATORY SECTION (Amending WSR 08-05-001, filed 2/6/08, effective 3/8/08)

WAC 504-26-402 Conduct officer actions. (1) Any student charged by a conduct officer with a violation of any provision of standards of conduct for students is notified of the basis for the charge or charges and of the time, date, and place of a conference between the student and the conduct officer through one of the following procedures.

(a) The conduct officer provides notice by personal delivery or by regular United States mail addressed to the student or student organization at his, her, or its last known address. Duplicate notice may be provided by electronic mail.

(b) If the student is no longer enrolled at the time notice is sent, the notice is sent to the student's permanent address recorded in the registrar's files. The student or student organization is responsible for maintaining an updated mailing address on file with the registrar.

(c) Any request to extend the time and/or date of the conduct officer conference/hearing should be addressed to the conduct officer.

(2) In order that any informality in disciplinary proceedings not mislead a student as to the seriousness of the matter under consideration, the student is informed of the potential sanctions involved at the initial conference or hearing.

(3) After a review of the evidence and interviewing the student(s) involved in the case, the conduct officer may take any of the following actions:

(a) Terminate the proceeding exonerating the student or students;

(b) Dismiss the case;

(c) Impose appropriate sanctions as provided in WAC 504-26-405. Such sanctions are subject to the student's right of appeal as provided in ((~~this code~~)) these standards of conduct; or

(d) Refer the matter to the university conduct board pursuant to WAC 504-26-401(3).

(4) The conduct officer may consider the student's past contacts with the office of student ((~~conduct~~)) standards and accountability in determining an appropriate sanction and/or deciding whether to refer the case for a university conduct board hearing.

(5) The student is notified in writing of the determination made by the conduct officer within ten business days of the proceeding. The notice includes information regarding the student's right to appeal pursuant to WAC 504-26-407.

AMENDATORY SECTION (Amending WSR 08-05-001, filed 2/6/08, effective 3/8/08)

WAC 504-26-403 Conduct board proceedings. (1) Any student charged by a conduct officer with a violation of any provision of standards of conduct for students that is to be heard by a conduct board is provided notice by personal delivery or by regular United States mail addressed to the student or student organization at her, his, or its last known address.

(a) If the student is no longer enrolled at the time notice is sent, the notice is sent to the student's permanent address recorded in the registrar's files.

(b) The student or student organization is responsible for keeping an updated mailing address on file with the registrar.

(2) The written notice shall be completed by the conduct officer and shall include:

(a) The specific complaint, including the university policy or regulation allegedly violated;

(b) The approximate time and place of the alleged act that forms the factual basis for the charge of violation;

(c) The time, date, and place of the hearing;

(d) A list of the witnesses who may be called to testify, to the extent known;

(e) A description of all documentary and real evidence to be used at the hearing, to the extent known, including a statement that the student shall have the right to inspect his or her student conduct file.

(3) Time for hearings.

(a) The conduct board hearing is scheduled not less than seven days after the student has been sent notice of the hearing, except in the case of interim suspensions as set forth in WAC 504-26-406. Ordinarily, the hearing occurs within fifteen days of notice.

(b) Requests to extend the time and/or date for hearing must be addressed to the chair of the university conduct board. Requests made by an accused student must be copied to the office of student ((~~conduct~~)) standards and accountability; requests made by the office of student ((~~conduct~~)) standards and accountability must be copied to the accused student. A request for extension of time is granted only upon a showing of good cause.

(4) University conduct board hearings are conducted by a university conduct board. A goal of the hearing is to have an educational tone and to avoid creation of an unduly adversarial environment. The hearings are conducted according to the following guidelines, except as provided by subsection (6) of this section:

(a) Procedures:

(i) University conduct board hearings are conducted in private.

(ii) The complainant, accused student, and his or her advisor, if any, are allowed to attend the entire portion of the university conduct board hearing at which information is received (excluding deliberations). Admission of any other person to the university conduct board hearing is at the discretion of the university conduct board chair and/or the student conduct officer.

(iii) In university conduct board hearings involving more than one accused student, the student conduct officer, at his or her discretion, may permit joint or separate hearings.

(iv) In university conduct board hearings involving graduate students, board memberships are comprised to include graduate students and graduate teaching faculty to the extent possible.

(v) The complainant and the accused student have the right to be assisted by an advisor they choose, at their own expense. Upon request, a university advisor from the office of the dean of students is available to the complainant and the accused student to assist them in understanding the student conduct process. The complainant and/or the accused student is responsible for presenting his or her own information, and therefore, during the hearing, advisors are not permitted to address the board, witnesses, conduct officers or any party or representatives invited by the parties to the hearing, or to participate directly in any university conduct hearing. An advisor may communicate with the accused and recesses may be allowed for this purpose. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the university conduct board hearing because delays are not normally allowed due to the scheduling conflicts of an advisor.

(vi) The complainant, the accused student, and the student conduct officer may arrange for witnesses to present pertinent information to the university conduct board. The conduct officer tries to arrange the attendance of possible witnesses who are identified by the complainant. Complainant witnesses must provide written statements to the conduct officer at least two weekdays prior to the hearing. Witnesses identified by the accused student must provide written statements to the conduct officer at least two weekdays prior to the conduct hearing. The accused student is responsible for informing his or her witnesses of the time and place of the hearing. Witnesses provide information to and answer questions from the university conduct board. Questions may be suggested by the accused student and/or complainant to be answered by each other or by other witnesses. Written questions are directed to the conduct board chair, rather than to the witness directly. This method is used to preserve the educational tone of the hearing and to avoid creation of an unduly adversarial environment, and to allow the board chair to determine the relevancy of questions. Questions concerning whether potential information may be received are resolved at the discretion of the chair of the university conduct board.

(vii) Pertinent records, exhibits, and written statements (including student impact statements) may be accepted as information for consideration by a university conduct board at the discretion of the chair.

(viii) Questions related to the order of the proceedings are subject to the final decision of the chair of the university conduct board.

(ix) After the portion of the university conduct board hearing concludes in which all pertinent information is received, the ((~~student~~)) university conduct board shall determine (by majority vote) whether the accused student has violated each section of the standards of conduct for students as charged.

(x) The university conduct board's determination is made on the basis of a "preponderance of the evidence," that is, whether it is more likely than not that the accused student violated the standards of conduct for students.

(xi) Formal rules of process, procedure, and/or technical rules of evidence, such as are applied in criminal or civil court, are not used in conduct proceedings. Relevant evidence, including hearsay, is admissible if it is the type of evidence that reasonable members of the university community would rely upon in the conduct of their affairs. The chair of the ((~~student~~)) university conduct board shall have the discretion to determine admissibility of evidence.

(b) If the accused student is found responsible for any of the charges brought against the accused, the board may, at that time, consider the student's past contacts with the office of student ((~~conduct~~)) standards and accountability in determining an appropriate sanction.

(c) The accused student or student organization is notified of the conduct board's decision within ten calendar days from the date the matter is heard. The accused student or organization shall receive written notice of the decision, the reasons for the decision (both the factual basis therefore and the conclusions as to how those facts apply to the standards of conduct ((~~code~~)) for students), the sanction, notice that the order will become final unless internal appeal is filed within twenty-one days of the date the letter was personally delivered or deposited in the U.S. mail, and a statement of how to file an appeal.

(i) The conduct board's written decision is sent by regular mail or personal delivery, and may also be sent by electronic mail to the accused student's or the president of the student organization's last known address, as set forth in the registrar's files.

(ii) The written decision is the university's initial order.

(iii) If the student or organization does not appeal the conduct board's decision within twenty-one calendar days from the date of the decision letter, it becomes the university's final order.

