

WSR 07-11-021
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed May 4, 2007, 9:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-07-014.

Title of Rule and Other Identifying Information: WAC 220-52-075 Shellfish harvest logs.

Hearing Location(s): Seafarers Memorial Park Building, 601 14th Street, Anacortes, WA 98221, on August 3-4, 2007, at 8:00 a.m.

Date of Intended Adoption: October 12-13, 2007.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail preuslmp@dfw.wa.gov, fax (360) 902-2155, by August 1, 2007.

Assistance for Persons with Disabilities: Contact Susan Yeager by July 16, 2007, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal is intended to clarify existing requirements, provide requirements where they are lacking, reorganize the reporting locations and section (addresses and phone numbers), and provide penalty language and references for violations.

Reasons Supporting Proposal: Existing rules lack clarity, additional management information needs have arisen, addresses and phone numbers have changed, and penalty sections are absent. These proposed changes will provide increased clarity of the rules to meet management and enforcement needs as well as reduce fishermen's confusion.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Morris W. Barker, 1111 Washington Street, Olympia, (360) 902-2826; Implementation: Lew Atkins, 1111 Washington Street, Olympia, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

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

Small Business Economic Impact Statement

1. Description of the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule: Provides clarity of logbook requirements without adding any new fisheries required to maintain and submit logbooks. Specifies methods of logbook maintenance and reporting schedules as well as locations and phone numbers for report submission.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: None required.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: There may be a small increase in fisher labor for the on-the-water record keeping for logbook entries. No increased costs for reporting as those rules already exist.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? No.

5. Cost of Compliance for the 10% of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales.

There is no cost of compliance (see #3 above).

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: The department has discussed the proposed changes with many of the fishery groups affected and taken that input into consideration in developing these proposals - costs, if any are now considered *de minimus*.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: Many of the affected fisheries have already had discussions with agency staff. In addition, the proposals will be discussed in a public hearing format under the auspices of the fish and wildlife commission's public meeting process.

8. A List of Industries That Will Be Required to Comply with the Rule: Commercial shellfish fishers for the following fisheries: Crayfish, sea cucumber, sea urchin, scallop, shrimp other than ocean pink shrimp or squid.

A copy of the statement may be obtained by contacting Morris W. Barker, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2826, fax (360) 902-2944, e-mail barkemwb@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

May 4, 2007

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 03-28, filed 2/18/03, effective 3/21/03)

WAC 220-52-075 Shellfish harvest logs. (1) It is unlawful for any vessel operator engaged in the commercial harvest of crawfish, sea cucumber, sea urchin, scallop, shrimp other than ocean pink shrimp, or squid ~~((-or))~~ to fail to obtain and accurately maintain the appropriate harvest log available from the Washington department of fish and wildlife. It is unlawful for any license holder engaged in commercial sand shrimp fishing or operator of mechanical clam digging device to fail to obtain and accurately maintain the appropriate harvest log available from the Washington department of fish and wildlife. ((The harvest log must be kept aboard the vessel while the vessel is engaged in harvest or has crawfish, sea cucumbers, sea urchins, shrimp other than ocean pink shrimp, squid, scallops, clams, or sand shrimp aboard. The vessel operator must submit the harvest logs for inspection upon request by authorized department of

fish and wildlife representatives. The department's copies of the completed harvest log must be submitted to the department for each calendar month in which fishing activity occurs. State copies must be received within ten days following any calendar month in which fishing activity occurred, except that commercial sea cucumber harvest logs must be received for each month of the season provided for in WAC 220-52-072 regardless of whether harvest activity occurred during the month, and all shellfish harvesters must submit a log that must be received by the tenth day following the termination of commercial fishing activity showing that shellfish harvest has terminated for the year.

(4)) (2) It is unlawful for any harvest vessel operator or license holder engaged in harvest as described in subsection (1) of this section, to fail to maintain the required harvest log: Aboard the vessel; at the harvest site; when crawfish, sea cucumbers, sea urchins, shrimp other than ocean pink shrimp, squid, scallops, clams, or sand shrimp are aboard during transit of a harvest vessel; or are in possession of the license holder.

(3) It is unlawful for the vessel operator or license holder, engaged in harvest as described in subsection (1) of this section, to fail to submit harvest logs for inspection upon request by department of fish and wildlife officers or authorized employees.

(4) It is unlawful for any vessel operator or license holder, engaged in harvest as described in subsection (1) of this section, to fail to comply with the following methods of logbook submittal and time frames related to harvest logbook submittal:

(a) Within ten days following any calendar month in which fishing occurred, required completed harvest logs must be received by the department; however, vessel operators or license holders may submit logs directly to authorized department employees.

(b) Vessel operators or license holders responsible for submitting logs to the department, as described in subsection (1) of this section, must maintain a copy of all submitted logs for a period of three years following the harvest activity. Copies of harvest logs, which are required to be maintained, must be available for inspection upon request by department of fish and wildlife officers and authorized employees.

(c) Original harvest logs must be maintained and submitted in ascending consecutive order of log serial number.

(5) It is unlawful for any vessel operator or license holder, engaged in harvest as described in subsection (1) of this section, to fail to send completed harvest logs to the appropriate following mailing address, except as provided for in subsection (4)(a) of this section.

For Shrimp Harvest Logbooks:

ATTN: SHRIMP HARVEST MANAGER
Washington Department of Fish and Wildlife
Point Whitney Shellfish Laboratory
1000 Point Whitney Road
Brinnon, WA 98320-9799.

For Crawfish Harvest Logbooks:

ATTN: FISH PROGRAM - CRAWFISH HARVEST MANAGER
Washington Department of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501-1091.

For Sea Urchin and Sea Cucumber Harvest Logbooks:

ATTN: FISH PROGRAM - SEA URCHIN/SEA CUCUMBER HARVEST MANAGER
Washington Department of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501-1091.

For Clam (harvest with mechanical digging devices) Harvest Logbooks:

ATTN: FISH PROGRAM - GEODUCK HARVEST MANAGER
Washington Department of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501-1091.

For Scallop Harvest Logbooks:

ATTN: FISH PROGRAM - SCALLOP HARVEST MANAGER
Washington Department of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501-1091.

For Squid Harvest Logbooks:

ATTN: FISH PROGRAM - SQUID HARVEST MANAGER
Washington Department of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501-1091.

For Coastal Sand Shrimp Harvest Logbooks:

ATTN: SAND SHRIMP HARVEST MANAGER
Washington Department of Fish and Wildlife
P.O. Box 190
Ocean Park, WA 98640-0190.

For Puget Sound Sand Shrimp Harvest Logbooks:

ATTN: SAND SHRIMP HARVEST MANAGER
Washington Department of Fish and Wildlife
P.O. Box 1100
LaConner, WA 98257.

(6) It is unlawful for vessel operators engaged in commercial harvest of shrimp (other than Puget Sound shrimp or sand shrimp) or crawfish with shellfish pot or ring net gear ((~~must~~)) to fail to permanently and legibly record in ink the following information within the following time frames:

(a) Before leaving the catch area where harvest occurred, record the vessel Washington department of fish and wildlife boat registration number, number of pots or ring nets pulled, date pulled, soak time, and gear location ((~~before leaving the catch area where taken, and weights must be recorded upon landing or sale.~~))

(2) Vessel operators engaged in commercial harvest of shrimp other than ocean pink shrimp with beam trawl or shrimp trawl gear must record the vessel identity, date, location fished, trawl width, Marine Fish Shellfish Management and Catch Reporting Area, depth fished, latitude and longitude to the nearest hundredth of a minute at the beginning of each tow, tow speed, duration of tow and estimated weight of shrimp of each species caught for each tow before leaving the

site where the catch was taken or before commencing a new tow, whichever occurs first.

It shall be unlawful to fail to permanently record this information into the department-supplied harvest log before leaving each catch site. Harvest logs must be maintained and submitted in ascending consecutive order of harvest log serial numbers. Harvest logs must be submitted for each month in which fishing activity occurs and must be received by the department within ten days following any month in which fishing occurs. The fish receiving ticket serial number must be recorded onto the harvest log at the time of sale, or before leaving the last catch site of the day if the vessel operator holds a wholesale dealer license and is the original receiver of the catch.

(3) Vessel operators engaged in commercial harvest of sea urchins or sea cucumbers must); and

(b) Immediately after delivery of shellfish to an original receiver, record the weight of all shellfish.

(7) It is unlawful for vessel operators engaged in commercial harvest of shrimp, other than ocean pink shrimp, with beam trawl or shrimp trawl gear, to fail to permanently and legibly record in ink onto the department-supplied harvest log, the following information within the following time frames:

(a) Before commencing a new tow or prior to leaving the site where the catch was taken, record the vessel identity, current date of fishing activity, location fished, trawl width, Marine Fish-Shellfish Management and Catch Reporting Area fished, depth fished, latitude and longitude to the nearest hundredth of a minute at the beginning of each tow, tow speed, duration of tow, and estimated weight of shrimp of each species caught for each tow.

(b) Immediately after delivery of shrimp to an original receiver, or before leaving the last catch site of the day if the operator holds a wholesale fish dealer's license and is the original receiver, record the fish receiving ticket serial number.

(8) It is unlawful for vessel operators engaged in commercial harvest of sea urchins or sea cucumbers to fail to permanently and legibly record in ink the following information within the following time frames:

(a) Before leaving the harvest site, record the vessel identity, date, Marine Fish-Shellfish Catch Reporting Area fished, location fished, depth fished, latitude and longitude to the nearest tenth of a minute or to the nearest second, and the approximate ((number)) weight in pounds of sea urchins or sea cucumbers ((taken before leaving the site where taken and the exact weight must be recorded upon landing or sale.

(4) Vessel operators engaged in commercial harvest of clams with mechanical digging devices must record the vessel identity, location, and date of harvest before the end of each day's fishing and the weights by clam species must be recorded upon landing or sale.

(5) Vessel operators engaged in commercial harvest of scallops must)) harvested.

(b) Upon landing or delivery to an original receiver, the exact weight of sea urchins, as recorded on the shellfish receiving ticket, must be recorded.

(c) Upon landing or delivery to an original receiver, the exact weight of sea cucumbers, as recorded on the shellfish

receiving ticket, and whether or not prelanded processing occurred ("whole-live" or "split-drained"), must be recorded.

(9) It is unlawful for license holders engaged in commercial harvest of clams with mechanical digging devices to fail to permanently and legibly record in ink the following information within the following time frames:

(a) Before the end of each day's fishing and departure from the harvest grounds, record the vessel identity if a harvest vessel is used in harvest operation, exact location by latitude and longitude to the nearest thousandths of a minute (recorded in WGS 84 datum), and date of harvest.

(b) Weight by each clam species in pounds upon landing or delivery to an original receiver.

(c) Weight in pounds of each clam species caught and returned to the harvest grounds.

(10) It is unlawful for vessel operators engaged in commercial harvest of scallops to fail to permanently and legibly record in ink the following information within the following time frames:

(a) Before leaving the location where the catch was taken, record the vessel identity, date, location, and duration of harvest and estimated weight in pounds and species of scallops caught for each tow or dive hour ((before leaving the catch area where taken.

(6) Vessel operators engaged in commercial harvest of squid, except when taken incidental to any other lawful fishery, must record)).

(b) Upon landing or delivery to an original receiver, the exact weight in pounds, as recorded on the shellfish receiving ticket, and species of harvested scallops.

(11) It is unlawful for vessel operators engaged in commercial harvest of squid, except when taken incidental to any other lawful fishery, to fail to permanently and legibly record in ink the following information within the following time frames:

(a) Before leaving the Marine Fish-Shellfish Management and Catch Reporting Area where taken, the vessel's Washington department of fish and wildlife boat registration number, gear type, catch area, starting and ending time of fishing, and numbers of other species caught and returned. ((Weights of squid must be recorded on landing or sale.

(7) Vessel operators engaged in commercial harvest of sand shrimp, except when taken incidental to any other lawful fishery, must record)).

(b) Weight in pounds of squid upon landing or delivery to an original receiver.

(12) It is unlawful for license holders engaged in commercial harvest of sand shrimp, except when taken incidental to other lawful fishery, to fail to permanently and legibly record in ink the following information within the following time frames:

(a) Prior to leaving the harvest site, the location or identification number of the harvest tract, date of harvest, number of trenches pumped, average length and width of trenches (yards), total number of sand shrimp retained (dozens).

(b) At the time of delivery to an original receiver, total number of sand shrimp sold (dozens), and the name of the sand shrimp buyer.

((8) Vessel operators engaged in commercial harvest of shrimp (other than sand shrimp) using shellfish pot gear in

Puget Sound must record)) (13) It is unlawful for vessel operators engaged in commercial harvest of shrimp (other than sand shrimp), using shellfish pot gear in Puget Sound, to fail to permanently and legibly record in ink onto the department-supplied harvest logs, the following information within the following time frames:

(a) Prior to leaving the harvest site, the vessel's Washington department of fish and wildlife boat registration number, date, number of pots pulled, pot mesh size, depth fished, soak time, gear location (including latitude and longitude to the nearest hundredth of a minute), species targeted, and weight(s) in pounds of catch ((before leaving the site where catch is taken)). A separate weight for each species caught and retained must be recorded. When single pots are fished an entry is required for each pot site. When two or more pots are fished on a common ground line the catch site must be recorded at the location of the last pot on the ground line that is pulled. ((It shall be unlawful to fail to permanently record this information into the department-supplied harvest log before leaving each catch site. Harvest logs must be maintained and submitted in ascending consecutive order of harvest log serial numbers. Harvest logs must be submitted for each month in which fishing activity occurs and must be received by the department within ten days following any month in which fishing occurs. The fish receiving ticket serial number must be recorded onto the harvest log at the time of sale, or before leaving the last catch site of the day if the vessel operator holds a wholesale dealer license and is the original receiver of the catch.))

(b) Immediately after delivery of shrimp to an original receiver, or before leaving the last catch site of the day if the operator holds a wholesale fish dealer's license and is the original receiver, record the fish receiving ticket serial number.

(14) It is unlawful for vessel operators engaged in commercial harvest of shrimp from Puget Sound with shellfish pot gear ((must)) to fail to report their daily catch by telephone before leaving the last catch site fished each day((-)), in the following manner:

(a) For harvest in Crustacean Management Regions 1A, 1B, 1C, or 2, reports must be made to the voice recorder at the La Conner district office: 360-446-4345 ext 245.

(b) For harvest in Crustacean Management Regions 3, 4, or 6, reports must be made to the voice recorder at the Point Whitney shellfish laboratory: 360-796-4601 ext 800.

(c) All reports must specify the fisher's name, estimated total number of pounds of each shrimp species in possession, number of pots fished, number of pot pulls (pots multiplied by pulls), the Marine Fish-Shellfish Management and Catch Reporting Area where shrimp were harvested, and the port or name of vessel where the catch will be landed or sold. ((The fish receiving ticket reporting requirements of WAC 220-69-240 remain in effect.))

(15) Violation of this section as it relates to failing to report required information or failing to submit log books is punishable under RCW 77.15.280 reporting of fish or wildlife harvest. Violation of this section as it relates to knowingly providing false or misleading information is punishable under RCW 77.15.270, providing false information.

WSR 07-11-024

PROPOSED RULES

PUBLIC DISCLOSURE COMMISSION

[Filed May 4, 2007, 12:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-23-163.

Title of Rule and Other Identifying Information: Amending WAC 390-28-020 Definition—Applicant, to remove reference to the out-of-date subsection; WAC 390-28-070 Hearing to modify reporting—By affidavit or sworn statement, to correct a grammatical error; and WAC 390-28-080 Hearing to modify reporting—Evidence, record, adverse decisions, to comply with a provision of the Administrative Procedure Act, RCW 34.05.449(5), and identify those rare circumstances that would give rise to the commission deciding to hear all or a portion of the details related to a reporting modification request in closed session.

Hearing Location(s): Commission Hearing Room, 711 Capitol Way, Room 206, Olympia, WA 98504, on June 28, 2007, at 9:30 a.m.

Date of Intended Adoption: June 28, 2007.

Submit Written Comments to: Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908, e-mail dellis@pdc.wa.gov, fax (360) 753-1112, by June 25, 2007.

Assistance for Persons with Disabilities: Contact Kami Madsen by phone (360) 586-0544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend existing sections in chapter 390-28 WAC relating to reporting modifications to reflect current law and otherwise improve the rules.

Reasons Supporting Proposal: To provide guidance and clarification to the general public and persons requesting reporting modifications under chapter 42.17 RCW.

Statutory Authority for Adoption: RCW 42.17.370.

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 rule amendments are designed to conform to provisions of the Administrative Procedure Act, correct grammatical errors and remove out-of-date references.

Name of Proponent: The public disclosure commission (PDC), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Doug Ellis, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735; and Enforcement: Phil Stutzman, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not voluntarily make section 201 applicable to the adoption of these rules pursuant to subsection (5)(a)(i) of section 201, and, to date,

JARRC has not made section 201 application to the adoption of these rules.

May 3, 2007
Vicki Rippie
Executive Director

AMENDATORY SECTION (Amending WSR 91-22-083, filed 11/5/91, effective 12/6/91)

WAC 390-28-080 Hearing to modify reporting—Evidence, record, adverse decisions. (1) All evidence presented at hearings (~~(of the commission)~~) held pursuant to chapter 390-28 WAC and RCW 42.17.370(10) shall be considered to be a public record (~~(: Provided, That)~~). There is a presumption that all hearings and evidence presented in hearing records are open to the public. Requests for closure of hearings or portions of hearings or hearing records generally will be denied. However, pursuant to RCW 34.05.449(5) and 42.17.370(10), the commission may close the hearing (~~and hold an executive session~~) or a portion of the hearing or hearing record. The commission may close a hearing or portion of a hearing or hearing record for a limited purpose to protect compelling interests and where closure is specifically justified if it finds that it is necessary to allow the applicant to:

(a) Provide sufficient evidence to assure that proper findings are made regarding the name of an entity the disclosure of which would likely adversely affect the competitive position of the applicant as provided in RCW 42.17.370(10); or

(b) Provide other information or relevant legal authorities for which it finds a compelling interest has otherwise been shown by the applicant to close the hearing.

(2)(a) Before concluding that closure of a hearing or portion of a hearing or hearing record is warranted, the commission must find by clear and convincing evidence that:

(i) The applicant has satisfied a basis for seeking closure under subsection (1)(a) or (b) of this section;

(ii) An open hearing or record to report the information would work a manifestly unreasonable hardship on the applicant;

(iii) Anyone present when the closure request is made has been given an opportunity to object to the closure;

(iv) The proposed method for closing the hearing or hearing record is the least restrictive means available for protecting the threatened interests, after considering alternatives;

(v) The commission has had the opportunity to weigh the competing interests of the applicant seeking closure and the public's interests;

(vi) Closing the hearing or portion of the hearing or hearing record will not frustrate the purposes of chapter 42.17 RCW; and

(vii) The proposed protective order is not broader in its application or duration than necessary to serve its purpose.

(b) All evidence presented at any portion of a (~~hearing held in executive~~) closed session identifying the matters for which the applicant requests modification under these rules shall be considered (~~and held~~) confidential by the commission pursuant to a protective order which shall be entered by the commission unless otherwise ordered by a court of competent jurisdiction. In the event that an administrative law

judge determines that testimony in private may be necessary, the judge shall immediately adjourn the hearing and refer the matter to the commission.