(5) There is a single verbatim record, such as ((~~a tape recording~~)) an audio record, of all university conduct board hearings (not including deliberations). Deliberations are not recorded. The record is the property of the university.

(6) If an accused student to whom notice of the hearing has been sent (in the manner provided above) does not appear before a university conduct board hearing, the information in support of the complaint is presented and considered in his or her absence, and the board may issue a decision based upon that information.

(7) The university conduct board may for convenience or to accommodate concerns for the personal safety, well-being, and/or fears of confrontation of the complainant, accused student, and/or other witnesses during the hearing by providing separate facilities, and/or by permitting participation by telephone, audio tape, written statement, or other means, as determined in the sole judgment of the vice-president for student affairs or designee to be appropriate.

AMENDATORY SECTION (Amending WSR 08-05-001, filed 2/6/08, effective 3/8/08)

WAC 504-26-404 Procedure for academic integrity violations. (1) Initial hearing.

(a) When a responsible instructor finds that a violation of academic integrity has occurred, the instructor shall assemble the evidence and, upon reasonable notice to the student of the date, time, and nature of the allegations, meet with the student suspected of violating academic integrity policies. If the student admits violating academic integrity policies, the instructor assigns an outcome in keeping with published course policies and notifies the office of student ((~~conduct~~)) standards and accountability in writing, including the allegations, the student's admission, and the sanctions imposed.

(b) If the instructor is unable to meet with the student or if the accused student disputes the allegation(s) and/or the outcome proposed by the instructor, the instructor shall make a determination as to whether the student did or did not violate the academic integrity policy. If the instructor finds that the student was in violation, the instructor shall provide the student and the office of student ((~~conduct~~)) standards and accountability with a written determination, the evidence relied upon, and the sanctions imposed.

(c)The student has twenty-one days from the date of the decision letter to request review of the instructor's determination and/or sanction(s) imposed to the academic integrity hearing board.

(2) Review.

(a) Upon timely request for review by a student who has been found by his or her instructor to have violated the academic integrity policy, the academic integrity hearing board shall make a separate and independent determination of whether or not the student is responsible for violating the academic integrity policy and/or whether the outcome proposed by the instructor is in keeping with the instructor's published course policies.

(b) The academic integrity hearing board is empowered to provide an appropriate remedy for a student including arranging a withdrawal from the course, having the student's work evaluated, or changing a grade where it finds that:

(i) The student is not responsible for violating academic integrity policies; or

(ii) The outcome imposed by the instructor violates the instructor's published policies.

(c) Students who appear before the academic integrity board shall have the same rights to notice and to conduct a defense as enumerated in WAC 504-26-403 except:

(i) Notice of hearing and written orders shall be sent to the address provided by the student in the student's request for review (unless an address is not provided therein); and

(ii) The written decision of the academic integrity hearing board is the university's final order. There is no appeal from findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.

(3) If the reported violation is the student's first offense, the office of student ((~~conduct~~)) standards and accountability ordinarily requires the student to attend a workshop separate from, and in addition to, any academic outcomes imposed by the instructor. A hold is placed on the student's record preventing registration or graduation until completion of the workshop.

(4) If the reported violation is the student's second offense, the student is ordinarily required to appear before a university conduct board with a recommendation that the student be dismissed from the university.

(5) If the instructor or academic integrity hearing board determines that the act of academic dishonesty for which the student is found responsible is particularly egregious in light of all attendant circumstances, the instructor or academic integrity hearing board may direct that the student's case be heard by the university conduct board with a recommendation for dismissal from the university even if it is the student's first offense.

(6) Because instructors and departments have a legitimate educational interest in the outcomes, reports of academic integrity hearing board and/or conduct board hearings shall be reported to the responsible instructor and the chair or dean.

AMENDATORY SECTION (Amending WSR 08-05-001, filed 2/6/08, effective 3/8/08)

WAC 504-26-405 Sanctions. (1) The following sanctions may be imposed upon any student found to have violated the standards of conduct for students:

(a) Warning. A notice in writing to the student that the student is violating or has violated institutional regulations.

(b) Probation. Formal action placing conditions upon the student's continued attendance at the university. Probation is for a designated period of time and warns the student that suspension or expulsion may be imposed if the student is found to violate any institutional regulation(s) or fails to complete his or her conditions of probation during the probationary period. A student on probation is not eligible to run for or hold an office in any student group or organization; she or he is not eligible for certain jobs on campus, including but not limited to resident advisor or orientation counselor, and she or he is not eligible to serve on the university conduct board.

(c) Loss of privileges. Denial of specified privileges for a designated period of time.

(d) Restitution. Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.

(e) Education. The university may require the student to successfully complete an educational project designed to create an awareness of the student's misconduct.

(f) Community service. Imposition of service hours (not to exceed eighty hours per student or per member of an organization).

(g) Residence hall suspension. Separation of the student from the residence halls for a definite period of time, after which the student may be eligible to return. Conditions for readmission may be specified.

(h) Residence hall expulsion. Permanent separation of the student from the residence halls.

(i) University suspension. Separation of the student from the university for a definite period of time, after which the student is eligible to request readmission. Conditions for readmission may be specified.

(j) University expulsion. Permanent separation of the student from the university. Also referred to as university dismissal. The terms are used interchangeably throughout this chapter.

(k) Revocation of admission and/or degree. Admission to or a degree awarded from the university may be revoked for fraud, misrepresentation, or other violation of law or university standards in obtaining the degree, or for other serious violations committed by a student prior to graduation.

(l) Withholding degree. The university may withhold awarding a degree otherwise earned until the completion of the process set forth in this ((~~student~~)) standards of conduct ((~~code~~)) for students, including the completion of all sanctions imposed, if any.

(m) Trespass. A student may be restricted from any or all university premises based on his or her misconduct.

(n) Loss of recognition. A student organization's recognition may be withheld permanently or for a specific period of time. A fraternity or sorority may be prohibited from housing freshmen. Loss of recognition is defined as withholding university services, privileges or administrative approval from a student organization. Services, privileges and approval to be withdrawn include, but are not limited to, intramural sports (although individual members may participate), information technology services, university facility use and rental, campus involvement office organizational activities, and office of Greek life advising.

(o) Hold on transcript and/or registration. A hold restricts release of a student's transcript or access to registration until satisfactory completion of conditions or sanctions imposed by a student conduct officer or university conduct board. Upon proof of satisfactory completion of the conditions or sanctions, the hold is released.

(p) No contact order. A prohibition of direct or indirect physical, verbal, and/or written contact with another individual or group.

(2) More than one of the sanctions listed above may be imposed for any single violation.

(3) In determining an appropriate sanction for a violation of the ((~~student~~)) standards of conduct ((~~code~~)) for students, a student's or student organization's past contacts with the office of student ((~~conduct~~)) standards and accountability may be considered.

(4) Other than university expulsion or revocation or withholding of a degree, disciplinary sanctions are not made part of the student's permanent academic record, but shall become part of the student's disciplinary record.

(5) In cases heard by university conduct boards, sanctions are determined by that board. The student conduct officer has the authority to assign sanctions in any conduct officer hearing.

(6) Academic integrity violations.

No credit need be given for work that is not a student's own. Thus, in academic integrity violations, the responsible instructor has the authority to assign a grade and/or educational sanction in accordance with the expectations set forth in the relevant course syllabus. The instructor's choices may include, but are not limited to, assigning a grade of "F" for the assignment and/or assigning an educational sanction such as extra or replacement assignments, quizzes, or tests, or assigning a grade of "F" for the course.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-406 Interim suspension. In certain circumstances, the vice-president for student affairs, or a designee, may impose ((~~a university~~)) an interim suspension prior to the university conduct board hearing or at any time prior to the university's final order.

(1) Interim suspension may be imposed only in situations involving an immediate danger to the health, safety or welfare of:

(a) Any part of the university community or public at large; or

(b) The student's own physical safety and well-being.

(2) Conduct that creates an ongoing disruption of, or interference with, the operations of the university and that prevents other students, employees, or invitees from members of the university community from completing their duties as employees or students, is conduct harmful to the welfare of members of the university community.

(3) During the interim suspension, a student may be denied access to the residence halls, and/or to the campus (including classes), and/or all other university activities or privileges for which the student might otherwise be eligible, as the vice-president for student affairs or designee may determine to be appropriate.

(4) The vice-president for student affairs or designee ordering an interim suspension prepares a brief written decision containing the reasons for the decision (both the factual basis and the conclusions as to why those facts constitute a violation of the ((~~student code~~)) standards of conduct for students), and the policy reasons for the interim suspension. The vice-president of student affairs or designee sends copies of the decision by personal delivery or by U.S. mail to all persons or offices bound by it (including, at a minimum, the suspended student and the office of student ((~~conduct~~)) standards and accountability).

(5) The interim suspension does not replace the regular hearing process, which shall proceed to hearing as quickly as feasible, ordinarily within five working days of the notice of the interim suspension where the accused student has not consented to a longer time frame.

AMENDATORY SECTION (Amending WSR 08-05-001, filed 2/6/08, effective 3/8/08)

WAC 504-26-407 Review of decision. (1) A decision reached by the university conduct board or a sanction imposed by the student conduct officer may be appealed by the accused student(s) in the manner prescribed in the decision letter containing the university's decision and sanctions. Such appeal must be made within twenty-one days of the date of the decision letter.

(a) The university president or designee, of his or her own initiative, may direct that an appeals board be convened to review a conduct board decision without notice to the parties. However, the appeals board may not take any action less favorable to the accused student(s), unless notice and an opportunity to explain the matter is first given to the accused student(s).

(b) If the accused and/or the ((~~office of~~)) student conduct officer or designee wish to explain their views of the matter to the appeals board they shall do so in writing.

(c) The appeals board shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal adjudicative hearing under the Administrative Procedure Act (chapter 34.05 RCW).

(2) Except as required to explain the basis of new information, an appeal is limited to a review of the verbatim record of the university conduct board hearing and supporting documents for one or more of the following purposes:

(a) To determine whether the university conduct board hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures giving the complaining party a reasonable opportunity to prepare and to present information that the standards of conduct for students were violated, and giving the accused student a reasonable opportunity to prepare and to present a response to those allegations. Deviations from designated procedures are not a basis for sustaining an appeal unless significant prejudice results.

(b) To determine whether the decision reached regarding the accused student was based on substantial information, that is, whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the standards of conduct for students occurred.

(c) To determine whether the sanction(s) imposed were appropriate for the violation of the standards of conduct for students which the student was found to have committed.

(d) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, because such information and/or facts were not known to the person appealing at the time of the original ((~~student~~)) university conduct board hearing.

(3) The university appeals board shall review the record and all information provided by the parties and make determinations based on the following:

(a) Affirm, reverse or modify the conduct board's decision;

(b) Affirm, reverse, or modify the sanctions imposed by the conduct board.

(4) The appeal board's decision shall be personally delivered or mailed via U.S. mail to the student. Such decision shall be delivered or mailed to the last known address of the accused student(s). It is the student's responsibility to maintain a correct and updated address with the registrar. The university appeal board's decision letter is the final order and shall advise the student or student organization that judicial review may be available. If the appeal board does not provide the student with a response within twenty days after the request for appeal is received, the request for appeal is deemed denied.

(5) The appeals board decision is effective as soon as the order is signed((~~. A petition to delay the date that the order becomes effective (a "petition for stay") may be directed to the chair of the appeals board within ten days of the date the order was personally delivered to the student or placed in the U.S. mail. The chair shall have authority to decide whether to grant or deny the request~~)), except in cases involving expulsion or loss of recognition. In cases involving expul-

sion or loss of recognition, the appeals board decision is effective ten calendar days from the date the order is signed, unless the university president or designee provides written notice of additional review as provided in subsection (6) of this section.

(6) For cases involving expulsion or loss of recognition, the university president or designee may review a decision of the appeals board by providing written notice to the student or student organization no later than ten calendar days from the date the appeals board decision is signed.

(a) This review is limited to the record and purposes stated in subsection (2) of this section.

(b) Prior to issuing a decision, the president or designee shall make any inquiries necessary to determine whether the proceeding should be converted into a formal adjudicative hearing under the Administrative Procedure Act (chapter 34.05 RCW).

(c) If the accused and/or the student conduct officer or designee wish to explain their views of the matter to the appeals board, they shall do so in writing.

(d) The president or designee's decision is in writing, includes a brief statement of the reasons for the decision, and is issued within twenty calendar days after the date of the appeals board order. The decision becomes effective as soon as it is signed and includes a notice that judicial review may be available.

(7) Students may petition to delay the date that the final order of the university becomes effective by directing a petition to the chair of the appeals board, or the president or designee, as applicable, within ten calendar days of the date the order was personally delivered to the student or placed in the U.S. mail. The chair, or the president or designee, as applicable, shall have authority to decide whether to grant or deny the request.

(8) There is no further review beyond that of the findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-501 Records. (1) ((~~Disciplinary~~)) Standards of conduct for students records are maintained in accordance with the university's records retention schedule.

(2) The disciplinary record is confidential.

(3) A student may request a copy of his or her own disciplinary record at his or her own reasonable expense by making a written request to the office of student ((~~conduct~~)) standards and accountability.

(4) Personally identifiable student information is redacted to protect another student's privacy.

(5) A student may authorize release of his or her own disciplinary record to a third party in compliance with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 CFR Part 99) by making a written request to the office of student ((~~conduct~~)) standards and accountability.

(6) The university may inform the complainant of the outcome of any disciplinary proceeding involving a crime of violence as defined by FERPA (20 U.S.C. Sec. 1232g; 34 CFR Part 99).

(7) The university informs the complainant of the outcome of any disciplinary proceeding alleging sexual misconduct. (34 CFR 668.46 (b)(11)(vi)(B).)

(8) The university may not communicate a student's disciplinary record to any person or agency outside the university without the prior written consent of the student, except as required or permitted by law. Exceptions include but are not limited to:

(a) The student's parents or legal guardians may review these records if the student is a minor or a dependent for tax purposes as defined by FERPA (20 U.S.C. Sec. 1232g; 34 CFR Part 99).

(b) Release to another educational institution, upon request, where the student seeks or intends to enroll, as allowed by FERPA (20 U.S.C. Sec. 1232g; 34 CFR Part 99).

WSR 11-06-067
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Medicaid Purchasing Administration)

[Filed March 2, 2011, 9:06 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 388-502-0100 General conditions of payment, 388-502A-0200 Definitions, 388-530-3200 The department's authorization process, 388-533-0400 Maternity care and newborn delivery, 388-544-0600 Vision care—Payment methodology, and 388-556-0100 Chemical dependency treatment services.

Hearing Location(s): Office Building 2, Auditorium, 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 April 5, 2011, at 10:00 a.m.

Date of Intended Adoption: Not sooner than April 6, 2011.

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 April 5, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by March 23, 2011, 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: Correcting errant WAC cross references and correcting the name of the medicaid purchasing administration.

Reasons Supporting Proposal: It will eliminate confusion for people who read these rules by directing them to the correct WAC citations and referring to the correct administration.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

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

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

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is just a "housekeeping" change to correct errant WAC citations.