~~((2))~~ (3) Any decision or order adverse to an applicant rendered by the commission or the administrative law judge shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law.

AMENDATORY SECTION (Amending Order 85-04, filed 10/31/85)

WAC 390-28-070 Hearing to modify reporting—By affidavit or sworn statement. (1) An applicant may choose to waive a personal appearance at a hearing conducted pursuant to chapter 390-28 WAC. In the event that an applicant chooses to waive such appearance, that person shall submit a written, sworn statement setting out in detail the rationale for requesting modification or suspension.

(2) The commission, or the administrative law judge, shall proceed to decide the application in the same manner as if an appearance were made (~~(: Provided, That)~~). However, in the event the commission or the administrative law judge is not able to reach a conclusion on the request because of an insufficiency of the evidence, (~~it may adjourn~~) the hearing may be adjourned for the purposes of gathering further evidence, or (~~it may deny~~) the application may be denied.

AMENDATORY SECTION (Amending WSR 91-22-083, filed 11/5/91, effective 12/6/91)

WAC 390-28-020 Definition—Applicant. The term applicant for the purposes of chapter 390-28 WAC shall mean any person as defined in RCW 42.17.020(~~((24))~~) that seeks a modification pursuant to RCW 42.17.370(10) and these rules.

WSR 07-11-025

PROPOSED RULES

PUBLIC DISCLOSURE COMMISSION

[Filed May 4, 2007, 12:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-07-034.

Title of Rule and Other Identifying Information: New WAC 390-17-303 Superior court candidates—Eligibility to receive contributions.

Hearing Location(s): Commission Hearing Room, 711 Capitol Way, Room 206, Olympia, WA 98504, on June 28, 2007, at 9:30 a.m.

Date of Intended Adoption: June 28, 2007.

Submit Written Comments to: Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908, e-mail dellis@pdc.wa.gov, fax (360) 753-1112, by June 25, 2007.

Assistance for Persons with Disabilities: Contact Kami Madsen by phone (360) 586-0544.

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

2006 legislative changes impacting chapter 42.17 RCW. The rule addresses contribution limits for superior court candidates when the candidate's name is not on the ballot and a certificate of election is issued.

Reasons Supporting Proposal: To provide guidance and clarification to the general public and to superior court candidates reporting under chapter 42.17 RCW.

Statutory Authority for Adoption: RCW 42.17.370.

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 new rule is designed to clarify chapter 348, Laws of 2006 when applying the provisions of Article 4, Section 29, Amendment 41 of the state constitution.

Name of Proponent: The public disclosure commission (PDC), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Doug Ellis, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735; and Enforcement: Phil Stutzman, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not voluntarily make section 201 applicable to the adoption of these rules pursuant to subsection (5)(a)(i) of section 201, and, to date, JARRC has not made section 201 application to the adoption of these rules.

May 3, 2007
Vicki Rippie
Executive Director

NEW SECTION

WAC 390-17-303 Superior court candidates—Eligibility to receive contributions. (1) Candidates for judicial office are subject to the contribution limits in RCW 42.17.645 and the timing restriction on contributions of a candidate's personal funds in RCW 42.17.105(8). Pursuant to Article 4, Section 29, Amendment 41 of the state Constitution and RCW 42.17.645, candidates for the office of judge of the superior court may only receive contributions for each election in which the candidate is on the ballot or appears as a write-in candidate.

(2) For purposes of RCW 42.17.645:

(a) Only superior court candidates who appear on the primary election ballot or as write-in candidates in the primary election may receive contributions with respect to that primary; and

(b) Only superior court candidates who appear on the general election ballot or as write-in candidates in the general election may receive contributions with respect to that general election.

(3)(a) A superior court candidate who is issued a certificate of election before the primary election and whose name

does not appear on either the primary or general election ballot may receive contributions pursuant to RCW 42.17.645:

(i) Through the last day for withdrawal of declarations of candidacy pursuant to RCW 29A.24.131; or

(ii) If there is a reopening of filing for the position and no other candidate files, the last day for reopening of filing pursuant to RCW 29A.24.171 and 29A.24.181.

(b) Contributions remaining in the account of such a superior court candidate who is issued a certificate of election must be returned to contributors within two weeks of certification. Primary election related contributions are to be returned using the first-in, first-out accounting method. Any contributions received with respect to the general election must be returned in full to contributors.

(4) A superior court candidate who is issued a certificate of election after the primary election and whose name does not appear on the general election ballot may receive contributions pursuant to RCW 42.17.645. However, contributions received with respect to the general election must be returned in full to contributors within two weeks of certification.

WSR 07-11-028

PROPOSED RULES

HORSE RACING COMMISSION

[Filed May 7, 2007, 1:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-07-109.

Title of Rule and Other Identifying Information: WAC 260-36-010 License required.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98001, on July 12, 2007, at 9:30 a.m.

Date of Intended Adoption: July 12, 2007.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by July 9, 2007.

Assistance for Persons with Disabilities: Contact Patty Sorby by July 9, 2007, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendment to WAC 260-36-010 will allow a Class A and B racing association to hire mutuel clerks, licensed in another recognized jurisdiction, to work at a Class A or B racing association for a period not to exceed four days in any calendar year without having to obtain a license from the commission. This will allow Class A and B racing association to put on more staff for high attendance days, i.e. the Kentucky Derby or the Longacre's Mile.

Reasons Supporting Proposal: Supports the horse racing industry.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

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

May 4, 2007
R. J. Lopez
Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-01-052, filed 12/14/06, effective 1/14/07)

WAC 260-36-010 License required. (1) Any person acting in an official capacity or any person participating directly in horse racing must have a valid license, except as provided in subsection (2) of this section.

(2) The following persons are not required to have a license:

(a) Commissioners and employees of the commission ~~((do not require a license.))~~;

(b) Persons employed by a racing association who only perform duties of concessions, housekeeping, parking, food and beverage, landscaping or similar functions, and do not act in an official capacity or participate directly in horse racing ~~((are not required to be licensed))~~; and

(c) Persons employed by an out-of-state racing association and holding a valid license from a recognized racing jurisdiction, who work for a Class A or B racing association as parimutuel clerks for a period not to exceed four days in any calendar year.

(3) Decisions regarding who is required to be licensed, if not addressed in this chapter, will be made by the executive secretary. It is a violation of these rules for any person to act in an official capacity or participate directly in horse racing unless licensed by the commission.

WSR 07-11-036
PROPOSED RULES
SPOKANE COUNTY AIR
POLLUTION CONTROL AUTHORITY

[Filed May 8, 2007, 11:35 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: SCAPCA Regulation I, Article IX - Asbestos Control Standards and SCAPCA Regulation I, Article X, Section 10.09 - Asbestos Notification Period and Fees.

Hearing Location(s): Spokane Regional Health Building, 1101 West College, Rooms 320-321, Spokane, WA 99201, on July 12, 2007, at 9:00 a.m.

Date of Intended Adoption: July 12, 2007.

Submit Written Comments to: Deirdre Fitzgerald, 1101 West College, Suite 403, Spokane, WA 99201, e-mail dmfitzgerald@scapca.org, fax (509) 477-6828, by 4:30 p.m. on June 26, 2007.

Assistance for Persons with Disabilities: Contact Barbara Nelson by 4:30 p.m. on June 26, 2007, (509) 477-4727.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend asbestos control standards for clarification and to streamline some requirements pertaining to nonfriable asbestos roofing projects. The regulation should continue to limit and control asbestos emissions primarily resulting from asbestos removal, renovation, and demolition projects.

Reasons Supporting Proposal: Provide clarification on many issues that have arisen since the regulations were last revised in 1998. Asbestos is a known human carcinogen. Fiber release must be controlled in order to protect public health.

Statutory Authority for Adoption: RCW 70.94.141, 70.94.380(2).

Statute Being Implemented: Chapter 70.94 RCW and U.S.C. 7401 et seq., 42 U.S.C. 7412.

Rule is necessary because of federal law, [42 U.S.C. 7401 et seq., 42 U.S.C. 7412].

Name of Proponent: Spokane County Air Pollution Control Authority (SCAPCA), governmental.

Name of Agency Personnel Responsible for Drafting: Deirdre Fitzgerald, SCAPCA, 1101 West College, Suite 403, Spokane, WA 99201, (509) 477-4727; Implementation and Enforcement: Matt Holmquist, SCAPCA, 1101 West College, Suite 403, Spokane, WA 99201, (509) 477-4727.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is a local air pollution control authority rule and as such, chapter 19.85 RCW does not apply.

A cost-benefit analysis is not required under RCW 34.05.328. This is a local agency rule and pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule.

May 7, 2007
Matt Holmquist
Compliance Administrator

AMENDATORY SECTION

SCAPCA Regulation I, Article IX - Asbestos Control Standards

SECTION 9.01 PURPOSE

The Board of Directors of the ~~((Spokane County Air Pollution Control Authority))~~ Spokane Regional Clean Air Agency recognizes that airborne asbestos is a serious health hazard. Asbestos fibers released into the air can be inhaled and cause lung cancer, pleural mesothelioma, peritoneal mesothelioma or asbestosis. The Board of Directors has adopted this regulation to control asbestos emissions primarily resulting from asbestos removal, renovation, and demolition projects in order to protect the public health.

SECTION 9.02 DEFINITIONS

A. AHERA Building Inspector means a person who has successfully completed the training requirements for a building inspector established by EPA Asbestos Model Accreditation Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E, I.B.3) and whose certification is current.

B. AHERA Project Designer means a person who has successfully completed the training requirements for an abatement project designer established by EPA Asbestos Model Accreditation Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E, I.B.5.) and whose certification is current.

C. Asbestos means the asbestiform varieties of actinolite, amosite (cummingtonite-grunerite), tremolite, chrysotile (serpentine), crocidolite (riebeckite), or anthophyllite.

D. Asbestos-Containing Material means any material containing more than one percent (1%) asbestos as determined using the method specified in EPA regulations Appendix A, Subpart F, 40 CFR Part 763, Section 1, Polarized Light Microscopy or a more effective method as approved by EPA. It includes any material presumed or assumed to be asbestos-containing.

E. Asbestos-Containing Waste Material means any waste that contains or is contaminated with asbestos-containing material except for nonfriable asbestos-containing roofing that remains nonfriable. Asbestos-containing waste material includes asbestos containing material that has been disturbed or deteriorated in a way that is no longer an integral part of the structure or component, asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or HEPA filters. Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

F. Asbestos Project means any activity involving the abatement, renovation, demolition, removal, salvage, clean-up or disposal of asbestos-containing material, or any other action or inaction that disturbs or is likely to disturb any asbestos-containing material. It includes the removal and disposal of ~~((stored))~~ asbestos-containing material or asbestos-containing waste material. It does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released nor does it include nonfriable asbestos-containing roofing material that will not be rendered friable.

G. Asbestos Survey means a written report resulting from a thorough ~~((describing an))~~ inspection using the procedures and analysis in EPA regulations (40 CFR 763.85, ~~((and))~~ 40 CFR 763.86 and 40 CFR 763.87), or an alternate asbestos survey method that has received prior written approval from the Control Officer, to determine whether materials or structures to be worked on, renovated, removed, or demolished (including materials on the outside of structures) contain asbestos. In addition to requirements in 40 CFR 763.85, & 40 CFR 763.86 & 40 CFR 763.87 asbestos surveys shall contain the approximate quantity and location of each material determined to contain asbestos and a sche-

matic showing the locations where each bulk asbestos sample was taken. The condition and friability of asbestos-containing materials shall also be described in the asbestos survey. Any material presumed or assumed to be asbestos-containing material need not be sampled and tested for asbestos, but materials presumed to be asbestos-containing material shall be identified as such in the asbestos survey.

H. Competent Person means a person who is capable of identifying asbestos hazards and selecting the appropriate asbestos control strategy, has the authority to take prompt corrective measures to eliminate the hazards, and has been trained and is currently certified in accordance with the standards established by the Washington State Department of Labor and Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction).

I. Contiguous means properties adjoining one another or in close proximity that have the same property owner.

~~((J))~~ J. Component means any equipment, pipe, structural member, or other item or material. ~~((covered or coated with, or manufactured from, asbestos-containing material.))~~

K. Controlled Area means an area to which only certified asbestos workers, or other persons authorized by the Washington Industrial Safety and Health Act (WISHA), have access.

~~((L))~~ L. Demolition means wrecking, razing, leveling, dismantling, or burning of a structure, making the structure permanently uninhabitable or unusable in part or whole.

M. Disposal Container means a carton, bag, drum, box, or crate designed for the purpose of safely transporting and disposing of asbestos-containing waste material.

~~((N))~~ N. Friable Asbestos-Containing Material means asbestos-containing material that, when dry, can be crumbled, disintegrated, pulverized, or reduced to powder by hand pressure or by the forces expected to act upon the material in the course of demolition, renovation, or disposal. Each of these descriptions is separate and distinct (i.e., asbestos-containing material that, when dry, can be (a) crumbled by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal; (b) disintegrated or pulverized by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal; or (c) reduced to powder by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal). Such materials include, but are not limited to, thermal system insulation, surfacing material, Nicolet roofing paper, and cement asbestos products.

~~((O))~~ O. Leak-Tight Container means a dust-tight and liquid tight container, at least 6-mil thick, that encloses asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and sealed polyethylene plastic.

~~((P))~~ P. Nonfriable Asbestos-Containing Material means asbestos-containing material that is not friable, (e.g., when dry, cannot be crumbled, disintegrated, pulverized, or reduced to powder by hand pressure or by the forces expected to act on the material in the course of demolition, renovation, or disposal).

Q. Nonfriable Asbestos-Containing Roofing means an asbestos-containing roofing material where all of the following apply:

1. The roofing is a nonfriable asbestos-containing material not asphalt coated asbestos felting or similar built-up roofing;

2. The roofing is in good condition and is not peeling, cracking, or crumbling;

3. The roofing binder is petroleum-based and asbestos fibers are suspended in that base with individual fibers still encapsulated; and

4. The roofing binder exhibits enough plasticity to prevent the release of asbestos fibers in the process of removing and disposing of it.

~~((R))~~ R. Owner-Occupied, Single-Family Residence means any non-multiple unit building containing ~~((living))~~ space for uses such as living, sleeping, preparation of food, and eating that is used ~~((that is currently occupied))~~ by one family who owns the property as their domicile both prior to and after renovation or demolition. This term includes houses, mobile homes, trailers, detached garages, houseboats, and houses with a "mother-in-law apartment" or "guest room". This term does not include rental property or multiple-family units, nor does this term include any mixed-use building (e.g., a business being operated out of a residence), structure, or installation that contains a residential unit. This term does not include structures used for structural fire training exercises performed pursuant to Regulation I, Article VI, Section 6.01.

S. Owner's Agent means any person who leases, operates, controls, or is responsible for an asbestos project, renovation, or demolition. It also includes the person submitting ~~((signing))~~ an NOI and/or performing the asbestos survey.

~~((T))~~ T. Person means any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

~~((P))~~ U. Renovation means altering a structure or component in any way, other than demolition.

V. Structure means something built or constructed, in part or in whole. Examples include, but are not limited to, the following in part or in whole: houses, garages, commercial buildings, bridges, "smoke" stacks, pole-buildings, canopies, lean-tos, foundations, equipment, and other parts and miscellaneous components.

~~((Q))~~ W. Surfacing Material means material that is sprayed-on, troweled-on, or otherwise applied to surfaces including, but not limited to, acoustical plaster on ceilings, ~~((or panels))~~ fireproofing material on structural members, or other material on surfaces for decorative purposes.

~~((R))~~ X. Suspect Asbestos-Containing Material means material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material, fire barriers, gaskets, flooring material, and cement siding.

~~((S))~~ Y. Thermal System Insulation means material applied to pipes, fittings, boilers, tanks, ducts, or other structural components to prevent heat loss or gain.

Z. Visible Emissions means any emissions that are visually detectable without the aid of instruments. The term does not include condensed uncombined water vapor.

AA. Wallboard System means joint compound and tape specifically applied to cover nail holes, cracks and wall corners. It does not mean "add on materials" such as sprayed on materials, paints, textured ceilings or wall coverings. Wallboard systems where joint compound and tape have become an integral system (40 CFR Part 61 FRL4821-7) may be analyzed as a composite sample for determining if it is an asbestos-containing material.

BB. Waste Generator means any owner or owner's agent that generates, produces, or is in part or whole, responsible for an activity that results in asbestos-containing waste material.

CC. Workday means Monday through Friday 8:00 a.m. to 4:30 p.m. excluding legal holidays observed by the Authority.

~~((F))~~ DD. Work Schedule Fax Program means a program whereby the property owner or owner's agent provides prior notice by facsimile to the Authority of the specific location and date of the asbestos project or demolition on a form approved by the Authority.

SECTION 9.03 ASBESTOS SURVEY REQUIREMENTS

Except as provided below, an AHERA building inspector shall perform an asbestos survey as defined in Section 9.02.G of this Regulation prior to renovation or demolition.

A. Requirements for Renovations.

Except as provided for in Section 9.03.A.1. ~~((it shall be unlawful for any person to cause or allow any renovation unless prior to renovation, the property owner or the owner's agent obtains an asbestos survey, performed by an AHERA building inspector.))~~ Prior to performing any renovation activity the property owner or the owner's agent shall determine whether there are suspect asbestos-containing materials in the work area. The property owner or the owner's agent shall obtain an asbestos survey of any suspect asbestos-containing materials. The asbestos survey shall be performed by an AHERA (Asbestos Hazard Emergency Response Act) building inspector.

~~((1. Asbestos surveys associated with the renovation of an owner-occupied, single-family residence need not be performed by an AHERA building inspector.))~~

1. Owner-Occupied, Single-Family Residence Renovation Performed by the Owner-Occupant.

Asbestos surveys associated with the renovation of an owner-occupied, single-family residence by the owner-occupant, need not be performed by an AHERA building inspector and need not be an asbestos survey as defined in Section 9.02.G. of this Regulation. An owner occupant's assessment for the presence of asbestos prior to renovation of an owner-occupied, single-family residence will suffice. A written asbestos survey is not required.

~~((2. A summary of the results of an asbestos survey shall be posted, either by the property owner or the owner's agent at the work site or communicated in writing to all persons who may come into contact with the material.~~

3. The property owner or owner's agent shall retain a copy of all asbestos survey records for at least 2 years.))

2. Asbestos Survey Posting

Except as provided for in Section 9.03.A.1 of this Regulation, a summary of the results of an asbestos survey shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site.

3. Asbestos Survey Retention.

The property owner or owner's agent and the AHERA building inspector that performed the survey, when applicable, shall retain a complete copy of the asbestos survey for at least 2 years and make it available to the Authority upon request.

4. Determination of the Presence of Asbestos-Containing Material.

a. Except as provided for in Section 9.03.A.1, only an AHERA building inspector may determine, by performing an asbestos survey as defined in Section 9.02.G, that a suspect material does not contain asbestos.

b. It is not required that an AHERA building inspector evaluate any material presumed to be asbestos containing.

B. Requirements for Demolition.

It shall be unlawful for any person to cause or allow any demolition, except as provided by RCW 52.12.150(6), unless prior to demolition, the property owner or the owner's agent obtains an asbestos survey, performed by an AHERA building inspector.