A cost-benefit analysis is not required under RCW 34.05.328. Because this is just a "housekeeping" change to correct errant WAC citations, it is exempt under RCW 34.05.328 (5)(b)(iv).

March 2, 2011
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-19-057, filed 9/14/10, effective 10/15/10)

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

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

(b) The service is medically or dentally necessary;

(c) The service is properly authorized;

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

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

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

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

(a) An Indian health service;

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

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

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

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

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

(c) Emergency medical expense requirements (EMER) (see WAC 388-550-1050 and 388-865-0217); and

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

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

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

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 07-10-022, filed 4/23/07, effective 6/1/07)

WAC 388-502A-0200 Definitions. Unless otherwise specified, the following definitions and those found in WAC 388-500-0005, apply to this chapter:

"Audit period"—The time period the department selects to review a provider's records. This time period is indicated in the audit report.

"Chargemaster"—A list of all goods and services and the prices the provider charges for each of those goods and services.

"Extrapolation"—The methodology of estimating an unknown value by projecting, with a calculated precision (i.e., margin of error), the results of an audited sample to the universe from which the sample was drawn.

"Medical assistance"—For purposes of this chapter, the common phrase used to describe all medical programs available through the department.

"Overpayment"—Any payment or benefit to a client or to a vendor in excess of what is entitled by law, rule or contract, including amounts in dispute, as defined in RCW 43.20B.010.

"Record"—Documentation maintained by a health services provider to show the details of the providing of services or products to a medical assistance client. See also WAC 388-502-0020, ((~~general provider~~)) healthcare record requirements.

"Sample"—A selection of claims reviewed under a defined audit process.

"Universe"—A defined population of claims submitted by a provider for payment during a specific time period.

"Usual and customary charge"—The rate providers must bill the department for a certain service or equipment. This rate may not exceed:

(1) The established charge billed to the general public for the same services; or

(2) If the general public is not served, the established rate normally offered to other payers for the same services.

AMENDATORY SECTION (Amending WSR 08-21-107, filed 10/16/08, effective 11/16/08)

WAC 388-530-3200 The department's authorization process. (1) The department may establish automated ways for pharmacies to meet authorization requirements for specified drugs, devices, and drug-related supplies, or circumstances as listed in WAC 388-530-3000(4) including, but are not limited to:

(a) Use of expedited authorization codes as published in the department's prescription drug program billing instructions and numbered memoranda;

(b) Use of specified values in national council of prescription drug programs (NCPDP) claim fields;

(c) Use of diagnosis codes; and

(d) Evidence of previous therapy within the department's claim history.

(2) When the automated requirements in subsection (1) of this section do not apply or cannot be satisfied, the pharmacy provider must request authorization from the department before dispensing. The pharmacy provider must:

(a) Ensure the request states the medical diagnosis and includes medical justification for the drug, device, drug-related supply, or circumstance as listed in WAC 388-530-3000(4); and

(b) Keep documentation on file of the prescriber's medical justification that is communicated to the pharmacy by the prescriber at the time the prescription is filled. The records must be retained for the period specified in WAC ((~~388-502-0020 (1)(c)~~)) 388-502-0020(5).

(3) When the department receives the request for authorization:

(a) The department acknowledges receipt:

(i) Within twenty-four hours if the request is received during normal state business hours; or

(ii) Within twenty-four hours of opening for business on the next business day if received outside of normal state business hours.

(b) The department reviews all evidence submitted and takes one of the following actions within fifteen business days:

(i) Approves the request;

(ii) Denies the request if the requested service is not medically necessary; or

(iii) Requests the prescriber submit additional justifying information.

(A) The prescriber must submit the additional information within ten days of the department's request.

(B) The department approves or denies the request within five business days of the receipt of the additional information.

(C) If the prescriber fails to provide the additional information within ten days, the department will deny the requested service. The department sends a copy of the request to the client at the time of denial.

(4) The department's authorization may be based on, but not limited to:

(a) Requirements under this chapter and WAC 388-501-0165;

(b) Client safety;

(c) Appropriateness of drug therapy;

(d) Quantity and duration of therapy;

(e) Client age, gender, pregnancy status, or other demographics; and

(f) The least costly therapeutically equivalent alternative.

(5) The department evaluates request for authorization of covered drugs, devices, and drug-related supplies that exceed limitations in this chapter on a case-by-case basis in conjunction with subsection (4) of this section and WAC 388-501-0169.

(6) If a provider needs authorization to dispense a covered drug outside of normal state business hours, the provider may dispense the drug without authorization only in an emergency. The department must receive justification from the provider within seventy-two hours of the fill date, excluding weekends and Washington state holidays, to be paid for the emergency fill.

(7) The department may remove authorization requirements under WAC 388-530-3000 for, but not limited to, the following:

(a) Prescriptions written by specific practitioners based on consistent high quality of care; or

(b) Prescriptions filled at specific pharmacies and billed to the department at the pharmacies' lower acquisition cost.

(8) Authorization requirements in WAC 388-530-3000 are not a denial of service.

(9) Rejection of a claim due to the authorization requirements listed in WAC 388-530-3000 is not a denial of service.

(10) When a claim requires authorization, the pharmacy provider must request authorization from the department. If the pharmacist fails to request authorization as required, the department does not consider this a denial of service.

(11) Denials that result as part of the authorization process will be issued by the department in writing.

(12) The department's authorization:

(a) Is a decision of medical appropriateness; and

(b) Does not guarantee payment.

AMENDATORY SECTION (Amending WSR 05-01-065, filed 12/8/04, effective 1/8/05)

WAC 388-533-0400 Maternity care and newborn delivery. (1) The following definitions and abbreviations and those found in WAC 388-500-0005 apply to this chapter.

(a) **"Birthing center"** means a specialized facility licensed as a childbirth center by the department of health (DOH) under chapter 246-349 WAC.

(b) **"Bundled services"** means services integral to the major procedure that are included in the fee for the major procedure. Under this chapter, certain services which are customarily bundled must be billed separately (unbundled) when the services are provided by different providers.

(c) **"Facility fee"** means the portion of ((~~MAA's~~)) the department's payment for the hospital or birthing center charges. This does not include ((~~MAA's~~)) the department's payment for the professional fee defined below.

(d) **"Global fee"** means the fee ((~~MAA~~)) the department pays for total obstetrical care. Total obstetrical care includes all bundled antepartum care, delivery services and postpartum care.

(e) **"High-risk"** pregnancy means any pregnancy that poses a significant risk of a poor birth outcome.

(f) **"Professional fee"** means the portion of ((~~MAA's~~)) the department's payment for services that rely on the provider's professional skill or training, or the part of the reimbursement that recognizes the provider's cognitive skill. (See WAC 388-531-1850 for reimbursement methodology.)

(2) ((~~MAA~~)) The department covers full scope medical maternity care and newborn delivery services to fee-for-service clients who qualify for categorically needy (CN) or medically needy (MN) scope of care (see WAC 388-462-0015 for client eligibility). Clients enrolled in ((~~an MAA~~)) the department managed care plan must receive all medical maternity care and newborn delivery services through the plan. See subsection (20) of this section for client eligibility limitations for smoking cessation counseling provided as part of antepartum care services.

(3) ((~~MAA~~)) The department does not provide maternity care and delivery services to its clients who are eligible for:

(a) Family planning only (a pregnant client under this program should be referred to the local community services office for eligibility review); or

(b) Any other program not listed in this section.