~~((1. A summary of the results of the asbestos survey shall be posted, either by property owner or the owner's agent, at the work site or communicated in writing to all persons who may come into contact with the material.))~~

1. Asbestos Survey Posting.

Except as provided for in Section 9.03.A.1 of this Regulation, a summary of the results of an asbestos survey shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site.

~~((2. The property owner or owner's agent shall retain a copy of all asbestos survey records for at least 2 years.))~~

2. Asbestos Survey Retention.

The property owner or owner's agent and the AHERA building inspector that performed the survey when applicable shall retain a complete copy of the asbestos survey for at least 2 years and make it available to the Authority upon request.

3. Determination of the Presence of Asbestos-Containing Material.

a. Except as provided by RCW 52.12.150(6), only an AHERA building inspector may determine by performing an asbestos survey that a suspect material does not contain asbestos.

b. It is not required that an AHERA building inspector evaluate any material presumed to be asbestos containing.

C. Alternate Asbestos Survey Method.

An alternate asbestos survey method shall be submitted to the Control Officer for approval prior to sampling, at a minimum, on occasions when conventional sampling methods required in Section 9.02.G of this Regulation can not or will not be exclusively performed. For example, conventional sampling methods may not be possible on fire damaged buildings or portions thereof, rubble or debris piles, and ash or soil, because they are not structures with intact materi-

als and identifiable homogeneous areas. Alternate asbestos survey methodology may be used alone or, when possible, in combination with conventional survey methodology. An alternate asbestos survey methodology typically involves random sampling according to a grid pattern, but is not limited to such. An illustration of how the principles of such sampling techniques are applied can be found in the EPA publication, Preparation of Soil Sampling Protocols: Sampling Techniques & Strategies, EPA/600/R-92/128, July 1992.

SECTION 9.04 NOTIFICATION REQUIREMENTSA. General Requirements.

It shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a complete notification, including the required fee and any additional information requested by the Control Officer, has been submitted to the Authority on approved forms by the property owner or owner's agent, in accordance with the advance notification period requirements contained in Article X, Section 10.09 of this Regulation.

1. The advance notification period shall begin on the workday a complete notification is received by the Authority and shall end after the advance notification period in Section 10.09 has passed (e.g., The advance notification period for a notification submitted after 4:30 p.m. on a Friday shall not begin until the following Monday, provided Monday is not a holiday observed by the Authority. A 10 day notification period means work on an asbestos project or demolition can begin on day 11.

~~((+))~~ 2. The duration of an asbestos project shall be commensurate with the amount of work involved.

~~((2))~~ 3. Notification is not required for asbestos projects involving less than 10 linear feet or 48 square feet (per structure, per calendar year) of any asbestos-containing material. Owners and/or owner's agents must file notification once the 10 linear feet or 48 square feet has been reached on any asbestos project or multiple asbestos project.

~~((3))~~ 4. Notification is not required for removal and disposal of the following nonfriable asbestos-containing materials: caulking, window-glazing, or roofing. All other asbestos project and demolition requirements remain in effect except as provided by Article IX.

~~((4))~~ 5. Notification is not required for renovations involving owner-occupied, single-family residences. All other asbestos project and demolition requirements remain in effect except as provided by Article IX.

~~((5))~~ 6. Notification is required for all demolitions involving structures with a projected roof area greater than 120 square feet, even if no asbestos-containing material is present. All other demolition requirements remain in effect.

~~((6))~~ 7. A copy of the notification, all amendments to the notification, the asbestos survey, and any Order of Approval for an alternate means of compliance shall be made available for inspection at all times at the asbestos project or demolition site.

((7)) 8. Multiple Asbestos Projects

Notification for multiple asbestos projects or demolitions may be filed by a property owner or owner's agent on one form if all the following criteria are met:

a. The notification applies only to contiguous properties having the same owner.

b. The work will be performed by the same abatement and/or demolition contractor.

c. A work plan is submitted that includes: ~~((a map of the structures involved in the project including the site address for each structure; the amount and type of asbestos-containing material in each structure; and the schedule for performing asbestos project and demolition work. For projects where a detailed work schedule cannot be provided, the property owner or owner's agent shall participate in the Authority's work schedule fax program and will continue to participate in the program throughout the duration of the project.))~~

i. a map of the structures involved in the project;

ii. the site address for each structure;

iii. the amount and type of asbestos-containing material in each structure;

iv. the schedule for performing asbestos project and demolition work (for projects where a detailed work schedule cannot be provided, the property owner or owner's agent shall participate in the Authority's work schedule fax program and will continue to participate in the program throughout the duration of the project);

v. a copy of the asbestos survey for all structures that do not contain asbestos containing material; and

vi. any other information requested by the Authority.

((8. Annual Notification.

A property owner or owner's agent may file one annual notification for asbestos projects to be conducted on one or more structures, vessels, or buildings in one calendar year if all of the following conditions are met:

a. ~~The notification applies only to single, contiguous property.~~

b. ~~The annual notification is filed with the Authority before commencing work on any asbestos project included in the annual notification.~~

c. ~~The total amount of asbestos-containing material for all asbestos projects from each structure, vessel, or building in a calendar year under this section is less than 260 linear feet on pipes or less than 160 square feet on other components.~~

d. ~~The property owner submits quarterly written reports to the Authority on approved forms within 15 days after the end of each calendar quarter.))~~

9. The property owner or owner's agent shall retain a copy of all asbestos notification records for at least 2 years and make them available to the Authority upon request.

10. Fee for Work Done Without Notification.

Where any work on an asbestos project or demolition, for which notification is required, is commenced or performed prior to making notification, except as provided for in Section 9.04.C, the Control Officer may conduct a compliance investigation and assess a fee. In such case, a compliance investigation fee, as established in Section 10.09(c) of this Regulation, shall be paid by the applicant in addition to the fees required in Section 10.09(a) of this Regulation. Pay-

ment of fees does not relieve any person from the requirement to comply with the regulations nor from any penalties for failure to comply.

11. Notification Expiration.

Notifications are valid for no more than twelve months from the earliest original notification start date. A new notification shall be submitted to the Authority for work to be performed beginning or continuing more than twelve months from the earliest original notification start date and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 10.09(a) of this Regulation.

B. Amendments.1. Mandatory Amendments.

An amendment shall be submitted to the Authority for any of the following changes in notification and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 10.09(a) of this Regulation:

a. ~~((Increases))~~ Changes in the project type (e.g., from asbestos removal only to asbestos removal and demolition) or cancellation of a project filed under a notification; ((or job size category that increase the fee or change the advance notification period; or

b. Changes in the type of asbestos-containing material that will be removed; or))

b. Increases in the job size category which increase the fee or changes the advance notification period;

c. Changes in the type of asbestos-containing material that will be removed;

~~((e. Changes in the start date, completion date, or work schedule, including hours of work. Asbestos contractors or property owners participating in the Authority's work schedule fax program are not required to submit amendments for work schedule changes occurring between the start and completion dates.))~~

d. Changes in the asbestos project start date or demolition start date including placing a project "on hold" or "off hold" (e.g., an asbestos project is temporarily delayed and a new start date has not been confirmed);

e. Changes in the asbestos project completion date;

f. Changes in the asbestos project work schedule, including days and hours of work (Asbestos contractors or property owners participating in the Authority's work schedule fax program, as defined in this Regulation, are not required to submit amendments for work schedule changes such as days of the week and hours of the day occurring between the asbestos project start and completion date); or

g. An amendment must be submitted to the Authority for any other change in a notification (e.g., changing a demolition contractor) ((and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 10.09(a) of this Regulation)).

~~((2. Optional Amendments. An amendment may be submitted to the Authority for any other change in a notification and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 10.09(a) of this Regulation.))~~

((3)) 2. Opportunity for Amendment.

In no case shall an amendment be accepted and approved by the Authority if it is filed after the last completion date on record. In the case of additional work to be performed after the last completion date on record, a new notification shall be

submitted to the Authority and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 10.09(a) of this Regulation.

C. Emergencies.

1. Advance Notice

The Control Officer may waive the advance notification period, if the property owner or owner's agent submits a written request, demonstrating to the Control Officer that an asbestos project or demolition must be conducted immediately because of any of the following:

- a. There was a sudden, unexpected event that resulted in a public health or safety hazard; ~~((or))~~
- b. The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage; ~~((or))~~
- c. Asbestos-containing materials were encountered that were not identified during the asbestos survey; or
- d. The project must proceed to avoid imposing an unreasonable financial burden.

2. When Advance Notice is Not Possible

Advance notification shall not be required to commence an asbestos project or demolition which would normally require advance notification pursuant to Section 9.04 and 10.09 of this Regulation, if all of the following criteria are met:

- a. A notification shall be filed with the Authority not later than the first working day after the asbestos project or demolition is commenced and shall be accompanied by a written request from the property owner or owner's agent, demonstrating to the Control Officer that an asbestos project or demolition was conducted without advance notification because of life endangerment or other serious consequences.
- b. For purposes of compliance with Section 9.04 and 10.09, the Control Officer shall determine whether the asbestos project or demolition, commenced before approval by the Authority, meets the requirements of this subsection.

SECTION 9.05 ASBESTOS REMOVAL REQUIREMENTS PRIOR TO RENOVATION OR DEMOLITION

A. Removal of Asbestos Prior to Renovation or Demolition.

1. Except as provided in Sections 9.05.B., 9.07.B, and 9.08.C., of this Regulation, it shall be unlawful for any person to cause or allow any ~~demolition or renovation~~ or demolition that may:

- a. disturb asbestos-containing material without first removing all asbestos-containing material in accordance with the requirements of this Regulation; or
- b. damage a structure so as to preclude access to asbestos-containing material for future removal, without first removing all asbestos-containing material in accordance with the requirements of this Regulation.

2. Except as provided in Sections 9.07.B and 9.08.C of this Regulation, it shall be unlawful for any person to create or allow a condition, involving an existing structure, that will likely result in the disturbance of asbestos-containing material (e.g., not removing all asbestos-containing material in a structure scheduled for demolition or partially removing asbestos-containing material and leaving remaining asbestos-

containing material in a state that makes it more susceptible to being disturbed).

3. Asbestos-containing material need not be removed from a component if, prior to renovation or demolition, the component is removed for reuse, stored for reuse, or transported for reuse without disturbing or damaging the asbestos-containing material.

B. Exception for Hazardous Conditions.

Asbestos-containing material need not be removed prior to a demolition, if the property owner or owner's agent demonstrates to the Control Officer that it is not accessible (e.g., asbestos survey cannot be performed or asbestos cannot be removed prior to demolition) because of hazardous conditions such as: structures or buildings that are structurally unsound (~~(and)~~) or in danger of imminent collapse, or other conditions that are immediately dangerous to life and health. The property owner or owner's agent must submit the written determination of the hazard by an authorized government official or a licensed structural engineer, and must submit the procedures that will be followed for controlling asbestos emissions during the demolition and disposal of the asbestos-containing waste material. The Exception for Hazardous Conditions plan (i.e., hazardous conditions determination and procedures) shall be submitted to the Authority for approval with a complete notification pursuant to Section 9.04 of this Regulation.

1. At a minimum, all of the following procedures shall be incorporated into the Exception for Hazardous Conditions plan and followed by the owner or owner's agent unless equally effective work practices and procedures are submitted to, and approved by, the Authority:

- a. Presume that the structure contains friable and nonfriable asbestos-containing material and treat all demolition debris as asbestos-containing waste material;
- b. Follow the procedures for asbestos projects in Section 9.06 of this Regulation;
- c. Remove and dispose of a minimum of six inches of soil beneath and six feet of soil around the demolition debris pile as asbestos-containing waste material or submit a sampling plan for approval, for demonstrating that soil has not been contaminated from the asbestos project; and
- d. Make air monitoring data available for the Authority to review, upon request, for 2 years from the date the Control Officer approves the plan.

SECTION 9.06 PROCEDURES FOR ASBESTOS PROJECTS

A. Training Requirements.

It shall be unlawful for any person to cause or allow any work on an asbestos project unless it is performed by persons trained and certified in accordance with the standards established by the Washington State Department of Labor & Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction) and whose certification is current.

This certification requirement does not apply to asbestos projects conducted in an owner-occupied, single-family residence performed by the resident owner of the dwelling.

B. Asbestos Removal Work Practices.

Except as provided in Section ~~((9-06-C))~~ 9.07.A (Method of Removal for Nonfriable Asbestos-Containing Roofing Materials) and Section ~~((9-07))~~ 9.08 (Alternate means of Compliance) of this Regulation, it shall be unlawful for any person to cause or allow the removal of asbestos-containing material unless all the following requirements are met:

1. The asbestos project shall be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only, including occasions when asbestos abatement is not actively occurring (e.g., when workers are on break or temporarily off-site).

2. If a negative pressure enclosure is employed it shall be equipped with transparent viewing ports, if feasible, and shall be maintained in good working order.

3. Absorbent materials, such as surfacing material and thermal system insulation, shall be saturated with a liquid wetting agent prior to removal. Wetting shall continue until all the material is permeated with the wetting agent. Any unsaturated surfaces exposed during removal shall be wetted immediately and kept wet until sealed in leak-tight containers.

4. Nonabsorbent materials, such as cement asbestos board or vinyl asbestos tile, shall be continuously coated with a liquid wetting agent on any exposed surface prior to and during removal. They shall be wetted after removal, as necessary, to assure they are wet when sealed in leak-tight containers. Any dry surfaces exposed during removal shall be wetted immediately and kept wet until sealed in leak-tight containers.

5. Metal components (such as valves, fire doors, and reactor vessels) that have internal asbestos-containing material do not require wetting of the asbestos-containing material if all access points to the asbestos-containing materials are welded shut or the component has mechanical seals, which cannot be removed by hand, that separate the asbestos-containing material from the environment.

6. Except for surfacing material being removed inside a negative pressure enclosure, asbestos-containing material that is being removed, has been removed, or may have fallen off components during an asbestos project shall be carefully lowered to the ground or the floor, not dropped, thrown, slid, or otherwise damaged.

7. All asbestos-containing waste material shall be kept wet and shall be sealed in leak-tight containers while still wet, as soon as possible after removal but no later than the end of each work shift.

8. The exterior of each leak-tight container shall be free of all asbestos residue and shall be permanently labeled with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the federal Occupational Safety and Health Administration.

9. Immediately after sealing, each leak-tight container shall be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be readable without opening the container.

10. Leak-tight containers shall not be dropped, thrown, slid, or otherwise damaged.

11. The asbestos-containing waste material shall be stored in a controlled area until transported to, and disposed of at, a ~~(n-approved))~~ waste disposal site approved to accept asbestos-containing waste material.

12. No visible emissions shall result from an asbestos project.

SECTION 9.07 PROCEDURES FOR NONFRIABLE ASBESTOS-CONTAINING ROOFING MATERIAL

~~((C))~~ A. Method of Removal for Nonfriable Asbestos-Containing Roofing Material.

All of the following asbestos removal methods shall be employed for nonfriable asbestos-containing roofing material ~~((that has been determined to be nonfriable by a Competent Person or an AHERA Building Inspector:))~~

1. The nonfriable asbestos-containing roofing material shall be removed using methods, such as spud bar and knife, which do not render the material friable. Removal methods such as sanding, grinding, abrading, or sawing ~~((or grinding))~~ shall not be employed unless the material that is disturbed is handled as friable asbestos-containing material in accordance with this Regulation.

~~((2. Dust control methods shall be used as necessary to assure no fugitive dust is generated from the removal of nonfriable asbestos-containing roofing material.~~

3. Nonfriable asbestos-containing roofing material shall be carefully lowered to the ground to prevent fugitive dust.

2 ~~((4. After being lowered to the ground, the n))~~ Nonfriable asbestos-containing roofing material shall be ~~((immediately))~~ transferred to a disposal container as soon as possible after removal, but no later than the end of each work shift.

3 ~~5.~~ Each disposal container shall have a sign identifying the material as nonfriable asbestos-containing roofing material and shall be transported to, and disposed of at, an approved waste disposal site in compliance with applicable local, state, and federal regulations.

B. Leaving Nonfriable Asbestos-Containing Roofing Material in Place During Demolition

Nonfriable asbestos-containing roofing material may be left in place during a demolition, except for demolition by burning, if all of the following are met:

a. A signed and dated written determination is submitted to SCAPCA with the notification for demolition, and includes all of the following:

i. the person making the determination is an AHERA Project Designer;

ii. a summary of the evaluation performed within the past 12 months, including a description of the type and current condition of asbestos-containing roofing materials;

iii. a summary of the work practices and engineering controls that will be used;

iv. a determination that nonfriable asbestos-containing roofing material will remain nonfriable during all demolition activities and subsequent disposal of the debris; and

v. any other information requested by the Authority.

b. The proposal is approved by the Authority.

c. The owner or owner's agent complies with any conditions of approval.

SECTION ((9-07)) 9.08 ALTERNATE MEANS OF COMPLIANCE

The plan for using an alternate means of compliance as provided below shall be submitted to the Authority for Approval with a complete notification pursuant to Section 9.04 of this Regulation.

A. Friable Asbestos-Containing Material Removal Alternative.

An alternate asbestos removal method may be employed for friable asbestos-containing material if an AHERA Project Designer (who is also qualified as a Certified Hazardous Materials Manager, Certified Industrial Hygienist, Registered Architect, or Professional Engineer) has evaluated the work area, the type of asbestos-containing material, the projected work practices, and the engineering controls, and demonstrates to the Control Officer that the planned control method will be equally as effective as the work practices contained in Section 9.06.B of this Regulation in controlling asbestos emissions. The property owner or the owner's agent shall document through air monitoring, both upwind and downwind or at the exhaust from the controlled area, that the asbestos fiber concentrations outside the controlled area do not exceed 0.01 fiber/cc, 8 hour average.

The Control Officer may require conditions in the Order of Approval that are reasonably necessary to assure the planned control method is as effective as wetting, and may revoke the Order of Approval for cause.

B. Nonfriable Asbestos-Containing Material Removal Alternative.

An alternate asbestos removal method may be employed for nonfriable asbestos-containing material if a Competent Person or AHERA Project Designer has evaluated the work area, the type of asbestos-containing material, the proposed work practices, and the engineering controls, and demonstrates to the Control Officer that the planned control method will be equally as effective as the work practices contained in Section 9.06.B of this Regulation in controlling asbestos emissions.

The Control Officer may require conditions in the Order of Approval that are reasonably necessary to assure the planned control method is as effective as wetting, and may revoke the Order of Approval for cause.

C. Leaving Nonfriable Asbestos-Containing Material in Place During Demolition (Other than Nonfriable Asbestos-Containing Roofing Material per Section 9.07.B of this Regulation).

Nonfriable asbestos-containing material may be left in place during a demolition, if an AHERA Project Designer (who is also qualified as a Certified Hazardous Materials Manager, Certified Industrial Hygienist, Registered Architect, or Professional Engineer) has evaluated the work area, the type and condition of asbestos-containing materials involved, the proposed work practices, and the engineering controls, and demonstrates to the Control Officer that the asbestos-containing material will remain nonfriable during all demolition activities and the subsequent disposal of the debris.

The Control Officer may require conditions in the Order of Approval that are reasonably necessary to assure the

planned control method is as effective as wetting, and may revoke the Order of Approval for cause.

SECTION ((9-08)) 9.09 DISPOSAL OF ASBESTOS-CONTAINING WASTE MATERIAL**A. Disposal Within 10 Days of Removal.**

Except as provided in Section ((9.08.C and 9.08.D)) 9.09.C of this Regulation, it shall be unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless it is deposited within 10 days of removal at a waste disposal site authorized to accept such waste.