(4) ((~~MAA~~)) The department requires providers of maternity care and newborn delivery services to meet all of the following. Providers must:

(a) Be currently licensed by the state of Washington's department of health (DOH) and/or department of licensing;

(b) Have signed core provider agreements with ((~~MAA~~)) the department;

(c) Be practicing within the scope of their licensure; and

(d) Have valid certifications from the appropriate federal or state agency, if such is required to provide these services (e.g., federally qualified health centers (FQHCs), laboratories certified through the Clinical Laboratory Improvement Amendment (CLIA), etc.).

(5) ((~~MAA~~)) The department covers total obstetrical care services (paid under a global fee). Total obstetrical care includes all of the following:

(a) Routine antepartum care that begins in any trimester of a pregnancy;

(b) Delivery (intrapartum care/birth) services; and

(c) Postpartum care. This includes family planning counseling.

(6) When an eligible client receives all the services listed in subsection (5) of this section from one provider, ((~~MAA~~)) the department pays that provider a global obstetrical fee.

(7) When an eligible client receives services from more than one provider, ((~~MAA~~)) the department pays each provider for the services furnished. The separate services that ((~~MAA~~)) the department pays appear in subsection (5) of this section.

(8) ((~~MAA~~)) The department pays for antepartum care services in one of the following two ways:

(a) Under a global fee; or

(b) Under antepartum care fees.

(9) ((~~MAA's~~)) The department's fees for antepartum care include all of the following:

(a) Completing an initial and any subsequent patient history;

(b) Completing all physical examinations;

(c) Recording and tracking the client's weight and blood pressure;

(d) Recording fetal heart tones;

(e) Performing a routine chemical urinalysis (including all urine dipstick tests); and

(f) Providing maternity counseling.

(10) ((~~MAA~~)) The department covers certain antepartum services in addition to the bundled services listed in subsection (9) of this section. ((~~MAA~~)) The department pays separately for any of the following:

(a) An enhanced prenatal management fee (a fee for medically necessary increased prenatal monitoring). ((~~MAA~~)) The department provides a list of diagnoses and/or conditions that ((~~MAA~~)) the department identifies as justifying more frequent monitoring visits. ((~~MAA~~)) The department pays for either (a) or (b) of this subsection, but not both;

(b) A prenatal management fee for "high-risk" maternity clients. This fee is payable to either a physician or a certified nurse midwife. ((~~MAA~~)) The department pays for either (a) or (b) of this subsection, but not both;

(c) Necessary prenatal laboratory tests except routine chemical urinalysis, including all urine dipstick tests, as described in subsection (9)(e) of this section; and/or

(d) Treatment of medical problems that are not related to the pregnancy. ((~~MAA~~)) The department pays these fees to physicians or advanced registered nurse practitioners (ARNP).

(11) ((~~MAA~~)) The department covers high-risk pregnancies. ((~~MAA~~)) The department considers a pregnant client to have a high-risk pregnancy when the client:

(a) Has any high-risk medical condition (whether or not it is related to the pregnancy); or

(b) Has a diagnosis of multiple births.

(12) ((~~MAA~~)) The department covers delivery services for clients with high-risk pregnancies, described in subsection (11) of this section, when the delivery services are provided in a hospital.

(13) ((~~MAA~~)) The department pays a facility fee for delivery services in the following settings:

(a) Inpatient hospital; or

(b) Birthing centers.

(14) ((~~MAA~~)) The department pays a professional fee for delivery services in the following settings:

(a) Hospitals, to a provider who meets the criteria in subsection (4) of this section and who has privileges in the hospital;

(b) Planned home births and birthing centers.

(15) ((~~MAA~~)) The department covers hospital delivery services for an eligible client as defined in subsection (2) of this section. ((~~MAA's~~)) The department's bundled payment for the professional fee for hospital delivery services include:

(a) The admissions history and physical examination; and

(b) The management of uncomplicated labor (intrapartum care); and

(c) The vaginal delivery of the newborn (with or without episiotomy or forceps); or

(d) Cesarean delivery of the newborn.

(16) ((~~MAA~~)) The department pays only a labor management fee to a provider who begins intrapartum care and unanticipated medical complications prevent that provider from following through with the birthing services.

(17) In addition to ((~~MAA's~~)) the department's payment for professional services in subsection (15) of this section, ((~~MAA~~)) the department may pay separately for services provided by any of the following professional staff:

(a) A stand-by physician in cases of high risk delivery and/or newborn resuscitation;

(b) A physician assistant or registered nurse "first assist" when delivery is by cesarean section;

(c) A physician, (ARNP), or licensed midwife for newborn examination as the delivery setting allows; and/or

(d) An obstetrician/gynecologist specialist for external cephalic version and consultation.

(18) In addition to the professional delivery services fee in subsection (15) or the global/total fees (i.e., those that include the hospital delivery services) in subsections (5) and (6) of this section, ((~~MAA~~)) the department allows additional fees for any of the following:

(a) High-risk vaginal delivery;

(b) Multiple vaginal births. ((~~MAA's~~)) The department's typical payment covers delivery of the first child. For each subsequent child, ((~~MAA~~)) the department pays at fifty percent of the provider's usual and customary charge, up to ((~~MAA's~~)) the department's maximum allowable fee; or

(c) High-risk cesarean section delivery.

(19) ((~~MAA~~)) The department does not pay separately for any of the following:

(a) More than one child delivered by cesarean section during a surgery. ((~~MAA's~~)) The department's cesarean section surgery fee covers one or multiple surgical births;

(b) Postoperative care for cesarean section births. This is included in the surgical fee. Postoperative care is not the same as or part of postpartum care.

(20) In addition to the services listed in subsection (10) of this section, ((~~MAA~~)) the department covers counseling for tobacco dependency for eligible pregnant women through two months postpregnancy. This service is commonly referred to as smoking cessation education or counseling.

(a) ((~~MAA~~)) The department covers smoking cessation counseling for only those fee-for-service clients who are eligible for categorically needy (CN) scope of care. See (f) of this subsection for limitations on prescribing pharmacotherapy for eligible CN clients. Clients enrolled in managed care may participate in a smoking cessation program through their plan.

(b) ((~~MAA~~)) The department pays a fee to certain providers who include smoking cessation counseling as part of an antepartum care visit or a postpregnancy office visit (which must take place within two months following live birth, miscarriage, fetal death, or pregnancy termination). ((~~MAA~~)) The department pays only the following providers for smoking cessation counseling:

(i) Physicians;

(ii) Physician assistants (PA) working under the guidance and billing under the provider number of a physician;

(iii) ARNPs, including certified nurse midwives (CNM); and

(iv) Licensed midwives (LM).

(c) ((~~MAA~~)) The department covers one smoking cessation counseling session per client, per day, up to ten sessions per client, per pregnancy. The provider must keep written documentation in the client's file for each session. The documentation must reflect the information in (e) of this subsection.

(d) ((~~MAA~~)) The department covers two levels of counseling. Counseling levels are:

(i) Basic counseling (fifteen minutes), which includes (e)(i), (ii), and (iii) of this subsection; and

(ii) Intensive counseling (thirty minutes), which includes the entirety of (e) of this subsection.

(e) Smoking cessation counseling consists of providing information and assistance to help the client stop smoking. Smoking cessation counseling includes the following steps (refer to ((~~MAA's~~)) the department's physician-related services billing instructions and births and birthing centers billing instructions for specific counseling suggestions and billing requirements):

(i) Asking the client about her smoking status;

(ii) Advising the client to stop smoking;

(iii) Assessing the client's willingness to set a quit date;

(iv) Assisting the client to stop smoking, which includes developing a written quit plan with a quit date. If the provider considers it appropriate for the client, the "assisting" step may also include prescribing smoking cessation pharmacotherapy as needed (see (f) of this subsection); and

(v) Arranging to track the progress of the client's attempt to stop smoking.