B. Waste Tracking Requirements.

It shall be unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless all of the following requirements are met:

1. Maintain waste shipment records, beginning prior to transport, using a form that includes all of the following information:

- a. The name, address, and telephone number of the waste generator.
- b. The approximate quantity in cubic meters or cubic yards.
- c. The name and telephone number of the disposal site operator.
- d. The name and physical site location of the disposal site.
- e. The date transported.
- f. The name, address, and telephone number of the transporter.

g. A certification that the contents of the consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition to transport by highway according to applicable waste transport regulations.

2. Provide a copy of the waste shipment record to the disposal site owner or operator at the same time the asbestos-containing waste material is delivered.

3. If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 35 calendar days of the date the waste was accepted by the initial transporter, contact the transporter and/or the owner or operator of the disposal site to determine the status of the waste shipment.

4. If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 45 days of the date the waste was accepted by the initial transporter, report in writing to the Control Officer. Include in the report, a copy of the waste shipment record and cover letter signed by the waste generator, explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

5. Retain a copy of all waste shipment records for at least 2 years, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site. A copy of waste shipment records shall be provided to the Authority upon request.

C. Temporary Storage Site.

A person may establish a facility for the purpose of collecting and temporarily storing asbestos-containing waste

material if the facility is approved by the Control Officer and all of the following conditions are met:

1. A complete application for Temporary Storage of asbestos containing waste material is submitted to and approved by the Authority.

2. The application must be accompanied by a \$55 non-refundable fee.

(+) 3. Accumulated asbestos-containing waste material shall be kept in a controlled storage area posted with asbestos warning signs and accessible only to authorized persons.

(2) 4. All asbestos-containing waste material shall be stored in leak-tight containers which are maintained in leak-tight condition.

(3) 5. The storage area must be locked except during transfer of asbestos-containing waste material.

(4) 6. Storage, transportation, disposal, and return of the waste shipment record to the waste generator shall not exceed 90 days.

7. Effective January 1, 2008, Temporary Storage of asbestos-containing waste material approvals are valid for the calendar year in which they are issued.

D. Disposal of Asbestos Cement Pipe.

Asbestos cement pipe may be buried in place if the pipe is left intact (e.g., not moved, broken or disturbed) and covered with at least 3 feet or more of non-asbestos fill material.

SECTION 9.10 COMPLIANCE WITH OTHER RULES

A. Other Requirements.

Other government agencies have adopted rules that may apply to asbestos regulated under these rules including, but not limited to, the U.S Environmental Protection Agency, the U.S. Occupational safety and Health Administration, and the Washington State Department of Labor and Industries. Nothing in the Authority's rules shall be construed as excusing any person from complying with any other applicable local, state, or federal requirement.

The Authority implements and enforces the requirements of 40 CFR Part 61 Subpart M (except for asbestos on roadways, asbestos demolition or renovation activities subject to 40 CFR 61.145).

AMENDATORY SECTION

SRCAA Regulation I, Article X, Section 10.09 - Asbestos Notification Period and Fees

A. Written notification, as required in Article IX, Section 9.04, shall be accompanied by the appropriate nonrefundable fee, as follows:

Project	Size or Type	Notification Period	Fee
Owner-Occupied, Single-Family Residence Asbestos Project (excluding demolition)	Notification Not Required	None	None
Owner-Occupied, Single-Family Residence Demolition	All	Prior Notice	Per the Fee Schedule
All Other Demolitions with no asbestos project	All	10 Days	Per the Fee Schedule
Asbestos Project includes demolition fee*	10-259 linear ft 48-159 square ft	3 Days	Per the Fee Schedule
Asbestos Project includes demolition fee	260-999 linear ft 160-4,999 square ft	10 Days	Per the Fee Schedule
Asbestos Project includes demolition fee	≥ 1,000 linear ft ≥ 5,000 square ft	10 Days	Per the Fee Schedule
<u>Amendment***</u>	<u>9.04.B</u>	<u>Prior Notice</u>	<u>Per the Fee Schedule</u>
Emergency	9.04.C	Prior Notice**	((Additional fee equal to project fee)) <u>Per the Fee Schedule</u>
<u>((Amendment***</u>	<u>9.04.B</u>	<u>Prior Notice</u>	<u>Per the Fee Schedule))</u>
<u>Exception for Hazardous Conditions</u>	<u>9.05.B</u>	<u>Concurrent with Project</u>	<u>Per the Fee Schedule</u>
<u>Leaving Nonfriable Asbestos in Place During Demolition</u>	<u>9.07.B</u>	<u>Concurrent with Project</u>	<u>Per the Fee Schedule</u>
Alternate Means of Compliance ((demolitions or friable asbestos-containing material) (<u>friable asbestos removal alternative, nonfriable asbestos removal alternative, and leaving nonfriable asbestos in place during demolition (except for roofing)</u>))	((9.07.A or C) <u>9.08.A, B, and C</u>)	10 Days	((Additional fee equal to project fee) <u>Per the Fee Schedule</u>)
((Alternate Means of Compliance (non-friable asbestos-containing material)	9.07.B	10 Days	Additional fee equal to project fee
Exception for Hazardous Conditions	9.05.B	Concurrent with Project	Regular Project fee))

* Demolitions with asbestos projects involving less than 10 linear feet or less than 48 square feet may submit an asbestos project notification under this project category and will be eligible for the 3-day notification period.

** Except in the case where advance notice is not required pursuant to Section 9.04.C.2.

*** For an amendment where the project type or job size category is associated with a higher fee, a fee equal to the difference between the fee associated with the most recently submitted notification and the fee associated

with the increased project type or job size category shall be submitted.

1. The Board shall periodically review the fee schedule for notifications submitted pursuant to Section 9.04 and determine if the total projected fee revenue to be collected pursuant to this Section is sufficient to fully recover program costs. Any proposed fee revisions shall include opportunity for public review and comment. Accordingly, the Agency shall account for program costs, including employee costs

and overhead. If the Board determines that the total projected fee revenue is either significantly excessive or deficient for this purpose, then the Board shall amend the fee schedule to more accurately recover program costs.

B. The Control Officer may waive part or all of the asbestos project fee and notification period, by written authorization, for disposal of unused and intact or abandoned (without the knowledge or consent of the property owner) asbestos-containing materials. All other asbestos project and demolition requirements remain in effect.

C. Where a compliance investigation is conducted pursuant to Section 9.04 of this Regulation, the compliance investigation fee shall be equal to \$50 per hour of compliance investigation.

D. The asbestos project fee in Section 10.09.a is waived for any demolition performed in accordance with RCW 52.12.150(6), where the good faith inspection is an asbestos survey, as defined in Section 9.02.G, performed by an AHERA Building Inspector, as defined in Section 9.02.A.

E. Fees shall be paid without regard to whether the request(s) associated with this Section are approved or denied.

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

WSR 07-11-042

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed May 9, 2007, 10:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-04-018.

Title of Rule and Other Identifying Information: WAC 388-543-1100 Scope of coverage and coverage limitations for DME and related supplies, prosthetics, orthotics, medical supplies and related services, 388-543-1150 Limits and limitation extensions, 388-543-1600 Items and services which require prior authorization, 388-543-1700 When MAA covers rented DME, 388-543-2000 Wheelchairs, and 388-543-2800 Reusable and disposable medical supplies.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on June 26, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 27, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail at schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on June 26, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller by June 22, 2007, TTY (360) 664-6178 or (360) 664-6097 or by at e-mail schilse@dshs.wa.gov.

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

- Fix cross references;
- Change all references to "MAA" to "the department;"
- Clarify the department's coverage of a speech generating device, wheelchair, and/or specialty bed for clients in a nursing facility;
- Clarify that a heavy duty bariatric bed is not considered a specialty bed;
- Remove the following from WAC 388-543-1150 Limits and limitation extensions:
 - Lice comb from list of covered products because these combs are included with the "nontoxic gel" which is covered;
 - Diaphragmatic pacing antennae;
 - Deluxe floor sitter/feeder seat, including floor sitter wedge, shoulder harness, and hip strap;
 - High back activity chair, including adjustable footrest, two pairs of support blocks, and hip strap.
- Add the following to WAC 388-543-1150 Limits and limitation extensions:
 - Breast pumps;
 - Pneumatic compressor;
 - Positioning car seat;
 - All prosthetics and orthotics not specifically listed within the "limits and limitation extension" list - are limited to one per twelve month period per limb;
 - Beds, mattresses, and related equipment;
 - Other patient room equipment;
 - Noninvasive bone growth/nerve stimulators;
 - Communication devices - Artificial larynx, any type;
 - Ambulatory aids;
 - Bathroom equipment;
 - Blood monitoring.
- Remove diaphragmatic pacing antennae from limits list;
- Clarify prescribing requirements for dual-eligible clients; and
- Add and remove items from covered services list such as positioning devices.

Reasons Supporting Proposal: The proposed changes clarify DME coverage for clients in nursing facilities, for dual-eligible clients, and clarify/add/remove items from the coverage, limits and limitation extension section.

Statutory Authority for Adoption: RCW 74.04.050 and 74.08.090.

Statute Being Implemented: RCW 74.04.050 and 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Erin Mayo, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1729.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has determined that the proposed rule will not create more than minor costs for affected small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Erin Mayo, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1729, e-mail mayoe@dshs.wa.gov.

May 8, 2007
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

WAC 388-543-1100 Scope of coverage and coverage limitations for DME and related supplies, prosthetics, orthotics, medical supplies and related services. The federal government deems **durable medical equipment (DME)** and related supplies, **prosthetics, orthotics, and medical supplies** as optional services under the **medicaid** program, except when prescribed as an integral part of an approved plan of treatment under the home health program or required under the early and periodic screening, diagnosis and treatment (**EPSDT**) program. The **department** may reduce or eliminate coverage for optional services, consistent with legislative appropriations.

(1) The department covers DME and related supplies, prosthetics, orthotics, medical supplies, related services, repairs and labor charges when they are:

(a) Within the scope of an eligible client's medical care program (see WAC 388-501-0060 and 388-501-0065);

(b) Within accepted medical or physical medicine community standards of practice;

(c) Prior authorized as described in WAC 388-543-1600, 388-543-1800, and 388-543-1900;

(d) Prescribed by a physician, advanced registered nurse practitioner (ARNP), or physician assistant certified (PAC). Except for dual eligible medicare/medicaid clients (~~(-the prescription must)~~) when medicare is the primary payer and the department is being billed for co-pay and/or deductible only:

(i) (~~Be dated and signed by the prescriber~~) The prescriber must use DSHS 13-794 (Health and Recovery Services (HRSA) Prescription Form) to write the prescription. The form is available for download at <http://www1.dshs.wa.gov/msa/forms/eforms.html>; and;

(ii) The prescription (DSHS 13-794) must:

(A) Be signed and dated by the prescriber;

(B) Be (~~less than six months in duration~~) no older than one year from the date the prescriber signs the prescription; and

(~~(iii)~~) (C) State the specific item or service requested, diagnosis, estimated length of need (weeks, months, or years), and quantity;

(e) Billed to the department as the payor of last resort only. The department does not pay first and then collect from medicare and;

(f) **Medically necessary** as defined in WAC 388-500-0005. The provider or client must submit sufficient objective evidence to establish medical necessity. Information used to establish medical necessity includes, but is not limited to, the following:

(i) A physiological description of the client's disease, injury, impairment, or other ailment, and any changes in the client's condition written by the prescribing physician, ARNP, PAC, licensed prosthetist and/or orthotist, physical therapist, occupational therapist, or speech therapist; and/or

(ii) Video and/or photograph(s) of the client demonstrating the impairments as well and client's ability to use the requested equipment, when applicable.

(2) The department evaluates a request for any equipment or device listed as noncovered in WAC 388-543-1300 under the provisions of WAC 388-501-0160.

(3) The department evaluates a request for a service that is in a covered category, but has been determined to be experimental or investigational under WAC 388-531-0550, under the provisions of WAC 388-501-0165.

(4) The department evaluates requests for covered services in this chapter that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions under the provisions of WAC 388-501-0165 and 388-501-0169.

(5) The department does not reimburse for DME and related supplies, prosthetics, orthotics, medical supplies, related services, and related repairs and labor charges under **fee-for-service (FFS)** when the client is any of the following:

(a) An inpatient hospital client;

(b) Eligible for both medicare and medicaid, and is staying in a **nursing facility** in lieu of hospitalization;

(c) Terminally ill and receiving hospice care; or

(d) Enrolled in a risk-based managed care plan that includes coverage for such items and/or services.

(6) The department covers medical equipment and related supplies, prosthetics, orthotics, medical supplies and related services, repairs, and labor charges listed in the department's published issuances, including Washington Administrative Code (WAC), billing instructions, and numbered memoranda.

(7) An interested party may request the department to include new equipment/supplies in the billing instructions by sending a written request plus all of the following:

(a) Manufacturer's literature;

(b) Manufacturer's pricing;

(c) Clinical research/case studies (including FDA approval, if required); and

(d) Any additional information the requester feels is important.

(8) The department bases the decision to purchase or rent DME for a client, or to pay for repairs to client-owned equipment on medical necessity.

(9) The department covers replacement batteries for purchased medically necessary DME equipment covered within this chapter.

(10) The department covers the following categories of medical equipment and supplies only when they are medically necessary, prescribed by a physician, ARNP, or PAC, are within the scope of his or her practice as defined by state law, and are subject to the provisions of this chapter and related WACs:

(a) Equipment and supplies prescribed in accordance with an approved plan of treatment under the home health program;

(b) Wheelchairs and other DME;

(c) Prosthetic/orthotic devices;

(d) Surgical/ostomy appliances and urological supplies;

(e) Bandages, dressings, and tapes;

(f) Equipment and supplies for the management of diabetes; and

(g) Other medical equipment and supplies listed in department published issuances.

(11) The department evaluates a **BR** item, procedure, or service for its medical appropriateness and reimbursement value on a case-by-case basis.

(12) For a client in a **nursing facility**, the department covers only the following when medically necessary. All other DME and supplies identified in the department's billing instructions are the responsibility of the nursing facility, in accordance with chapters 388-96 and 388-97 WAC. See also WAC 388-543-2900 (3) and (4).

(a) The department covers:

~~((a))~~ (i) The purchase and repair of a speech generating device (SGD)~~((a))~~ and one of the following:

(A) A powered or manual wheelchair for the exclusive full-time use of a permanently disabled nursing facility resident when the wheelchair is not included in the nursing facility's per diem rate~~((a))~~; or

~~(B) The rental of); or~~

(B) A specialty bed or the rental of a specialty bed outside of the skilled nursing facility per-diem when:

(I) The specialty bed is intended to help the client heal; and

(II) The client's nutrition and laboratory values are within normal limits.

(b) A heavy duty bariatric bed is not considered a ((specialty)) specialty bed.

(13) Vendors must provide instructions for use of equipment; therefore, instructional materials such as pamphlets and video tapes are not covered.

(14) Bilirubin lights are limited to rentals, for at-home newborns with jaundice.

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

WAC 388-543-1150 Limits and limitation extensions.

The department covers non-DME (MSE), DME, and related supplies, prosthetics, orthotics, medical supplies, and related services as described in WAC 388-543-1100(1). The department limits the amount, frequency, or duration of certain covered MSE, DME, and related supplies, prosthetics, orthotics, medical supplies, and related services, and reimburses up to the stated limit without requiring prior authorization. These limits are designed to avoid the need for prior authorization

for items normally considered medically necessary and for quantities sufficient for a thirty-day supply for one client. In order to exceed the stated limits, the provider must request a limitation extension (LE), which is a form of prior authorization (PA). The department evaluates such requests for LE under the provisions of WAC 388-501-0169. Procedures for LE are found in department billing instructions. The following items and quantities do not require prior authorization; requests to exceed the stated quantities require LE:

(1) Antiseptics and germicides:

(a) Alcohol (isopropyl) or peroxide (hydrogen) - one pint per month;

(b) Alcohol wipes (box of two hundred) - one box per month;

(c) Betadine or pHisoHex solution - one pint per month;

(d) Betadine or iodine swabs/wipes (box of one hundred) - one box per month;

(e) Disinfectant spray - one twelve-ounce bottle or can per six-month period; or

(f) Periwash (when soap and water are medically contraindicated) - one five-ounce bottle of concentrate solution per six-month period.

(2) Blood monitoring/testing supplies:

(a) Replacement battery of any type, used with a client-owned, medically necessary home or specialized blood glucose monitor - one in a three-month period; and

(b) Spring-powered device for lancet - one in a six-month period.

(3) Braces, belts and supportive devices:

(a) Custom vascular supports (CVS) - two pair per six-month period. CVS fitting fee - two per six-month period;

(b) Surgical stockings (below-the-knee, above-the-knee, thigh-high, or full-length) - two pair per six-month period;

(c) Graduated compression stockings for pregnancy support (panty hose style) - two per twelve-month period;

(d) Knee brace (neoprene, nylon, elastic, or with a hinged bar) - two per twelve-month period;

(e) Ankle, elbow, or wrist brace - two per twelve-month period;

(f) Lumbosacral brace, rib belt, or hernia belt - one per twelve-month period;

(g) Cervical head harness/halter, cervical pillow, pelvic belt/harness/boot, or extremity belt/harness - one per twelve-month period.

(4) Decubitus care products:

(a) Cushion (gel, sacroiliac, or accuback) and cushion cover (any size) - one per twelve-month period;

(b) Synthetic or lambs wool sheepskin pad - one per twelve-month period;

(c) Heel or elbow protectors - four per twelve-month period.

(5) Ostomy supplies:

(a) Adhesive for ostomy or catheter: Cement; powder; liquid (e.g., spray or brush); or paste (any composition, e.g., silicone or latex) - four total ounces per month.

(b) Adhesive or nonadhesive disc or foam pad for ostomy pouches - ten per month.

(c) Adhesive remover or solvent - three ounces per month.

(d) Adhesive remover wipes, fifty per box - one box per month.

(e) Closed pouch, with or without attached barrier, with a one- or two-piece flange, or for use on a faceplate - sixty per month.

(f) Closed ostomy pouch with attached standard wear barrier, with built-in one-piece convexity - ten per month.

(g) Continent plug for continent stoma - thirty per month.

(h) Continent device for continent stoma - one per month.

(i) Drainable ostomy pouch, with or without attached barrier, or with one- or two-piece flange - twenty per month.

(j) Drainable ostomy pouch with attached standard or extended wear barrier, with or without built-in one-piece convexity - twenty per month.

(k) Drainable ostomy pouch for use on a plastic or rubber faceplate (only one type of faceplate allowed) - ten per month.

(l) Drainable urinary pouch for use on a plastic, heavy plastic, or rubber faceplate (only one type of faceplate allowed) - ten per month.

(m) Irrigation bag - two every six months.

(n) Irrigation cone and catheter, including brush - two every six months.

(o) Irrigation supply, sleeve - one per month.

(p) Ostomy belt (adjustable) for appliance - two every six months.

(q) Ostomy convex insert - ten per month.

(r) Ostomy ring - ten per month.

(s) Stoma cap - thirty per month.

(t) Ostomy faceplate - ten per month. The department does not allow the following to be used on a faceplate in combination with drainable pouches (refer to the billing instructions for further details):

(i) Drainable pouches with plastic face plate attached; or

(ii) Drainable pouches with rubber face plate.

(6) Supplies associated with client-owned transcutaneous electrical nerve stimulators (TENS):

(a) For a four-lead TENS unit - two kits per month. (A kit contains two leads, conductive paste or gel, adhesive, adhesive remover, skin preparation material, batteries, and a battery charger for rechargeable batteries.)

(b) For a two-lead TENS unit - one kit per month.

(c) TENS tape patches (for use with carbon rubber electrodes only) are allowed when they are not used in combination with a kit(s).

(d) A TENS stand alone replacement battery charger is allowed when it is not used in combination with a kit(s).

(7) Urological supplies - diapers and related supplies:

(a) The standards and specifications in this subsection apply to all disposable incontinent products (e.g., briefs, diapers, pull-up pants, underpads for beds, liners, shields, guards, pads, and undergarments). See subsections (b), (c), (d), and (e) of this section for additional standards for specific products. All of the following apply to all disposable incontinent products:

(i) All materials used in the construction of the product must be safe for the client's skin and harmless if ingested;

(ii) Adhesives and glues used in the construction of the product must not be water-soluble and must form continuous seals at the edges of the absorbent core to minimize leakage;

(iii) The padding must provide uniform protection;

(iv) The product must be hypoallergenic;

(v) The product must meet the flammability requirements of both federal law and industry standards; and

(vi) All products are covered for client personal use only.

(b) In addition to the standards in subsection (a) of this section, diapers must meet all the following specifications. They must:

(i) Be hourglass shaped with formed leg contours;

(ii) Have an absorbent filler core that is at least one-half inch from the elastic leg gathers;

(iii) Have leg gathers that consist of at least three strands of elasticized materials;

(iv) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling materials;

(v) Have a backsheet that is moisture impervious and is at least 1.00 mm thick, designed to protect clothing and linens;

(vi) Have a topsheet that resists moisture returning to the skin;

(vii) Have an inner lining that is made of soft, absorbent material; and

(viii) Have either a continuous waistband, or side panels with a tear-away feature, or refastenable tapes, as follows:

(A) For child diapers, at least two tapes, one on each side.

(B) The tape adhesive must release from the backsheet without tearing it, and permit a minimum of three fastening/unfastening cycles.

(c) In addition to the standards in subsection (a) of this section, pull-up pants and briefs must meet the following specifications. They must:

(i) Be made like regular underwear with an elastic waist or have at least four tapes, two on each side or two large tapes, one on each side;

(ii) Have an absorbent core filler that is at least one-half inch from the elastic leg gathers;

(iii) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling;

(iv) Have leg gathers that consist of at least three strands of elasticized materials;

(v) Have a backsheet that is moisture impervious, is at least 1.00 mm thick, and is designed to protect clothing and linens;

(vi) Have an inner lining made of soft, absorbent material; and

(vii) Have a top sheet that resists moisture returning to the skin.

(d) In addition to the standards in subsection (a) of this section, underpads are covered only for incontinent purposes in a client's bed and must meet the following specifications:

(i) Have an absorbent layer that is at least one and one-half inches from the edge of the underpad;

(ii) Be manufactured with a waterproof backing material;

(iii) Be able to withstand temperatures not to exceed one hundred-forty degrees Fahrenheit;

(iv) Have a covering or facing sheet that is made of non-woven, porous materials that have a high degree of permeability, allowing fluids to pass through and into the absorbent filler. The patient contact surface must be soft and durable;

(v) Have filler material that is highly absorbent. It must be heavy weight fluff filler or the equivalent; and

(vi) Have four-ply, nonwoven facing, sealed on all four sides.

(e) In addition to the standards in subsection (a) of this section, liners, shields, guards, pads, and undergarments are covered for incontinence only and must meet the following specifications:

(i) Have channels to direct fluid throughout the absorbent area, and leg gathers to assist in controlling leakage, and/or be contoured to permit a more comfortable fit;

(ii) Have a waterproof backing designed to protect clothing and linens;

(iii) Have an inner liner that resists moisture returning to the skin;

(iv) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling materials;

(v) Have pressure-sensitive tapes on the reverse side to fasten to underwear; and

(vi) For undergarments only, be contoured for good fit, have at least three elastic leg gathers, and may be belted or unbelted.

(f) The department covers the products in this subsection only when they are used alone; they cannot be used in combination with each other. The department approves a client's use of a combination of products only when the client uses different products for daytime and nighttime use (see department billing instructions for how to specify this when billing). The total quantity of all products in this section used in combination cannot exceed the monthly limitation for the product with the highest limit (see subsections (g), (h), (i), (j), (k), (l), and (m) of this section for product limitations). The following products cannot be used together:

(i) Disposable diapers;

(ii) Disposable pull-up pants and briefs;

(iii) Disposable liners, shields, guards, pads, and undergarments;

(iv) Rented reusable diapers (e.g., from a diaper service); and

(v) Rented reusable briefs (e.g., from a diaper service), or pull-up pants.

(g) Purchased disposable diapers (any size) are limited to:

(i) Three hundred per month for a child three to eighteen years of age; and

(ii) Two hundred forty per month for an adult nineteen years of age and older.

(h) Reusable cloth diapers (any size) are limited to:

(i) Purchased - thirty-six per year; and

(ii) Rented - two hundred forty per month.

(i) Disposable briefs and pull-up pants (any size) are limited to:

(i) Three hundred per month for a child age three to eighteen years of age; and

(ii) One hundred fifty per month for an adult nineteen years of age and older.

(j) Reusable briefs, washable protective underwear, or pull-up pants (any size) are limited to:

(i) Purchased - four per year.

(ii) Rented - one hundred fifty per month.

(k) Disposable pant liners, shields, guards, pads, and undergarments are limited to two hundred forty per month.

(l) Underpads for beds are limited to:

(i) Disposable (any size) - one hundred eighty per month.

(ii) Purchased, reusable (large) - forty-two per year.

(iii) Rented, reusable (large) - ninety per month.

(8) Urological supplies - urinary retention:

(a) Bedside drainage bag, day or night, with or without anti-reflux device, with or without tube - two per month. This cannot be billed in combination with any of the following:

(i) With extension drainage tubing for use with urinary leg bag or urostomy pouch (any type, any length), with connector/adaptor; and/or

(ii) With an insertion tray with drainage bag, and with or without catheter.

(b) Bedside drainage bottle, with or without tubing - two per six month period.

(c) Extension drainage tubing (any type, any length), with connector/adaptor, for use with urinary leg bag or urostomy pouch. This cannot be billed in combination with a vinyl urinary leg bag, with or without tube.

(d) External urethral clamp or compression device (not be used for catheter clamp) - two per twelve-month period.

(e) Indwelling catheters (any type) - three per month.

(f) Insertion trays:

(i) Without drainage bag and catheter - one hundred and twenty per month. These cannot be billed in combination with other insertion trays that include drainage bag, catheters, and/or individual lubricant packets.

(ii) With indwelling catheters - three per month. These cannot be billed in combination with: Other insertion trays without drainage bag and/or indwelling catheter; individual indwelling catheters; and/or individual lubricant packets.

(g) Intermittent urinary catheter - one hundred twenty per month. These cannot be billed in combination with: An insertion tray with or without drainage bag and catheter; or other individual intermittent urinary catheters.

(h) Irrigation syringe (bulb or piston) - cannot be billed in combination with irrigation tray or tubing.

(i) Irrigation tray with syringe (bulb or piston) - thirty per month. These cannot be billed in combination with irrigation syringe (bulb or piston), or irrigation tubing set.

(j) Irrigation tubing set - thirty per month. These cannot be billed in combination with an irrigation tray or irrigation syringe (bulb or piston).

(k) Leg straps (latex foam and fabric). Allowed as replacement only.

(l) Male external catheter, specialty type, or with adhesive coating or adhesive strip - sixty per month.

(m) Urinary suspensory with leg bag, with or without tube - two per month. This cannot be billed in combination with: a latex urinary leg bag; urinary suspensory without leg bag; extension drainage tubing; or a leg strap.

(n) Urinary suspensory without leg bag, with or without tube - two per month.

(o) Urinary leg bag, vinyl, with or without tube - two per month. This cannot be billed in combination with: A leg strap; or an insertion tray with drainage bag and without catheter.

(p) Urinary leg bag, latex - one per month. This cannot be billed in combination with an insertion tray with drainage bag and with or without catheter.

(9) Miscellaneous supplies:

(a) Bilirubin light therapy supplies - five days' supply. The department reimburses only when these are provided with a prior authorized bilirubin light.

(b) Continuous passive motion (CPM) softgoods kit - one, with rental of CPM machine.

(c) Eye patch with elastic, tied band, or adhesive, to be attached to an eyeglass lens - one box of twenty.

(d) Eye patch (adhesive wound cover) - one box of twenty.

~~(e) ((Lice comb (e.g., LiceOut TM, or LiesMeister [Lice-Meister] TM, or combs of equivalent quality and effectiveness) - one per year.~~

~~(f))~~ (f) Nontoxic gel (e.g., LiceOut TM) for use with lice combs - one bottle per twelve month period.

~~((g))~~ (g) Syringes and needles ("sharps") disposal container for home use, up to one gallon size - two per month.

(10) Miscellaneous DME:

(a) Bilirubin light or light pad - five days rental per twelve-month period.

(b) Blood glucose monitor (specialized or home) - one in a three-year period.

(c) Continuous passive motion (CPM) machine - up to ten days rental and requires prior authorization.

~~(d) ((Diaphragmatic pacing antennae - four per twelve month period.~~

~~(e))~~ (e) Lightweight protective helmet/soft shell (including adjustable chin/mouth strap) - two per twelve-month period.

~~((f))~~ (f) Lightweight ventilated hard-shell helmet (including unbreakable face bar, woven chin strap w/adjustable buckle and snap fastener, and one set of cushion pads for adjusting fit to head circumference) - two per twelve-month period.

(g) Breast pumps - one allowed per lifetime.

(h) Pneumatic compressor - one in a five-year period.

(i) Positioning car seat - one in a five-year period.

(11) Prosthetics and orthotics:

(a) Thoracic-hip-knee-ankle orthosis (THKAO) standing frame - one every five years.

(b) Preparatory, above knee "PTB" type socket, non-alignable system, pylon, no cover, SACH foot plaster socket, molded to model - one per lifetime, per limb.

(c) Preparatory, below knee "PTB" type socket, non-alignable system, pylon, no cover, SACH foot thermoplastic or equal, direct formed - one per lifetime, per limb.

(d) Socket replacement, below the knee, molded to patient model - one per twelve-month period.

(e) Socket replacement, above the knee/knee disarticulation, including attachment plate, molded to patient model - one per twelve-month period.

(f) All other prosthetics and orthotics are limited to one per twelve-month period per limb.

(12) Positioning devices:

~~(a) ((Deluxe floor sitter/feeder seat (small, medium, or large), including floor sitter wedge, shoulder harness, and hip strap - one in a three-year period.~~

~~(b) High-back activity chair, including adjustable footrest, two pairs of support blocks, and hip strap - one in a three-year period.~~

~~(c))~~ (c) Positioning system/supine boards (small or large), including padding, straps adjustable armrests, footboard, and support blocks - one in a five-year period.

~~((d))~~ (d) Prone stander (child, youth, infant or adult size) - one in a five-year period.

~~((e))~~ (e) Adjustable standing frame (for child/adult thirty - sixty-eight inches tall), including two padded back support blocks, a chest strap, a pelvic strap, a pair of knee blocks, an abductor, and a pair of foot blocks - one in a five-year period.

(13) Beds, mattresses, and related equipment:

(a) Pressure pad, alternating with pump - one in a five-year period.

(b) Dry pressure mattress - one in a five-year period.

(c) Gel or gel-like pressure pad for mattress - one in a five-year period.

(d) Gel pressure mattress - one in a five-year period.

(e) Water pressure pad for mattress - one in a five-year period.

(f) Dry pressure pad for mattress - one in a five-year period.

(g) Mattress, inner spring - one in a five-year period.

(h) Mattress, foam rubber - one in a five-year period.

(i) Hospital bed, semi-electric - one in a ten-year period.

(j) Bedside rails - one in a ten-year period.

(14) Other patient room equipment:

(a) Patient lift, hydraulic, with seat or sling - one in a five-year period.

(b) Traction equipment - one in a five year period.

(c) Trapeze bars - one in a five-year period.

(d) Fracture frames - one in a five-year period.

(e) Transfer board or devices - one in a five-year period.

(15) Noninvasive bone growth/nerve stimulators:

(a) Transcutaneous electrical nerve stimulation device (TNS) - one in a five-year period.

(b) Osteogenesis stimulators - one in a five-year period.

(16) Communication devices - artificial larynx, any type - one in a five-year period.

(17) Ambulatory aids:

(a) Canes - one in a five-year period.

(b) Crutches - one in a five-year period.

(c) Walkers - one in a five-year period.

(18) Bathroom equipment:

(a) Commode chairs - one in a five-year period.

(b) Tub stool or bench - one in a five-year period.

(c) Transfer bench for tub or toilet - one in a five-year period.

(d) Bed pans - one in a five-year period.

(e) Urinals - one in a five-year period.

(f) Shower/commode chairs - one in a five-year period.

(g) Bath seats/chairs - one in a five-year period.

(h) Potty chairs - one in a five-year period.

(19) Blood monitoring:

(a) Sphygmomanometer/blood pressure apparatus - one in a five-year period.

(b) Automatic blood pressure monitor - one in a five-year period.

AMENDATORY SECTION (Amending WSR 01-01-078, filed 12/13/00, effective 1/13/01)

WAC 388-543-1600 Items and services which require prior authorization. (1) ~~((MAA))~~ The department bases its determination about which DME and related supplies, prosthetics, orthotics, medical supplies and related services require **prior authorization (PA)** or **expedited prior authorization (EPA)** on utilization criteria. (See WAC 388-543-1000 for PA and WAC 388-543-1800 for EPA.) ~~((MAA))~~ The department considers all of the following when establishing utilization criteria:

- (a) High cost;
- (b) Potential for utilization abuse;
- (c) Narrow therapeutic indication; and
- (d) Safety.

(2) ~~((MAA))~~ The department requires providers to obtain prior authorization for certain items and services, except for dual-eligible medicare/medicaid clients when medicare is the primary payer. This includes, but is not limited to, the following:

- (a) Augmentative communication devices (ACDs);
- (b) Certain by report (BR) DME and supplies as specified in ~~((MAA's))~~ the department's published issuances, including billing instructions and numbered memoranda;
- (c) Blood glucose monitors requiring special features;
- (d) Certain equipment rentals and certain prosthetic limbs, as specified in ~~((MAA's))~~ the department's published issuances, including billing instructions and numbered memoranda;
- (e) Decubitus care products and supplies;
- ~~((g))~~ (f) Decubitus care mattresses, including flotation or gel mattress, if the provider fails to meet the criteria in WAC 388-543-1900;
- (g) Equipment parts and labor charges for repairs or modifications and related services;
- (h) Hospital beds, if the provider fails to meet the requirements in WAC 388-543-1900;
- (i) Low air loss flotation system, if the provider fails to meet the requirements in WAC 388-543-1900;
- (j) Orthopedic shoes and selected orthotics;
- (k) Osteogenic stimulator, noninvasive, if the provider fails to meet the requirements in WAC 388-543-1900;
- (l) Positioning car seats for children under five years of age;
- (m) Transcutaneous electrical nerve stimulators, if the provider fails to meet the requirements in WAC 388-543-1900;
- (n) Wheelchairs, wheelchair accessories, wheelchair modifications, air, foam, and gel cushions, and repairs;
- (o) Wheelchair-style shower/commode chairs;
- (p) Other DME not specifically listed in ~~((MAA's))~~ the department's published issuances, including billing instructions and numbered memoranda, and submitted as a miscellaneous procedure code; and

(q) Limitation extensions.

AMENDATORY SECTION (Amending WSR 01-01-078, filed 12/13/00, effective 1/13/01)

WAC 388-543-1700 When ~~((MAA))~~ the department covers rented DME. (1) ~~((MAA's))~~ The department's reimbursement amount for rented durable medical equipment (DME) includes all of the following:

- (a) Delivery to the client;
 - (b) Fitting, set-up, and adjustments;
 - (c) Maintenance, repair and/or replacement of the equipment; and
 - (d) Return pickup by the provider.
- (2) ~~((MAA))~~ The department requires a dispensing provider to ensure the DME rented to a ~~((MAA))~~ client is both of the following:

- (a) In good working order; and
 - (b) Comparable to equipment the provider rents to clients with similar medical equipment needs who are either private pay clients or who have other third-party coverage.
- (3) ~~((MAA))~~ The department considers rented equipment to be purchased after twelve months' rental unless one of the following apply:

- (a) The equipment is restricted as rental only; or
 - (b) Other ~~((MAA))~~ department published issuances state otherwise.
- (4) ~~((MAA))~~ The department rents, but does not purchase, certain medically necessary equipment for clients. This includes, but is not limited to, the following:

(a) Bilirubin lights for newborns at home with jaundice; and

(b) Electric breast pumps.

(5) ~~((MAA's))~~ The department's minimum rental period for covered DME is one day.

(6) If a fee-for-service (FFS) client becomes a managed care plan client, both of the following apply:

- (a) ~~((MAA))~~ The department stops paying for any rented equipment on the last day of the month preceding the month in which the client becomes enrolled in the managed care plan; and
- (b) The plan determines the client's continuing need for the equipment and is responsible for reimbursing the provider.

(7) ~~((MAA))~~ The department stops paying for any rented equipment effective the date of a client's death. ~~((MAA))~~ The department prorates monthly rentals as appropriate.

(8) For a client who is eligible for both medicaid and medicare, ~~((MAA))~~ the department pays only the client's coinsurance and deductibles. ~~((MAA))~~ The department discontinues paying client's coinsurance and deductibles for rental equipment when either of the following applies:

- (a) The reimbursement amount reaches medicare's reimbursement cap for the equipment; or
- (b) Medicare considers the equipment purchased.

(9) ~~((MAA))~~ The department does not obtain or pay for insurance coverage against liability, loss and/or damage to rental equipment that a provider supplies to a ~~((MAA))~~ DSHS client.

AMENDATORY SECTION (Amending WSR 01-01-078, filed 12/13/00, effective 1/13/01)

WAC 388-543-2000 Wheelchairs. (1) ((MAA)) The department bases its decisions regarding requests for wheelchairs on medical necessity and on a case-by-case basis.

(2) The following apply when ((MAA)) the department determines that a wheelchair is medically necessary for six months or less:

(a) If the client lives at home, ((MAA)) the department rents a wheelchair for the client; or

(b) If the client lives in a nursing facility, the nursing facility must provide a **house wheelchair** as part of the per diem rate paid by the aging and disability services administration (AASA).

(3) ((MAA)) The department considers rental or purchase of a **manual wheelchair** for a home client who is non-ambulatory or has limited mobility and requires a wheelchair to participate in normal daily activities. ((MAA)) The department determines the type of manual wheelchair based on the following:

(a) A standard wheelchair if the client's medical condition requires the client to have a wheelchair to participate in normal daily activities;

(b) A standard lightweight wheelchair if the client's medical condition is such that the client:

(i) Cannot self-propel a standard weight wheelchair; or

(ii) Requires custom modifications that cannot be provided on a standard weight wheelchair.