(f) A provider may prescribe pharmacotherapy for smoking cessation for a client when the provider considers the treatment is appropriate for the client. ((~~MAA~~)) The department covers certain pharmacotherapy for smoking cessation as follows:

(i) ((~~MAA~~)) The department covers Zyban™ only;

(ii) The product must meet the rebate requirements described in WAC 388-530-1125;

(iii) The product must be prescribed by a physician, ARNP, or physician assistant;

(iv) The client for whom the product is prescribed must be eighteen years of age or older;

(v) The pharmacy provider must obtain prior authorization from ((~~MAA~~)) the department when filling the prescription for pharmacotherapy; and

(vi) The prescribing provider must include both of the following on the client's prescription:

(A) The client's estimated or actual delivery date; and

(B) Indication the client is participating in smoking cessation counseling.

(g) ((~~MAA's~~)) The department's payment for smoking cessation counseling is subject to postpay review. See WAC 388-502-0230, Provider review and appeal, and WAC ((~~388-502-0240, Audits and the audit appeal process for contractors/providers, for information regarding review and appeal~~

~~processes for providers~~)) 388-502A-1100, Provider audit-dispute process.

AMENDATORY SECTION (Amending WSR 08-14-052, filed 6/24/08, effective 7/25/08)

WAC 388-544-0600 Vision care—Payment methodology. (1) To receive payment, vision care providers must bill the department according to ((~~the conditions of payment under WAC 388-502-0020 (1)(a) through (c) and WAC 388-502-0100~~)) this chapter, chapters 388-501 and 388-502 WAC, and the department's published billing instructions and numbered memoranda.

(2) The department pays one hundred percent of the department contract price for covered eyeglass frames, lenses, and contact lenses when these items are obtained through the department's approved contractor.

(3) See WAC 388-531-1850 for professional fee payment methodology.

AMENDATORY SECTION (Amending WSR 00-18-032, filed 8/29/00, effective 9/29/00)

WAC 388-556-0100 Chemical dependency treatment services. The department covers chemical dependency treatment services, as defined in chapter 388-805 WAC, for medicaid and children's health clients. Coverage is limited to services performed by providers defined in WAC ((~~388-502-0010~~)) 388-502-0002.

WSR 11-06-069
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION
[Filed March 2, 2011, 9:25 a.m.]

Supplemental Notice to WSR 10-22-031.

Preproposal statement of inquiry was filed as WSR 10-16-010.

Title of Rule and Other Identifying Information: Chapter 392-141 WAC, Transportation—State allocation for operations.

Hearing Location(s): Office of Superintendent of Public Instruction, Brouillet Conference Room, 600 South Washington Street S.E., Olympia, WA 98506-7200, on April 6, 2011, at 10:00 a.m.

Date of Intended Adoption: April 15, 2011.

Submit Written Comments to: Allan J. Jones, Director, P.O. Box 47200, Olympia, WA 98504-7200, e-mail allan.jones@k12.wa.us, fax (360) 586-6124, by April 1, 2011.

Assistance for Persons with Disabilities: Contact Wanda Griffin by April 1, 2011, TTY (360) 664-3631 or (360) 725-6132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A complete revision of chapter 392-141 WAC is required in order to implement the new student transportation funding system implemented through EHB 2261 (2009).

The 2010 legislature through EHB 2776 modified the implementation date to September 1, 2011, and required the office of superintendent of public instruction (OSPI) to report on the language of the rule by December 1, 2010.

A hearing was conducted on December 8, 2010. In response to concerns raised during the December 8, 2010, hearing, the agency has made additional revisions to the proposed language incorporating some recommendations as well as redefining other areas for clarification.

Reasons Supporting Proposal: EHB 2261 (2009) and EHB 2776.

Statutory Authority for Adoption: RCW 28A.150.290.

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: See Purpose above.

Name of Proponent: [OSPI], governmental.

Name of Agency Personnel Responsible for Drafting: Catherine Slagle, OSPI, (360) 725-6136; Implementation: Shawn Lewis, OSPI, (360) 725-6292; and Enforcement: Allan J. Jones, OSPI, (360) 725-6120.

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.

March 1, 2011
Randy Dorn
State Superintendent

NEW SECTION

WAC 392-141-300 Authority and purpose. The authority for this chapter is RCW 28A.150.290 which authorizes the superintendent of public instruction to adopt rules and regulations for the administration of chapter 28A.150 RCW, which includes student transportation programs, RCW 28A.160.030, which includes individual and in lieu transportation arrangements, RCW 28A.160.160 which includes hazardous walking conditions, and RCW 28A.160.1921 which includes the transportation reporting requirements. The purpose of this chapter is to establish the method for the allocation of funding for the operation of public school district student transportation programs.

NEW SECTION

WAC 392-141-310 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Superintendent" means the superintendent of public instruction.

(2) "District" means either a school district or an educational service district.

(3) The definition of "school" includes learning centers or other agencies where educational services are provided.

(4) "Eligible student" means any student served by a district transportation program either by bus, district car, or individual arrangements meeting one or more of the following criteria:

(a) A student whose route stop is outside the walk area of the student's enrollment school site; or

(b) A student whose disability is defined by RCW 28A.155.020 and who is either not ambulatory or not capable of protecting his or her own welfare while traveling to or from school.

Districts determine which students are provided with transportation services; however, only eligible students qualify for funding under the operations allocation.

(5) "To and from transportation" means all transportation between route stops and schools both before and after the school day. To and from transportation includes transportation between home and school and transportation between schools, commonly referred to as shuttles. Transportation not authorized for state allocations under this definition includes, but is not limited to, transportation for students participating in nonacademic extended day programs, field trips, and extracurricular activities.

(6) "Home to school transportation" means all student transportation between route stops and schools both before and after the school day. Home to school transportation does not include transportation between schools.

(7) "Basic program transportation" means students transported between home and school for their basic education. Basic program transportation includes those students who qualify under RCW 28A.155.020 for special services and are capable of protecting his or her own welfare while traveling to or from school and those students who are qualified for gifted programs or bilingual programs or homeless students that do not require specialized transportation. Also included in basic program transportation is transportation required to comply with the school choice provisions of the Elementary Secondary Education Act.

(8) "Special program transportation" means home to school transportation for one of the following specialized programs:

(a) Special education programs provided for by chapter 28A.155 RCW and where transportation as a related service is included on the student's individual education plan or where transportation is required under the provisions of Section 504 of the Rehabilitation Act of 1973; or

(b) Students who require special transportation to a bilingual program in a centralized location; or

(c) Students who require special transportation to a gifted program in a centralized location; or

(d) Students who require special transportation to their school of origin as required by the provisions of the McKinney-Vento Homeless Assistance Act; or

(e) Students who require special transportation to a district operated head start, early childhood education assistance program, or other early education program.

(9) "Kindergarten route" means a school bus providing home to school transportation for basic education kindergarten students operated between the beginning and end of the school day.

(10) "Private party contract" means the provision of home to school transportation service using a private provider (not in a school bus). Private party contracts shall require criminal background checks of drivers and other adults with unsupervised access to students and assurances that any students transported be provided with child safety restraint systems that are age and weight appropriate. Vehicles used must meet school bus specifications established in chapter 392-143 WAC if they have a manufacturer's design capacity of greater than ten passengers, including the driver. However, a vehicle manufactured to meet the federal specifications of a multifunction school activity bus may be used.

(11) "In lieu transportation" means a contract to provide home to school transportation with a parent, guardian or adult student, including transportation on rural roads to access a school bus stop.