(c) A high-strength lightweight wheelchair for a client:

(i) Whose medical condition is such that the client cannot self-propel a lightweight or standard weight wheelchair; or

(ii) Requires custom modifications that cannot be provided on a standard weight or lightweight wheelchair.

(d) A heavy duty wheelchair for a client who requires a specifically manufactured wheelchair designed to:

(i) Support a person weighing up to three hundred pounds; or

(ii) Accommodate a seat width up to twenty-two inches wide (not to be confused with custom heavy duty wheelchairs).

(e) A custom heavy duty wheelchair for a client who requires a specifically manufactured wheelchair designed to:

(i) Support a person weighing over three hundred pounds; or

(ii) Accommodate a seat width over twenty-two inches wide.

(f) A rigid wheelchair for a client:

(i) With a medical condition that involves severe upper extremity weakness;

(ii) Who has a high level of activity; and

(iii) Who is unable to self-propel any of the above categories of wheelchair.

(g) A custom manufactured wheelchair for a client with a medical condition requiring wheelchair customization that cannot be obtained on any of the above categories of wheelchairs.

(4) ((MAA)) The department considers a **power-drive wheelchair** when the client's medical needs cannot be met by a less costly means of mobility. The prescribing physician

must certify that the client can safely and effectively operate a power-drive wheelchair and that the client meets all of the following conditions:

(a) The client's medical condition negates his or her ability to self-propel any of the wheelchairs listed in the manual wheelchair category; and

(b) A power-drive wheelchair will provide the client the only means of independent mobility; or

(c) A power-drive wheelchair will enable a child to achieve age-appropriate independence and developmental milestones.

(d) All other circumstances will be considered based on medical necessity and on a case-by-case basis.

(e) The following additional information is required for a three or four-wheeled power-drive scooter/cart:

(i) The prescribing physician certifies that the client's condition is stable; and

(ii) The client is unlikely to require a standard power-drive wheelchair within the next two years.

(5) ((MAA)) The department considers the power-drive wheelchair to be the client's primary chair when the client has both a power-drive wheelchair and a manual wheelchair.

(6) In order to consider purchasing a wheelchair, ((MAA)) the department requires the provider to submit the following information from the prescribing physician, physical therapist, or occupational therapist:

(a) Specific medical justification for the make and model of wheelchair requested;

(b) Define the degree and extent of the client's impairment (such as stage of decubitus, severity of spasticity or flaccidity, degree of kyphosis or scoliosis); and

(c) Documented outcomes of less expensive alternatives (aids to mobility) that have been tried by the client.

(7) In addition to the basic wheelchair, ((MAA)) the department may consider wheelchair accessories or modifications that are specifically identified by the manufacturer as separate line item charges. The provider must submit specific medical justification for each line item, with the modification request.

(8) ((MAA)) The department considers wheelchair modifications to a medically necessary wheelchair when the provider submits all of the following with the modification request:

(a) The make, model, and serial number of the wheelchair to be modified;

(b) The modification requested; and

(c) Specific information regarding the client's medical condition that necessitates the modification.

(9) ((MAA)) The department may consider wheelchair repairs to a medically necessary wheelchair; the provider must submit to ((MAA)) the department the make, model, and serial number of the wheelchair for which the repairs are requested.

(10) ((MAA)) The department may cover two wheelchairs, a manual wheelchair and a power-drive wheelchair, for a noninstitutionalized client in certain situations. One of the following must apply:

(a) The architecture of the client's home is completely unsuitable for a power-drive wheelchair, such as narrow hall-

ways, narrow doorways, steps at the entryway, and insufficient turning radii;

(b) The architecture of the client's home bathroom is such that power-drive wheelchair access is not possible, and the client needs a manual wheelchair to safely and successfully complete bathroom activities and maintain personal cleanliness;

(c) The client has a power-drive wheelchair, but also requires a manual wheelchair because the power-drive wheelchair cannot be transported to meet the client's community, workplace, or educational activities; the manual wheelchair would allow the caregiver to transport the client in a standard automobile or van. In these cases, ((MAA)) the department requires the client's situation to meet the following conditions:

(i) The client's activities that require the second wheelchair must be located farther than one-fourth of a mile from the client's home; and

(ii) Cabulance, public buses, or personal transit are neither available, practical, nor possible for financial or other reasons.

(iii) All other circumstances will be considered on a case-by-case basis, based on medical necessity.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 05-21-102, filed 10/18/05, effective 11/18/05)

WAC 388-543-2800 Reusable and disposable medical supplies. (1) ((MAA)) The department requires that a physician, advanced registered nurse practitioner (ARNP), or physician's assistant certified (PAC) prescribe reusable and disposable medical supplies. Except for dual eligible medicare/medicaid clients, the prescription must:

(a) Be dated and signed by the prescriber;

(b) Be less than six months in duration from the date the prescriber signs the prescription; and

(c) State the specific item or service requested, diagnosis, estimated length of need (weeks, months, or years), and quantity.

(2) ((MAA)) The department bases its determination about which DME and related supplies, prosthetics, orthotics, medical supplies and related services require prior authorization (PA) or expedited prior authorization (EPA) on utilization criteria (see WAC 388-543-1000 for PA and WAC 388-543-1800 for EPA). ((MAA)) The department considers all of the following when establishing utilization criteria:

(a) High cost;

(b) The potential for utilization abuse;

(c) A narrow therapeutic indication; and

(d) Safety.

(3) ((MAA)) The department requires a provider to obtain a limitation extension in order to exceed the stated limits for nondurable medical equipment and medical supplies. See WAC 388-501-0165.

(4) ((MAA)) The department categorizes medical supplies and non-DME (MSE) as follows (see WAC 388-543-1150, 388-543-1600, and ((MAA's)) department's billing

instructions for further information about specific limitations and requirements for PA and EPA):

(a) Antiseptics and germicides;

(b) Bandages, dressings, and tapes;

(c) Blood monitoring/testing supplies;

(d) Braces, belts, and supportive devices;

(e) Decubitus care products;

(f) Ostomy supplies;

(g) Pregnancy-related testing kits and nursing equipment supplies;

(h) Supplies associated with transcutaneous electrical nerve stimulators (TENS);

(i) Syringes and needles;

(j) Urological supplies (e.g., diapers, urinary retention catheters, pant liners, and doublers); and

(k) Miscellaneous supplies.

WSR 07-11-050

PROPOSED RULES

UTILITIES AND TRANSPORTATION

COMMISSION

[Docket UT-070199—Filed May 10, 2007, 2:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-04-108.

Title of Rule and Other Identifying Information: This rule making would consider amending subsection (8) of WAC 480-120-262 Operator service providers (OSPs) relating to emergency calls (E-911). Because of new technology, the requirement may be obsolete.

Hearing Location(s): Commission Hearing Room 206, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, on August 15, 2007, at 1:30 p.m.

Date of Intended Adoption: August 15, 2007.

Submit Written Comments to: Carole J. Washburn, Secretary, P.O. Box 47250, Olympia, WA 98504, e-mail records@wutc.wa.gov, fax (360) 586-1150, by June 25, 2007. Please include Docket UT-070199 in your communication.

Assistance for Persons with Disabilities: Contact Mary DeYoung by Monday, August 13, 2007, TTY (360) 586-8203 or (360) 664-1133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal would repeal subsection (8) of WAC 480-120-262. Repealing the subsection would not have any appreciable impact on the E-911 system given changes in technology and the OSPs business practices.

Reasons Supporting Proposal: WAC 480-120-262(8) requires OSP be capable of transferring an emergency call back to the 911 system with the call routed to the correct public safety answering point (PSAP) for the location of the caller. The evolution of OSP services to regional or national operations makes this requirement technically difficult. OSPs may no longer have the complement of customer information for a number of reasons, the most prevalent of which is a change in business practice that sees most OSP service

outsourced, or provided by a business unit that operates under a separate line of business. Additionally, OSPs do not automatically connect a caller who has dialed "0" for an emergency, but advises the caller to hang up and dial 9-1-1. The requirement was adopted with the intent to promote access to emergency response. Due to E-911 capabilities today, the requirement may be obsolete. In addition, the state of Washington has installed "rapid transfer capability" that links all PSAPs in Washington and Oregon.

Affected WAC is WAC 480-120-262 Operator service providers (OSPs), amending to remove subsection (8), emergency calls.

Reasons Supporting Proposal: To put into rule the statutory language amended in SSB 5105.

Statutory Authority for Adoption: RCW 80.01.040 and 80.04.160.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Sharyn Bate, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1295; Implementation and Enforcement: Carole J. Washburn, Secretary, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1174.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed corrections and changes to rules will not result in or impose an increase in costs. Because there will not be any increase in costs resulting from the proposed rule changes, a small business economic impact statement is not required under RCW 19.85.030(1).

A cost-benefit analysis is not required under RCW 34.05.328. The commission is not an agency to which RCW 34.05.328 applies. The proposed rule is not a significant legislative rule of the sort referenced in RCW 34.05.328(5).

May 10, 2007

David W. Danner
for Carole J. Washburn
Executive Secretary

AMENDATORY SECTION (Amending Docket No. UT 040015, General Order No. R-516, filed 1/10/05, effective 2/10/05)

WAC 480-120-262 Operator service providers (OSPs). (1) Only for the purpose of this section:

"Consumer" means the party paying for a call using operator services. For collect calls, a consumer is both the originating party and the party who receives the call.

"Customer" means the call aggregator or pay phone service provider (PSP) contracting with an operator service provider (OSP) for service, such as hotel, motel, hospital, correctional facility, prison, campus, or similar entity.

"Operator service provider (OSP)" means any corporation, company, partnership, or person providing a connection to intrastate or interstate long-distance or to local services from locations of call aggregators.

"Operator services" means any telecommunications service provided to a call aggregator location that includes automated or live assistance to consumers in billing or completing (or both) telephone calls, other than those billed to the number from which the call originated or those completed through an access code used to bill a consumer's account previously established with the company.

This section applies to OSPs providing operator services from pay phones and other call aggregator locations. Each OSP must maintain a current list of the customers it serves in Washington and the locations and telephone numbers where the service is provided.

(2) **Posted disclosure.** OSPs must post clearly, legibly, and unobstructed, on or near the front of the pay phone the presubscribed OSP's name, address, and toll-free number, as registered with the commission. This information must be updated within thirty days after a change of OSPs. OSPs must post a notice to consumers that they can access other long distance companies and, in contrasting colors, the commission compliance number for consumer complaints and the following information:

"If you have a complaint about service from this pay phone and are unable to resolve it by calling the repair or refund number or operator, please call the commission at 1-888-333-WUTC (9882)."

(3) **Oral disclosure of rates.** This subsection applies to all calls from pay phones or other call aggregator locations, including, but not limited to, prison phones and store-and-forward pay phones or "smart" phones. When a collect call is placed, both the consumer placing the call and the consumer receiving the call must be given the rate quote options required by this section.

(a) **Oral rate disclosure message required.** Before an operator-assisted call from a call aggregator location can be connected by an OSP (whether by a presubscribed or other provider), the OSP must first provide an oral rate disclosure message to the consumer. If the charges to the consumer do not exceed the benchmark rate in (f) of this subsection, the oral rate disclosure message must comply with the requirements of (b) of this subsection. In all other instances, the oral rate disclosure message must comply with the requirements of (c) of this subsection.

(b) **Rate disclosure method when charges do not exceed benchmark.** The oral rate disclosure message must state that the consumer may receive a rate quote and explain the method of obtaining the quote. The method of obtaining the quote may be by pressing a specific key or keys, but no more than two keys, or by staying on the line. If the consumer follows the directions to obtain the rate quote, the OSP must state all rates and charges that will apply if the consumer completes the call.

(c) **Rate disclosure method when rates exceed benchmark.** The oral rate disclosure message must state all rates and charges that will apply if the consumer completes the call.

(d) **Charge must not exceed rate quote.** If the OSP provides a rate quote pursuant to either (b) or (c) of this subsection, the charges to the user must not exceed the quoted rate. If a consumer complains to the commission that the

charges exceeded the quoted rate, and the consumer states the exact amount of the quote, there will be a rebuttable presumption that the quote provided by the complaining consumer was the quote received by the consumer at the time the call was placed or accepted.

(e) **Completion of call.** Following the consumer's response to any of the above, the OSP must provide oral information advising that the consumer may complete the call by entering the consumer's calling card number.

(f) **Benchmark rates.** An OSP's charges for a particular call exceed the benchmark rate if the sum of all charges, other than taxes and fees required by law to be assessed directly on the consumer, would exceed, for any duration of the call, the sum of fifty cents multiplied by the duration of the call in minutes plus fifty cents. For example, an OSP's charges would exceed the benchmark rate if any of these conditions were true:

- (i) Charges for a one-minute call exceeded one dollar;
- (ii) Charges for a five-minute call exceeded three dollars;

or

(iii) Charges for a ten-minute call exceeded five dollars and fifty cents.

(4) **Access.** Pay phones must provide access to the services identified in WAC 480-120-263(3).

(5) **Branding.** The OSP must identify audibly and distinctly the OSP providing the service at the beginning of every call, including an announcement to the called party on collect calls. The OSP must ensure that the call begins no later than immediately following the prompt to enter billing information on automated calls and on live and automated operator calls, when the call is initially routed to the operator. The OSP must state the name of the company as registered with the commission (or its registered "doing business as" name) whenever referring to the OSP. When not necessary to identify clearly the OSP, the company may omit terms such as "company," "communications," "incorporated," or "of the Northwest."

(6) **Billing.** The OSP must provide to the billing company applicable call detail necessary for billing purposes and an address and toll-free number for consumer inquiries. The OSP must ensure that consumers are not billed for calls that are not completed. For billing purposes calls must be itemized, identified, and rated from the point of origination to the point of termination. An OSP may not transfer a call to another company unless the call can be billed from the point of origin. The OSP must provide specific call detail upon request, in accordance with WAC 480-120-161 (Form of bills). Charges billed to a credit card need not conform to the call detail requirements of that section.

(7) **Operational capabilities.** The OSP must answer at least ninety percent of all calls within ten seconds of the time the call reaches the company's switch. The OSP must maintain adequate facilities in all locations so the overall blockage rate for lack of facilities, including the facilities for access to consumers' preferred interexchange companies, does not exceed one percent in the time-consistent busy hour. Should excessive blockage occur, the OSP must determine what caused the blockage and take immediate steps to correct the problem. The OSP must reoriginate calls to another company upon request and without charge when technically able to

accomplish reorigination with screening and allow billing from the point of origin of the call. If reorigination is not available, the OSP must provide dialing instructions for the consumer's preferred company.

~~(8) ((Emergency calls. For purposes of emergency calls, every OSP must be able to transfer the caller into the appropriate E911 system and to the public safety answering point (PSAP) serving the location of the caller with a single keystroke from the operator's console, to include automatic identification of the exact location and address from which the call is being made. The OSP must be able to stay on the line with the emergency call until the PSAP representative advises the operator that they are no longer required to stay on the call. The OSP must provide a toll-free number for direct access to PSAPs should additional information be needed when responding to a call for assistance from a phone using the provider's services. That emergency contact information must not be considered proprietary.~~

~~(9))~~ **Fraud protection.**

(a) A company may not bill a call aggregator for:

(i) Charges billed to a line for originating calls using company access codes, toll-free access codes, or originating calls that otherwise reach an operator position if the originating line subscribed to outgoing call screening or pay phone specific ANI coding digits and the call was placed after the effective date of the outgoing call screening or pay phone specific ANI coding digits order; or

(ii) Collect or third-number-billed calls if the line serving the call that was billed had subscribed to incoming call screening (also termed "billed number screening") and if the call was placed after the effective date of the call screening service order.

(b) The access line provider must remove from the call aggregator's bill any calls billed through the access line provider in violation of this subsection. If investigation by the access line provider determines that the pertinent call screening or pay phone specific ANI coding digits was operational when the call was made, the access line provider may return the charges for the call to the company as not billable.

(c) Any call billed directly by an OSP, or through a billing method other than the access line provider, which is billed in violation of this subsection, must be removed from the call aggregator's bill. The company providing the service may request an investigation by the access line provider. If the access line provider determines that call screening or pay phone specific ANI coding digits (which would have prevented the call) was subscribed to by the call aggregator and was not operational at the time the call was placed, the OSP must bill the access line provider for the call.

~~((+0))~~ **(9) Suspension.** The commission may suspend the registration of any company providing operator services if the company fails to meet minimum service levels or to provide disclosure to consumers of protection available under chapter 80.36 RCW and pertinent rules.

Except as required by federal law, no provider of pay phone access line service may provide service to any OSP whose registration is suspended.

WSR 07-11-051**WITHDRAWAL OF PROPOSED RULES
SPOKANE COUNTY AIR
POLLUTION CONTROL AUTHORITY**

[Filed May 10, 2007, 2:27 p.m.]

Please withdraw WSR 07-09-075, which was filed on April 17, 2007, and pertaining to revisions to Sections 10.06 and 10.09 of SCAPCA Regulation I. Because of substantial changes, a proposed regulation will be refiled at a later date.

Matt Holmquist

WSR 07-11-054**PROPOSED RULES
SPOKANE COUNTY AIR
POLLUTION CONTROL AUTHORITY**

[Filed May 10, 2007, 2:49 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: SCAPCA Regulation I, Article X, Section 10.06 - Registration and Operating Permit Fees for Air Contaminant Sources and SCAPCA Regulation I, Article X, Section 10.09 - Asbestos Fees.

Hearing Location(s): Spokane Regional Health Building, 1101 West College, Rooms 320-321, Spokane, WA 99201, on July 12, 2007, at 9:00 a.m.

Date of Intended Adoption: July 12, 2007.

Submit Written Comments to: Brenda Smits, 1101 West College, Suite 403, Spokane, WA 99201, e-mail bmsmits@scapca.org, fax (509) 477-6828, by 4:30 p.m. on June 26, 2007.

Assistance for Persons with Disabilities: Contact Barbara Nelson by 4:30 p.m. on June 26, 2007, (509) 477-4727.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Section 10.09 - Asbestos Fees will be moved to a fee schedule. Currently, rates for asbestos fees are set through the formal rule-making process of the Administrative Procedure Act. By board direction, the program is subject to fee-based cost recovery. Fees will be based on actual and/or projected direct and indirect costs associated with the program. Fees will be established to recover total program costs. The revised regulation outlines the fee structure. Fee rates will be established in a fee schedule. The fee rates will be periodically reviewed to ensure that full cost recovery is being achieved. If full cost recovery is not achieved, adjustments to the fees either upward or downward may be made by the board. Adjustments to the fees would be preceded by public notice, a public comment period and a public hearing. The anticipated effect of the rule change is to maintain improved correlation between fee-based revenue and actual program costs.

Section 10.06 - Operating Permit Fees will be revised to reflect the agency's name change and to add reference to periodic fee reviews.

Reasons Supporting Proposal: Section 10.09, reorganizes fees into a fee schedule to streamline fee amendments, if necessary.

Section 10.06, clarifies intent for periodic fee reviews.

Also, refer above.

Statutory Authority for Adoption: RCW 70.94.141(1).

Statute Being Implemented: Chapter 70.94 RCW.

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

Name of Proponent: Spokane County Air Pollution Control Authority (SCAPCA), governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Matt Holmquist, SCAPCA, 1101 West College, Suite 403, Spokane, WA 99201, (509) 477-4727.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is a local air pollution control authority rule and as such, chapter 19.85 RCW does not apply.

A cost-benefit analysis is not required under RCW 34.05.328. This is a local agency rule and pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule.

May 10, 2007

Matt Holmquist

Compliance Administrator

AMENDATORY SECTION

~~((SCAPCA))~~ SRCAA REGULATION I, ARTICLE X, SECTION 10.06 REGISTRATION AND OPERATING PERMIT FEES FOR AIR CONTAMINANT SOURCES

A. Each source required by Article IV, Section 4.01 to be registered, each air operating permit source, and each source required by Article V, Section 5.02 to obtain an approved Notice of Construction and Application for Approval is subject to an annual fee for each calendar year, or portion of each calendar year, during which it operates. The owner or operator shall pay the fee, pursuant to the requirements in Section 10.02. Fees received pursuant to the registration program or the operating permit program shall not exceed the actual costs of program administration.

B. The annual fee for each source required by Article IV, Section 4.01 to be registered and that is not subject to Section 10.06.C. of this Regulation shall be determined by adding all of the applicable fees in the current fee schedule.

1. The Board shall periodically (~~annually~~) review the fee schedule for registered sources and determine if the total projected fee revenue to be collected pursuant to this Section is sufficient to fully recover program costs. Any proposed fee revisions shall include opportunity for public review and comment. Accordingly, the ~~((Authority))~~ Agency shall account for program costs, including employee costs and overhead. If the Board determines that the total projected fee revenue is either significantly excessive or deficient for this purpose, then the Board shall amend the fee schedule to more accurately recover program costs.

C. The annual fee for each air operating permit source shall be determined as follows:

1. The Board shall periodically review the fees for air operating permit sources and determine if the total projected

fee revenue to be collected pursuant to this Section is sufficient to fully recover program costs. Any proposed fee revisions shall include opportunity for public review and comment. Accordingly, the Agency shall account for program costs, including employee costs and overhead. If the Board determines that the total projected fee revenue is either significantly excessive or deficient for this purpose, then the Board shall amend the fees to more accurately recover program costs.

((+) 2. For sources that are subject to the air operating permit (AOP) program during any portion of the calendar year:

- a. Annual base fee of \$3,000;
- b. Emission fee of \$31.11 per ton of actual emissions from the previous calendar year;
- c. ((SCAPCA)) SRCAA time fee, as determined by the following formula:

$$TF_I = \frac{(H_I + H_G) \times RPC}{H_T}$$

$$PDRF_I \text{ } ^{y=2006 \Rightarrow 2015} = \frac{\text{Remaining Program Deficit}_y}{(2016 - y)} \times \frac{E_{I(y-1)}}{E_{T(y-1)}}$$

Where,

PDRF_I is the program deficit recovery fee assessed during year "y" (from 2006-2015) to each AOP source, I, that operated during any portion of the calendar year "y";

Remaining Program Deficit_y is the total cumulative funding deficit for SCAPCA's AOP program at the end of year "y";

"y" is the year, beginning in year 2006 and ending in year 2015;

E_I is the total (in tons) of actual emissions from AOP source, I, during the calendar year prior to year "y" (y-1); and

E_T is the sum (in tons) of the actual emissions from all AOP sources during the calendar year prior to year "y" (y-1).

Note: The program deficit recovery fee will expire in 2016 when the AOP program deficit will be zero.

- e. A share of the assessment by Ecology pursuant to RCW 70.94.162(3), as determined by the following formula:

$$I = \frac{F_I \times A_E}{F_T}$$

Where,

I is the individual share of the assessment;

F_I is the total individual fee assessed pursuant to Section 10.06.C.((+))2.a., b., c., and d. of this Regulation;

A_E is the total Ecology assessment pursuant to RCW 70.94.162(3); and

F_T is the sum of all the individual fees assessed pursuant to Sections 10.06.C.((+))2.a., b., c., and d. of this Regulation.

((2) 3. For affected units under Section 404 of the Federal Clean Air Act (42 USC 7401 et seq):

Where,

TF_I is the ((SCAPCA)) SRCAA time fee for AOP source, I;

H_I is the total ((SCAPCA)) SRCAA staff hours spent on AOP source, I;

H_G is the total general hours ((SCAPCA)) SRCAA staff spent on the AOP program divided by the total number of sources subject to the AOP program during any portion of the calendar year;

RPC is the remaining ((SCAPCA)) SRCAA AOP program cost, calculated by subtracting the sum of the Section 10.06.((B-4)) C.2.a and b. fees from the total ((SCAPCA)) SRCAA AOP program costs; and

H_T is the total number of hours ((SCAPCA)) SRCAA staff spent on the AOP program, including total time spent on the AOP sources and general hours spent on the AOP program.

Note: H_I, H_G, H_T, and RPC are for the most recent ((SCAPCA)) SRCAA fiscal year.

Note: H_I, H_G, and H_T are obtained from ((SCAPCA)) SRCAA time accounting records.

- d. Program deficit recovery fee, as determined by the following formula:

- a. A fee of \$50 per hour of time expended in carrying out the fee eligible activities specified in RCW 70.94.; and

- b. A share of the assessment by Ecology pursuant to RCW 70.94.162(3), as determined by the following formula:

$$I = \frac{F_I \times A_E}{F_T}$$

Where,

I is the individual share of the assessment;

F_I is the total individual fee assessed pursuant to Section 10.06.C.((2))3.a. of this Regulation;

A_E is the total Ecology assessment pursuant to RCW 70.94.162(3); and

F_T is the sum of all the individual fees assessed pursuant to Sections 10.06.C.((2))3.a. of this Regulation.

AMENDATORY SECTION

((SCAPCA)) SRCAA REGULATION I, ARTICLE X, SECTION 10.09 ASBESTOS NOTIFICATION PERIOD AND FEES

A. Written notification, as required in Article IX, Section 9.04, shall be accompanied by the appropriate nonrefundable fee, as follows: ((according to Section 10.09.A)).

((A. Notification Period and Fees))

Project	Size or Type	Notification Period	Fee
Owner-Occupied, Single-Family Residence Asbestos Project (excluding demolition)	Notification Not Required	None	None
Owner-Occupied, Single-Family Residence Demolition	All	Prior Notice	((\\$30)) <u>Per the Fee Schedule</u>
All Other Demolitions with no asbestos project	All	10 Days	((\\$250)) <u>Per the Fee Schedule</u>
Asbestos Project includes demolition fee*	10-259 linear ft 48-159 square ft	3 Days	((\\$250)) <u>Per the Fee Schedule</u>
Asbestos Project includes demolition fee	260-999 linear ft 160-4,999 square ft	10 Days	((\\$500)) <u>Per the Fee Schedule</u>
Asbestos Project includes demolition fee	≥ 1,000 linear ft ≥ 5,000 square ft	10 Days	((\\$1250)) <u>Per the Fee Schedule</u>
Emergency	9.04.C	Prior Notice**	Additional fee equal to project fee
Amendment***	9.04.B	Prior Notice	((\\$0)) <u>Per the Fee Schedule</u>
Alternate Means of Compliance (demolitions or friable asbestos-containing material)	9.07.A or C	10 Days	Additional fee equal to project fee
Alternate Means of Compliance (non-friable asbestos-containing material)	9.07.B	10 Days	Additional fee equal to project fee
Exception for Hazardous Conditions	9.05.B	Concurrent with Project	Regular Project fee
((Annual	9.04.A.8	Prior Notice	(\$1,000))

* Demolitions with asbestos projects involving less than 10 linear feet or less than 48 square feet may submit an asbestos project notification under this project category and will be eligible for the 3-day notification period.

** Except in the case where advance notice is not required pursuant to Section 9.04.C.2.

*** For an amendment where the project type or job size category is associated with a higher fee, a fee equal to the difference between the fee associated with the most recently submitted notification and the fee associated with the increased project type or job size category shall be submitted.

1. The Board shall periodically review the fee schedule for notifications submitted pursuant to Section 9.04 and determine if the total projected fee revenue to be collected pursuant to this Section is sufficient to fully recover program costs. Any proposed fee revisions shall include opportunity for public review and comment. Accordingly, the Agency shall account for program costs, including employee costs and overhead. If the Board determines that the total projected fee revenue is either significantly excessive or deficient for this purpose, then the Board shall amend the fee schedule to more accurately recover program costs.

B. The Control Officer may waive the asbestos project fee and notification period, by written authorization, for disposal of unused and intact or abandoned (without the knowledge or consent of the property owner) asbestos-containing materials. All other asbestos project and demolition requirements remain in effect.

C. Where a compliance investigation is conducted pursuant to Section 9.04 of this Regulation, the compliance inves-

tigation fee shall be equal to \$50 per hour of compliance investigation.

D. The asbestos project fee in Section 10.09.a is waived for any demolition performed in accordance with RCW 52.12.150(6), where the good faith inspection is an asbestos survey, as defined in Section 9.02.G, performed by an AHERA Building Inspector, as defined in Section 9.02.A.

E. Fees shall be paid without regard to whether the request(s) associated with this Section are approved or denied.

WSR 07-11-065

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed May 14, 2007, 1:25 p.m.]

Supplemental Notice to WSR 06-22-083.

Preproposal statement of inquiry was filed as WSR 05-16-025.

Title of Rule and Other Identifying Information: WAC 458-20-17902 Brokered natural gas—Use tax. RCW 82.12.022 and 82.14.230 impose state and local use taxes on the use of natural gas or manufactured gas by a consumer, if the person who sold the gas to the consumer has not paid public utility tax with respect to the gas. This use tax is imposed only for natural gas delivered to a consumer through a pipeline, and the tax rate that applies is the same rate as the state and city public utility taxes. Rule 17902 explains how this use tax applies and the reporting requirements.

Hearing Location(s): Capital Plaza Building, 4th Floor, Large L&P Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on July 9, 2007, at 1:30 p.m.

Date of Intended Adoption: July 18, 2007.

Submit Written Comments to: Pat Moses, P.O. Box 47453, Olympia, WA 98504-7453, e-mail PatM@dor.wa.gov, fax (360) 586-5543, by July 9, 2007.

Assistance for Persons with Disabilities: Contact Sandy Davis at (360) 725-7499, no later than ten days before the hearing date. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY users).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Consumers currently report and pay this use tax on a separate "natural gas use tax return." The department is considering a revision to Rule 17902, so that the "natural gas use tax return" can be incorporated into the excise tax return and reported with the other taxes included on that return.

This is the department's second CR-102 public hearing for Rule 17902 (the first hearing was held on December 5, 2006). The rule draft has been changed as a result of comments provided by the public [hearing] at the first public and in correspondence to the department. This public hearing is being used to provide stakeholders with an opportunity to comment on these changes.

Reasons Supporting Proposal: The proposed change allows increased efficiency in handling of the tax.

Statutory Authority for Adoption: RCW 82.12.022(9), 82.32.300, and 82.01.060(2).

Statute Being Implemented: RCW 82.12.022 and 82.14.230.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Pat Moses, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6116; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required because the rule and the amendments do not impose any requirements or burdens upon small business that are not already required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.

May 14, 2007

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 90-17-068, filed 8/16/90, effective 9/16/90)

WAC 458-20-17902 Brokered natural gas—Use tax.

(1) **Introduction.** RCW 82.12.022 and 82.14.230 impose state and local use taxes on the use of natural gas or manufactured gas by a consumer, if the person who sold the gas to the consumer has not paid public utility tax on that sale. This use tax is imposed only for natural gas delivered to a consumer through a pipeline. The use tax is applied at the same rate as the state and city public utility taxes. This section explains how this use tax applies and how it is reported to the department.

(2) Definitions. For the purpose of this section:

(a) "Brokered natural gas" (~~(as used in this section is)~~) means natural gas purchased by a consumer from a source out of the state and delivered to the consumer in this state.

(b) "Value of gas consumed or used" (~~(as used in this section shall be)~~) means the purchasing price of the gas to the consumer and generally (~~(shall)~~) must include all or part of the transportation charges as explained later.

~~((2))~~ (3) **Applicability of use tax.** The distribution and sale of natural gas in this state is generally taxed under the state and city public utility taxes. With changing conditions and federal regulations, it is now possible to have natural gas brokered from out of the state and sold directly to the consumer. If this occurs and the public utility taxes have not been paid, RCW 82.12.022 (state) and RCW 82.14.230 (city) impose a use tax on the brokered natural gas at the same rate as the state and city public utility taxes.

~~((3))~~ (4) **State tax.** When the use tax applies, the rate of tax imposed is equal to the public utility tax on gas distribution business under RCW 82.16.020 (1)(c). The rate of tax applies to the value of the gas consumed or used and is imposed upon the consumer.

~~((4))~~ (5) **City tax.** Cities are given the authority to impose a use tax on brokered natural gas. When imposed and applicable, the rate of tax is equal to the tax on natural gas business under RCW 35.21.870 on the value of gas consumed or used and is imposed on the consumer.

~~((5))~~ (6) **Transportation charges.**

(a) If all or part of the transportation charges for the delivery of the brokered natural gas are separately subject to the state's and cities' public utility taxes (RCW 82.16.020 (1)(c) and RCW 35.21.870), those transportation charges are excluded from measure of the use tax. The transportation charges not subject to the public utility taxes are included in the value of the gas consumed or used.

(b) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. In actual practice, the tax status of a situation must be determined after a review of all of the facts and circumstances.

(i) Public university purchases natural gas from an out of the state source through a broker. The natural gas is delivered by interstate pipeline to the local gas distribution system who delivers it to the university. The university pays the supplier for the gas, the pipeline for the interstate transportation charge, and the gas distribution system for its local transportation charge. The transportation charge by the pipeline is not subject to public utility tax because it is an interstate transportation charge. The transportation charge paid to the local gas distribution system is subject to the public utility taxes as an intrastate delivery. The value of the gas consumed or used is the purchase price paid to the supplier plus the transportation charge paid to pipeline company.

(ii) The above factual situation applies except that the natural gas is delivered directly by the interstate pipeline to the university. The university pays the supplier for the gas and the pipeline for the transportation charge. As the transportation charge is not subject to the public utility tax, it will be included in the measure of the tax. The value of the gas consumed or used is the purchase price plus the transportation charge paid to the pipeline.

~~((6))~~ **(7) Credits against the taxes.**

(a) A credit is allowed against the use taxes described in this section for any use tax paid by the consumer to another state which is similar to this use tax and is applicable to the gas subject to this tax. Any other state's use tax allowed as a credit ~~((shall))~~ will be prorated to the state's and cities' portion of the tax based on the relative rates of the two taxes.

(b) A credit is also allowed against the use tax imposed by the state for any gross receipts tax similar that imposed pursuant to RCW 82.16.020 (1)(c) by another state on the seller of the gas with respect to the gas consumed or used.

(c) A credit is allowed against the use tax imposed by the cities for any gross receipts tax similar to that imposed pursuant to RCW 35.21.870 by another state or political subdivision of the state on the seller of the gas with respect to the gas consumed or used.

~~((7))~~ **(8) Reporting requirements.** The person who delivers the gas to the consumer ~~((shall))~~ must make a report to the miscellaneous tax division of the department by the fifteenth day of the month following a calendar quarter. The report ~~((shall))~~ must contain the following information:

(a) The name and address of the consumer to whom gas was delivered,

(b) The volume of gas delivered to each consumer during the calendar quarter, and,

(c) Service address of consumer if different from mailing address.

~~((8))~~ **(9) Collection and administration.** ~~((A separate quarterly return for))~~ Use tax on brokered natural gas ((shall)) must be filed with the department by the consumer on ((or before the last day of the month following a calendar quarter)) forms and records prescribed by the department. Such forms and records must be filed according to the reporting frequency assigned by the department and must be accompanied by the remittance of the tax. ((The collection and administration for the cities of the use tax described in this section shall be done by the department under RCW 82.14.050.)) The department's authority to collect this tax is found in RCW 82.12.020 and 82.14.050.

The use tax on brokered natural gas has historically been reported and paid on a specific "natural gas use tax return," filed on a quarterly basis. However, starting no sooner than January of 2008, the department may eliminate the natural gas use tax return, and provide taxpayers with two alternatives to report and remit their natural gas use tax liability. Unlike the natural gas use tax return, the ease of using electronic filing (or e-file) is possible with either of the new reporting alternatives.

(a) Alternative 1 - Reporting and remitting liability using the regular excise tax return. Unless selecting Alternative 2 (see (b) of this subsection), a taxpayer must report and pay its brokered natural gas use tax on its regular excise tax return, which is filed at whatever frequency has been assigned by the department to that particular tax reporting account.

(b) Alternative 2 - Reporting and remitting liability using a separate tax reporting account. A taxpayer may elect to report its brokered natural gas use tax using a tax reporting account number established solely for reporting and paying its natural gas use tax. The taxpayer may request either a monthly or quarterly reporting frequency for this separate tax reporting account. Separate tax reporting accounts are similarly used to report some branch locations or specific construction contracts, as described in WAC 458-20-101 "Tax registration and tax reporting." (See WAC 458-20-101 (10)(c).)

WSR 07-11-072

**WITHDRAWAL OF PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

(By the Code Reviser's Office)

[Filed May 15, 2007, 8:24 a.m.]

WAC 392-107-200, 392-107-201, 392-107-205, 392-107-210, 392-107-220 and 392-107-225, proposed by the superintendent of public instruction in WSR 06-22-062 appearing in issue 06-22 of the State Register, which was distributed on November 15, 2006, 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 07-11-073

**WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(By the Code Reviser's Office)

[Filed May 15, 2007, 8:24 a.m.]

WAC 388-112-0250, 388-112-02605, 388-112-02610, 388-112-02615, 388-112-02620, 388-112-02625 and 388-112-02630, proposed by the department of social and health ser-

vices in WSR 06-22-079 appearing in issue 06-22 of the State Register, which was distributed on November 15, 2006, 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 07-11-074

WITHDRAWAL OF PROPOSED RULES

**DEPARTMENT OF
LABOR AND INDUSTRIES**

(By the Code Reviser's Office)

[Filed May 15, 2007, 8:24 a.m.]

WAC 296-62-14533, proposed by the department of labor and industries in WSR 06-22-086 appearing in issue 06-22 of the State Register, which was distributed on November 15, 2006, 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 07-11-075

WITHDRAWAL OF PROPOSED RULES

**DEPARTMENT OF
LABOR AND INDUSTRIES**

(By the Code Reviser's Office)

[Filed May 15, 2007, 8:25 a.m.]

WAC 296-17-90492, proposed by the department of labor and industries in WSR 06-22-108 appearing in issue 06-22 of the State Register, which was distributed on November 15, 2006, 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 07-11-076

PROPOSED RULES

**SPOKANE COUNTY AIR
POLLUTION CONTROL AUTHORITY**

[Filed May 15, 2007, 10:55 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Regulation I, Article X, Section 10.06.B. REGISTRATION AND OPERATING PERMIT FEES FOR AIR CONTAMINANT SOURCES.

Spokane County Air Pollution Control Authority (SCAPCA) is revising Regulation I, Article X, Section 10.06.B. - Registration Fees in order to clarify the subsection.

Hearing Location(s): Spokane County Public Works Building, 1206 West Broadway, Hearing Room Lower Level, Spokane, WA 99201, on July 12, 2007, at 9:00 a.m.

Date of Intended Adoption: July 12, 2007.