(12) "Count period" is the three consecutive school day window used for establishing the reported student count on home to school routes.

(13) The school year is divided into three "report periods," as follows: September - October, November - January, and February - April. These report periods are also referred to respectively as the fall, winter and spring reports. The count period must not fall within five school days of the end of the report period.

(14) "Combined student count" is the total number of basic program or special program eligible student riders reported during each report period. The combined student count for the determination of funding consists of the prorated counts from the prior year's spring report and the current year's fall and winter reports. The prior school year's fall, winter and spring student counts are used for the determination of the efficiency rating. The combined student count is prorated based on the number of months in the respective report period. For the 2011-12 school year, the fall 2011 report values will be used to provide values for the spring 2011 report.

(15) "Average distance to school" means the average of the distances from each school bus stop measured by the shortest road path to the assigned student's school of enrollment.

(16) "Prorated average distance" is calculated by taking the average distance to school weighted by the number of months in the corresponding report period. The prorated average distance used in calculating district allocation consists of the prorated average distance from the prior year's spring report and the current year's fall and winter reports. The prior school year's fall, winter and spring average distances are used for the determination of the efficiency rating. The average distance is prorated based on the number of months in the respective report period.

(17) "Land area" is the area of the school district in square miles, excluding water and public lands, as determined by the superintendent.

(18) "Roadway miles" refers to the number of public roadway miles within the land area of the school district, as determined by the superintendent.

(19) "Walk area" is defined as the area around a school where the shortest safe walking route to school is less than one mile.

(20) "District car route" means home to school transportation where a district motor pool vehicle (not a school bus) is used to transport an eligible student or students. Any regularly scheduled home to school transportation in a district car is required to be driven by an authorized school bus driver.

(21) "District car allocation" is calculated by multiplying the total annual district car route mileage by the rate of reimbursement per mile that is authorized for state employees for the use of private motor vehicles in connection with state business in effect on September 1st of each year.

(22) "Alternate funding system" means an additional funding system as provided in RCW 28A.160.191, defined by OSPI to adjust the allocation for low enrollment school districts, nonhigh school districts, school districts participating in interdistrict transportation cooperatives, and educational service districts operating special transportation services.

(23) "Local characteristics factor" means a percentage increase added to the calculated student transportation allocation to account for site characteristics not identified in the regression analysis defined in WAC 392-141-360. The local characteristics factor for a school year will be identified in the annual student transportation operations allocation reporting bulletin in the fall of each school year.

(24) "Expected allocation" means the initial amount of funding resulting from the regression analysis calculation including the local characteristics factor.

(25) "Adjusted allocation" means the expected allocation plus any adjustments.

(26) "Actual allocation" means the lesser of the previous year's actual reported transportation expenditures or the adjusted allocation.

(27) "Efficiency evaluation" refers to the statistical evaluation of efficiency of a district's transportation operation using linear programming of the data required by the funding formula and the number of buses used on home-to-school routes. Each district is separately compared to an individualized statistical model of a district having similar site characteristics. The efficiency evaluation is expressed as a percentage efficiency rating.

NEW SECTION

WAC 392-141-320 District reporting requirements. (1) Reports shall be submitted by each district to the superintendent prior to the last business day in October, the first business day in February, and the first business day in May. These reports shall reflect to the extent practical the planned student transportation program for the entire report period and which is in operation during the ridership count period. The superintendent shall have the authority to make modifications or adjustments in accordance with the intent of RCW 28A.160.150. Each district shall submit the data required on a timely basis as a condition to the continuing receipt of student transportation allocations.

(2) In each report period, districts shall report such operational data and descriptions, as required by the superintendent to determine the operations allocation for each district, including:

(a) School bus route information;

(b) Student count information; and

(c) An update to the estimated total car mileage for the current school year.

(3) For the fall report, districts shall report to the superintendent as required:

(a) An annual school bus mileage report including the total to and from school bus miles for the previous school year, and other categories as requested;

(b) An annual report of each type of fuel purchased for student transportation service for the previous school year, including quantity and cost; and

(c) An annual report of the number of students transported to their school of origin as required by the McKinney-Vento Homeless Assistance Act for the previous school year, and the total mileage and cost of such transportation.

NEW SECTION

WAC 392-141-330 School bus driver daily logs. Districts shall require drivers to maintain a daily route log that includes the school bus driver's name, bus number, route number, destinations and student counts by destination, pre-trip and post-trip verification, with the date and school bus driver's signature. These daily route logs shall be completed in ink and shall be maintained in the school district files in accordance with the school district record retention schedule. Electronic data collection systems or files may be used for any of this information.

Daily route logs are required to be completed at least once each week. If a district does not require daily route logs on a daily basis, the district must ensure that during each report period a daily log is collected on at least one additional weekday corresponding to each of the days of the count period.

NEW SECTION

WAC 392-141-340 Determination of the walk area. (1) Each district shall determine the walk area for each school building or learning center where students are enrolled, attend class and transportation is provided. The district is required to use a process to determine the walk area that involves as many of the following groups as possible: Parents, school administrators, law enforcement representatives, traffic engineers, public health or walking advocates and other interested parties. Hazardous conditions requiring transportation service will be documented and will include all roadways, environmental and social conditions included in the evaluation process.

(2) The process will identify preferred walking routes from each neighborhood to each elementary school as required by WAC 392-151-025. Walk areas and walking routes will be reviewed as conditions change or every two years.

(3) School districts are allowed to provide transportation service within the walk area, but basic program students who are provided transportation from school bus stops within the walk area are not eligible for funding. It is the responsibility of each school district to ensure that noneligible students who are provided with transportation service within the walk area are correctly reported during the count period.

(4) A school district is not required to document the process used to determine that transportation will not be provided from an area. School districts are only required to document the process used to make a decision to transport within one road mile of a school if the district is providing such

transportation due to hazardous conditions and reports those students for funding.

NEW SECTION

WAC 392-141-350 Authorization and limitation on district payments for individual and in lieu transportation arrangements. Districts may commit to individual transportation or in lieu arrangements subject to approval by the educational service district superintendent or his or her designee. The following arrangements and limitations apply:

(1) A district shall contract with the custodial parent, parents, guardian(s), person(s) in loco parentis, or adult student(s) to pay the lesser of the following in lieu of transportation by the district:

(a) Mileage and tolls for home to school transportation (in whole or part) for not more than two necessary round trips per school day; or

(b) Mileage and tolls for home to school transportation for not more than five round trips per school year, plus room and board.

(2) The in lieu of transportation mileage, tolls and board and room rates of reimbursement which a district is hereby authorized to pay shall be computed as follows:

(a) Mileage reimbursement shall be computed by multiplying the actual road distance from home to school (or other location specified in the contract) with any type of transportation vehicle that is operated for the purpose of carrying one or more students by the maximum rate of reimbursement per mile that is authorized by law for state employees for the use of private motor vehicles in connection with state business;

(b) Toll reimbursement shall be computed by adding the actual fees paid as a condition to the passage of a transportation vehicle and its student passengers or its operator, or both, across a bridge or upon a ferry, and similar fees imposed as a condition to the passage, ingress, or egress of such vehicle and its student passengers or its operator, or both, while traveling to and from school; and

(c) Board and room reimbursement shall be computed at the rates established by the department of social and health services (inclusive of the basic rates and, in the case of disabled students, the additional amounts for students with special needs, but exclusive of any rates or amounts for clothing and supplies).

NEW SECTION

WAC 392-141-360 Operation allocation computation. (1) The operation allocation shall be calculated using the following factors:

(a) The combined student count of basic program students;

(b) The combined student count of special program students;

(c) The district's prorated average distance;

(d) The district's total land area;

(e) The district's total number of roadway miles;

(f) The district's number of destinations served by home to school routes;

(g) The district's number of kindergarten routes operated during ten consecutive school days that include the count period and are all within the report period; and

(h) If the school district is a nonhigh district, the answer to the following question: Does the district provide transportation service for the high school students residing in the district?

For each district, an expected allocation is determined using the coefficients resulting from a regression analysis of (a) through (h) of this subsection, evaluated statewide against the prior school year's total to and from transportation expenditures and including the local characteristics factor. For the 2011-12 school year, the coefficients will be calculated based on the fall 2011 report and the 2010-11 school year transportation expenditures. In the 2012-13 school year and after, the coefficients will be determined using the prior school year reports and prior school year expenditures.

(2) The adjusted allocation is the result of modifying the expected allocation by adding any district car mileage reimbursement, adding any adjustment resulting from the alternate funding systems identified in WAC 392-141-380, and making any adjustment resulting from an alternate school year calendar approved by the state board of education under the provisions of RCW 28A.305.141. If the district contracts for student transportation services, any funding in lieu of depreciation is added to this total.

(3) Each district's actual allocation for student transportation operations is the lesser of the prior school year's total allowable student transportation expenditures or the adjusted allocation.

(4) The funding assumption for the transportation operation allocation is that kindergarten through twelfth grade (K-12) school transportation services are provided by the district five days per week, to and from school, before and after the regular school day and operating one hundred eighty days per school year. K-12 service being provided on any other basis is subject to corresponding proration of the operation allocation.

NEW SECTION

WAC 392-141-370 Transition and hold harmless provisions. (1) For the 2011-12 through the 2013-14 school years, the transition process will prorate each district's transportation allocation to the extent funds are available based on the difference between the district's prior year's allocation and the district's allocation determined through the process described in WAC 392-141-360.

(2) For the 2011-12 through the 2013-14 school years, each district's student transportation operations allocation shall be no less than the previous year's transportation operations allocation but not more than the total of allowable transportation expenditures plus district indirect expenses using the process identified in WAC 392-141-410.

NEW SECTION

WAC 392-141-380 Alternate funding systems for low enrollment districts, nonhigh districts, districts participating in interdistrict transportation cooperatives, and educational service districts operating special transporta-

tion services. The superintendent shall adjust the amount of the transportation operation allocation for low enrollment, nonhigh, districts in interdistrict transportation cooperatives, and educational service districts operating special transportation services in the following manner:

(1) The allocation calculated under WAC 392-141-360 is compared with the prior year's total approved transportation expenditures for each school district;

(2) The average percentage increase for all districts above the previous year's allocation is calculated; and

(3) The district's allocation shall be either the calculated allocation or the previous year's allocation increased by the average determined in subsection (2) of this section, whichever is greater, but not more than the prior year's transportation expenditures.

No later than the first business day of June of each year, the superintendent will specify the adjustment process to be used in the coming school year.

NEW SECTION

WAC 392-141-390 Allocation schedule for state payments. The superintendent shall apportion the transportation operation allocation according to the schedule in RCW 28A.510.250. Such allocation may be based on estimated amounts for payments made in September, October, November, December, and January. Prior to the 15th of January of each year the superintendent shall notify school districts of the regression analysis coefficients to be used in the calculation of district transportation allocation.

NEW SECTION

WAC 392-141-400 Efficiency evaluation review. (1) Each district's efficiency evaluation will be reviewed annually by the regional transportation coordinators. If a school district's efficiency rating is less than ninety percent, the regional transportation coordinator shall review the district's transportation operation to identify the factors impacting the ability of the district to operate an efficient student transportation system. Such factors will include those within the district's controls and those factors that are beyond the district's control.

(2) Completed regional transportation coordinator reports will be provided to the legislature prior to December 1st of each year. Districts will be provided an opportunity to respond to the conclusions of the regional coordinator evaluation and such comments will be included in the report to the legislature. Also included in the report are any actions identified by a district in response to the regional transportation coordinator evaluation.

NEW SECTION

WAC 392-141-410 Recovery of transportation funds. The superintendent of public instruction shall recover (take back) state pupil transportation allocations that are not expended for the student transportation program costs that are allowable under the accounting guidance provided by the superintendent. The amount of the recovery shall be calculated as follows:

(1) Determine the district's state allocation for student transportation operations for the school year.

(2) Determine the district's allowable student transportation costs as follows:

(a) Sum the following amounts:

(i) The district's direct expenditures for general fund program 99 pupil transportation, and for educational service district student transportation operations expenditures in program 70 transportation excluding expenditures associated with the regional coordinator and bus driver training grants;

(ii) Allowable indirect charges equal to the expenditures as calculated pursuant to (a)(i) of this subsection times the percentage provided by the superintendent's school apportionment and financial services section;

(b) Subtract the district's revenues for the school year for revenue account 7199 (transportation revenues from other districts).

(3) If the allowable program costs are less than the state allocation, OSPI shall recover the difference.

Funds may not be transferred from program 99 into the transportation vehicle fund.

NEW SECTION

WAC 392-141-420 District recordkeeping requirements. All data and forms necessary to develop the district's student transportation report shall be maintained in accordance with the district record retention schedule and shall include the following:

(1) All school bus route logs and school bus driver daily logs including those required in WAC 392-141-330. If student lists are maintained for each school bus route, a copy (electronic or paper) of the list in effect for each count period;

(2) All documentation used to verify the number of students boarding the bus at bus stops within the walk area of their school of enrollment;

(3) All documentation used to report and verify the location of school bus stops used in home to school transportation, including school destinations and transfer points;

(4) All documentation used to develop the annual school bus mileage report;

(5) All documentation used to develop the annual fuel report;

(6) All documentation used to develop the annual report of McKinney-Vento Homeless Act transportation;

(7) All documentation used to develop the district car mileage report;

(8) Copies of any and all correspondence, publications, news articles, or other materials distributed to parents describing the transportation funding process. School districts may provide educational material regarding the funding process for student transportation. However, school districts may not promote or publicize specific count periods. Districts shall not utilize incentive programs that provide tangible gifts to reward increases in ridership counts; and

(9) Other operational data and descriptions, as required by the superintendent to determine the operation allocation requirements for each district.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-141-105	Authority.
WAC 392-141-110	Purpose.
WAC 392-141-115	Definition—Eligible student.
WAC 392-141-120	Definition—To and from school.
WAC 392-141-130	Definition—Standard student mile allocation rate.
WAC 392-141-135	Definition—Prorated bus.
WAC 392-141-140	Definition—Radius mile.
WAC 392-141-146	Definition—Basic transportation.
WAC 392-141-147	Definition—Basic shuttle transportation.
WAC 392-141-148	Definition—Special transportation.
WAC 392-141-150	Definition—Midday transportation.
WAC 392-141-152	Definition—Combined transportation route.
WAC 392-141-155	Definition—Weighted student unit.
WAC 392-141-156	Definition—District car allocation rate.
WAC 392-141-157	Definition—District.
WAC 392-141-158	Definition—Minimum load factor.
WAC 392-141-159	Definition—Choice program transportation.
WAC 392-141-160	District reporting and recordkeeping requirements.
WAC 392-141-165	Adjustment of state allocation during year.
WAC 392-141-170	Factors used to determine allocation.
WAC 392-141-180	Limitations on the allocation for transportation between schools and learning centers.
WAC 392-141-185	Operation allocation computation.
WAC 392-141-190	Authorization and limitation on district payments for individual and in-lieu transportation arrangements.
WAC 392-141-195	Allocation schedule for state payments.
WAC 392-141-200	Recovery of transportation funds.