Submit Written Comments to: Charles E. Studer, Spokane County Air Pollution Control Authority, 1101 West College, Suite #403, Spokane, WA 99201, e-mail cestuder@scapca.org, fax (509) 466-6828 by 4:30 p.m., June 29, 2007.

Assistance for Persons with Disabilities: Contact Charles Studer by 4:30 p.m. July 5, 2007, (509) 477-4727 ext. 107.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarify the subsection by adding a table to delineate the different applicable fees.

Reasons Supporting Proposal: Previous subsection did not delineate the applicable registration fee schedule.

Statutory Authority for Adoption: RCW 70.94.141 and 70.94.380.

Statute Being Implemented: Chapter 70.94 RCW and 42 U.S.C. 7401 et seq.

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

Name of Proponent: Spokane County Air Pollution Control Authority, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Charles E. Studer, Spokane County Air Pollution Control Authority, (509) 477-4727 ext. 107.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is a local air pollution control authority rule. Chapter 19.85 RCW does not apply to local air pollution control authority rule development/amendments.

A cost-benefit analysis is not required under RCW 34.05.328. This is a local air pollution control authority rule. RCW 34.05.328 does not apply to local air pollution control authority rule development/amendments.

May 16 [15], 2007

Charles E. Studer
Environmental Engineer

AMENDATORY SECTION (Amending Order Res. 06-19, filed 12/7/2006)

SRCAA REGULATION I, ARTICLE X, SECTION 10.06
REGISTRATION AND OPERATING PERMIT FEES FOR
AIR CONTAMINANT SOURCES

Registration Fees

B. The annual fee for each source required by Article IV, Section 4.01 to be registered and that is not subject to Section 10.06.C. of this Regulation shall be determined by adding all of the applicable fees, below: (~~in the current fee schedule.~~)

Registration Fee Categories	Fee	Fee Applicability
Facility Fee ^A	Per the Fee Schedule	Per Source
Emissions Fee ^B	Per the Fee Schedule	Per Ton
Emission Point Fee ^C	Per the Fee Schedule	Per Stack/Point
Burn Out Oven/Incinerator Fee ^D	Per the Fee Schedule	Per Source
Synthetic Minor Fee ^E	Per the Fee Schedule	Per Source
WEDS Fee ^F	Per the Fee Schedule	Per Hour

a Each source is subject to the fee listed.

b The additional fee listed applies to each ton (rounded to the nearest one-tenth of a ton) of each criteria and toxic air pollutant emitted.

c The additional fee applies to each stack and other emission points. For gasoline stations, each gasoline tank vent is an emission point.

d The additional fee listed applies to each source which operated at least one incinerator or burn out oven during the registration period.

e The additional fee listed applies to each Synthetic Minor source as defined in SCAPCA Regulation I, Article I, Section 1.04.

f The additional fee listed applies to each source required by the Authority to submit an annual emissions inventory for entry into the Washington Emission Data System (WEDS). SCAPCA staff time spent processing and reviewing WEDS will be tracked in 15 minute increments and charged at the hourly rates provided above.

((+)) 2. The Board shall periodically review the fee schedule for registered sources and determine if the total projected fee revenue to be collected pursuant to this Section is sufficient to fully recover program costs. Any proposed fee revisions shall include opportunity for public review and comment. Accordingly, the Agency shall account for program costs, including employee costs and overhead. If the Board determines that the total projected fee revenue is either significantly excessive or deficient for this purpose, then the Board shall amend the fee schedule to more accurately recover program costs.

**WSR 07-11-077
PROPOSED RULES
GAMBLING COMMISSION**

[Filed May 15, 2007, 11:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-05-019.

Title of Rule and Other Identifying Information: WAC 230-40-817 Destruction and disposal of gambling chips.

Hearing Location(s): Hilton, 301 West 6th Street, Vancouver, WA 98660, (360) 993-4500, on August 10, 2007, at 9:30 a.m.

Date of Intended Adoption: August 10, 2007.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by August 1, 2007.

Assistance for Persons with Disabilities: Contact Gail Grate, Executive Assistant, by August 1, 2007, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We require card room licensees to submit internal controls outlining how they will dispose of logo chips. This new rule expands and codifies requirements to maintain control over logo chips when a card room goes out of business or changes its logo. The new rule will require the following:

1. Chip destruction log (sample attached);
2. Method of destruction;
3. Designate the departments responsible for overseeing chip destruction. At least one licensed employee must be from the accounting department; and

Procedures to be followed if the licensee's chip inventory becomes obsolete (i.e., card room changes its name, license is revoked, expired, or voluntarily surrendered).

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule change clarifies language of rules without changing the effect.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

May 14, 2007
Susan Arland
Rules Coordinator

NEW SECTION

WAC 230-40-817 Destruction and disposal of gambling chips. Licensees must submit internal controls to the gambling commission outlining the procedures for disposing of gambling logo chips.

Damaged and worn chips.

(1) A card room's internal controls must set out the method for destroying logo chips that are damaged or worn. The following, at a minimum, must be included in the internal controls:

- (a) Method of destruction. Chips must be destroyed or mutilated in such a way that they are unusable for play; and
- (b) The two departments, one of which must be the accounting department, that will be responsible for oversee-

ing chip destruction. Only licensed employees are allowed to perform chip destruction.

(2) All gambling chips destroyed by licensees shall be recorded on a chip destruction log in the format we prescribe.

Changing a logo or closing a card room.

(3) In the event the licensee's chip inventory becomes obsolete, the card room operator must:

(a) Sell or otherwise transfer gambling equipment to a licensed manufacturer or distributor; or

(b) Destroy the chips pursuant to the internal controls set forth in subsection (1) of this section.

WSR 07-11-078
PROPOSED RULES
GAMBLING COMMISSION
[Filed May 15, 2007, 11:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-05-020.

Title of Rule and Other Identifying Information: WAC 230-20-508 Authorized amusement games—Types, standards and classifications and 230-20-650 Amusement games—Coin toss games.

Hearing Location(s): Hilton, 301 West 6th Street, Vancouver, WA 98660, (360) 993-4500, on August 10, 2007, at 9:30 a.m.

Date of Intended Adoption: August 10, 2007.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susana@wsgr.wa.gov, fax (360) 486-3625, by August 1, 2007.

Assistance for Persons with Disabilities: Contact Gail Grate, Executive Assistant, by August 1, 2007, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed change clarifies the size of the target or target areas used in coin/token toss amusement games.

Coin/token toss amusement games are games where players toss one or more coins or tokens onto a surface or into a target area. These types of games are primarily operated at carnivals and agricultural fairs. An example of a coin toss game is where a coin is tossed onto a colored area on a flat surface.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business eco-

omic impact statement has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule change clarifies language of rules without changing the effect.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

May 14, 2007

Susan Arland

Rules Coordinator

AMENDATORY SECTION (Amending WSR 94-01-036, filed 12/6/93, effective 1/6/94)

WAC 230-20-508 Authorized amusement games—Types, standards and classifications. The commission hereby authorizes the following amusement games, whether coin operated or not, to be operated by persons possessing a commercial amusement game license, or bona fide charitable or nonprofit organizations possessing a license issued by the gambling commission or when conducted as authorized by RCW 9.46.0321 at an authorized location.

(1) In all amusement games, a merchandise prize must be awarded to the player, if the player is successful at achieving the objective of the game, with one cost of play.

(2) All amusement games operated within the state of Washington must meet the standards of at least one of the following classifications:

(a) Group I - Ball toss/kick games: The player throws or kicks a ball or balls in order to achieve a specified goal. Upon achieving the goal of the game, the player is awarded a prize.

(i) All balls for each game must be uniform in size and weight.

(ii) All targets for each game must be of the same weight and size or the operator must color code the target and advise the player of the difference in targets if the difference is not visible to the player.

(iii) No target may have a loose or floating weight.

(iv) The weight of any target will not exceed seven and one-half pounds.

(v) When the goal is to estimate the speed of the ball thrown or kicked, a minimum of three balls will be used to estimate the speed by the player and one ball for the actual throw or kick.

(vi) When ping pong or similar light weight balls are utilized in games requiring the ball to be tossed into a dish, saucer, cup or similar container, water must be placed in the bottom of each such container.

(b) Group II - Dart games: The player throws one or more darts into a target or target area. Upon successfully achieving a predetermined score, pattern, penetrating and/or breaking a target, or just sticking in the target, the player is awarded a prize.

(i) All darts must be uniform in size and in original condition with the point sharp or functional suction-cup darts and all feathers or tail sections intact.

(ii) The targets and target area for all dart games must be of a material capable of being penetrated and retaining a metal tip dart; or holding a suction-cup dart.

(iii) The target area will be in the rear of the stand and will be at least three feet but not more than fifteen feet from a foul line.

(iv) In "add em up games," when the player must achieve a predetermined score, all darts stuck on the lines will receive another throw. The player has the right to add up the score of the darts thrown.

(c) Group III - Hoop or ring toss games: The player must toss one or more hoops or rings over one or more targets which may consist of bottles, pegs, blocks, prizes, or any item capable of having a ring or hoop tossed over it.

(i) The operator must specifically advise the player as to the degree that the hoop(s) or ring(s) must go over the target.

(ii) All hoops or rings for each game must be uniform in size and shape and must be capable of going over the target.

(iii) All targets used at an individual stand must be the same size or the operator must disclose to the player by posting signs or using color codes to denote the different sizes.

(d) Group IV - Coin/token toss games: The player or players toss one or more coins or tokens onto a surface or into a target or target area. The game must have a clear and unobstructed thirty-six inch vertical airspace above the target, target area, or surface. The target, target area, or surface must be level. Any game which has a target or target area of four square inches or less must award a prize if any part of the coin or token is within the target or target area. "Four square inches" means a two-inch by two-inch square. The target area, at a minimum, must include a two-inch by two-inch square area. If the target does not include a two-inch by two-inch square area, such as a rainbow or star, a prize must be awarded if any part of the coin or token lands on any portion of the target area.

(e) Group V - Eye/hand coordination games: The player or players perform a task or tasks which requires the player to use the coordination between their hand(s) and eye(s) to successfully complete the task or tasks. The task or tasks may include one or a combination of the following:

(i) Striking a moving or fixed object or target to include a sequence of moving or fixed objects or targets;

(ii) Causing object(s) to be launched at target(s) from a device. The objects are aimed so they may land in, on, or through a target(s) to include catching or having the object(s) caught in the target(s);

(iii) Dropping object(s) onto target(s) or target area(s) or surface(s), to include covering the target(s), target area(s), or surface(s) with the object(s);

(iv) Capturing, lassoing, hooking, or getting a hold of an object(s) and causing them to move or change position;

(v) Guiding object(s) or images through a pattern, maze, or task;

(vi) Climbing on, over, through, or around object(s); or

(vii) Similar tasks.

(A) If a player is required to cover a spot or specific target area, then the target or target area must be a circular spot.

(I) The player must receive at least five circular discs to drop on the target or target area.

(II) The diameter of the circular discs used to cover the target or target area must be at least sixty-four percent of the diameter of the target spot or area.

(III) The target spot or area must be permanently affixed to a solid surface.

(B) A regulation billiard table, balls, and cue must be used for any game requiring a player to perform any task or tasks normally associated with playing billiards or pool.

(C) In games where objects are launched, tossed, or catapulted at target(s), the launching device shall respond in an identical manner on repetitive uses when an equal amount of force is applied or selected by the player.

(f) Group VI - Strength test games: The player(s) tests their own strength in performing a task or tasks for a predetermined number of times or length of time. This may include hand, arm, or whole body strength and may also require the player to use a tool or instrument to strike an object or target, which may cause the object to be propelled or travel a specific distance. The task(s) may require the object(s) to strike another object(s) to achieve the objective.

(g) Group VII - Crane games: The player, using one or more of a variety of control methods, maneuvers a crane or claw device into a position to attempt to retrieve a prize. All games must meet the following conditions:

(i) At least twenty seconds playing time per operation.

(ii) Crane or claw must be capable of reaching, picking up, and dispensing all prizes contained within the machine.

(iii) The controls for the machine must be clearly labelled as to their function.

(iv) Prizes must be loose and shall not be packed, arranged, lodged, or intertwined in the machine in any way which would prevent the prize from being picked up by the crane or claw and dispensed.

(h) Group VIII - Penny fall games: Penny fall games are electronic or electro-mechanical games in which:

(i) The player inserts a coin or token into a chute;

(ii) The player controls the direction the coin or token falls by aiming the chute;

(iii) The coin or token will land on a flat surface or surfaces which have a sweeper(s) and/or a pusher arm moving across the surface or surfaces;

(iv) The surfaces shall be level and contain similar coins or tokens;

(v) A carefully aimed coin or token will cause coins or tokens on the flat surface(s) to be pushed or swept into holes or chutes dispensing the tokens or awarding a set number of tickets to the player;

(vi) The game may contain additional factors which if properly negotiated or struck by a coin or token, will award additional tickets to the player;

(vii) The additional factor may be in the form of targets that when lit, grant the player bonus tickets when the coin or token passes over the target;

(viii) Any such additional targets or bonus opportunities must be activated prior to the player inserting the coin or token to start play and must remain activated for a period of time sufficient to allow the player to attempt to strike or negotiate the targets or bonus opportunities;

(ix) The skill of the player must be the determining factor in the outcome of the game; and

(x) Merchandise prizes may be placed on the coins, tokens, or other surfaces in the game and if the prize is pushed into a hole or chute then it is awarded to the player.

All such prizes must fit into or down the hole or chute in the game which awards prizes to the player.

(i) Group IX - Ball roll down games: The player rolls one or more balls to a target or target area. Upon achieving the objective of the game, the player is awarded a prize.

(i) Ball roll down games may be either one player attempting to score a predetermined number of points by landing in a target or target area, or striking and/or knocking down a target or targets.

(ii) Ball roll down games may be more than one player attempting to score a predetermined number of points, striking and/or knocking down a target(s), or landing in a target area. The first player to accomplish the goal is awarded a prize.

(j) Group X - Shooting games: A game in which the player or players use a device to fire a projectile or projectiles to hit a target or targets. The projectiles may include pellets, BB's, corks, water, electronic beams, light beams, balls, or suction-cup darts. The targets may be stationary or mobile. The player or players may be required to:

(i) Completely shoot out or obliterate a target or portion thereof;

(ii) Hit a target or specific portion thereof; or

(iii) Hold an electronic beam, light beam, or water stream on a target or portion thereof to achieve a specific result.

(A) All safety requirements of the local city or county ordinances must be observed by the operator and player(s).

(B) A short range shooting gallery must give a player at least four shots to shoot out a target which has a diameter of one-quarter inch or less, or at least one shot per target which must be struck. Targets must be at least one-half inch square and may include a bullseye section which the player must shoot out without touching the outside of the target.

(C) Shoot-out-the-star games must give the player at least one hundred projectiles in an automatic type device to shoot out a star which is no more than one and one-quarter inch from point to point.

(D) Games may award a prize based upon the number of players participating and use a combined score to determine the winner.

(E) If suction-cup darts are used in the game, a player must receive another turn if the dart does not stick to the target area.

(F) If targets must be knocked over or off of a shelf, then the bases of the targets must be uniform front and rear.

(G) If a player is required to destroy or obliterate all or part of a target, then the player must have the right to visually inspect the target at the conclusion of the game.

(k) Group XI - Cake walks and fish pond games: Cake walks and fish ponds, as commonly known, are amusement games. Cake walks involve a number of players walking on a numbered or color-coded circle while music is played. When the music stops, the player's prize is determined by the number or color of the portion of the circle they are standing on. Fish ponds are games where players receive a prize every time they compete, by either hooking or capturing a fish or similar object floating in a pool of water with a number or symbol on the bottom of the fish or object which corresponds to a prize or the operator may place a prize directly onto the

"line" or catching device of the player from behind a curtain or similar obstruction.

(3) All classifications of amusement games must be operated as either an attended amusement game as defined by WAC 230-02-511 or as a coin or token activated amusement game as defined by WAC 230-02-514.

(4) No amusement game shall award additional plays as a prize.

(5) Operators may introduce new games that meet the standards of the applicable classification without prior approval of the commission: Provided, That an operator must provide to the commission at least sixty days prior to such introduction a description of the game, the rules of play, and a justification for the classification selected: Provided, further, That upon notification by the director that the proposed game does not meet the selected classification, or otherwise violates a provision of law or commission rule, the game may not be introduced, or if already introduced, must be removed from play until its operation is brought into compliance with such law or rules. New games not falling within the classifications of this rule may be approved by the director for a twelve-month test period pending submission of a petition to amend the rule.

AMENDATORY SECTION (Amending Order 114, filed 10/15/81)

WAC 230-20-650 Amusement games—Coin toss games. No person licensed to conduct amusement games shall conduct any such game within the state of Washington wherein the ability of a player to win a prize depends upon causing a coin to land within the confines of a space unless the following conditions exist with respect to said game:

(1) There must exist an unobstructed air space, of at least thirty-six inches in height, above any surface upon which the landing of a coin will result in the awarding of a prize.

(2) Plates, spots, targets, etc. will not be inclined so as to give an advantage to the operator.

(3) If the area of an enclosed surface upon which the landing of a coin will result in the awarding of a prize is four square inches, or less, a prize must be awarded to any participant who causes a coin to land so that any part of said coin is within any part of said area. "Four square inches" means a two-inch by two-inch square. The target area, at a minimum, must include a two-inch by two-inch square area. If the target does not include a two-inch by two-inch square area, such as a rainbow or star, a prize must be awarded if any part of the coin or token lands on any portion of the target area.

WSR 07-11-079

PROPOSED RULES

GAMBLING COMMISSION

[Filed May 15, 2007, 12:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-08-008.

Title of Rule and Other Identifying Information: WAC 230-20-102 Bingo prizes—Record of winners.

Hearing Location(s): La Quinta Inn and Suites, 1425 East 27th Street, Tacoma, WA 98421, (253) 383-0146, on July 13, 2007, at 9:30 a.m.

Date of Intended Adoption: July 13, 2007.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by July 1, 2007.

Assistance for Persons with Disabilities: Contact Gail Grate, Executive Assistant, by July 1, 2007, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The petitioner requests that bingo licensees no longer be required to record the address of winners of cash or merchandise bingo prizes of \$20 or less.

The proposed change would also give licensees the option to record bingo winners under \$20 on a prize receipt log, rather than on a separate prize receipt.

The rule requires a bingo prize receipt to be completed for each prize awarded at bingo games with the exception that merchandise prizes with a cost or fair market value of \$15 or less may be receipted on a single log sheet as allowed in subsection (4) of the rule. The petitioner requests that cash and merchandise prizes of \$20 or less be receipted on a prize receipt log.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Ronnie Strong, licensed bingo operator, private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule change clarifies language of rules without changing the effect.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

May 15, 2007

Susan Arland

Rules Coordinator

AMENDATORY SECTION (Amending Order 369, filed 12/1/98, effective 1/1/99)

WAC 230-20-102 Bingo prizes—Record of winners. All payments of prizes for bingo games shall be accounted for and documented in a manner that affords independent verification of the amount paid and the fact of distribution to winners: Provided, That Class A and B bingo licensees, organizations conducting bingo under the provisions of RCW 9.46.0321, and bingo activities conducted at a qualified agricultural fair are exempt from all portions of this rule if the requirements of WAC 230-08-015 are followed. Payment of

all prizes shall be documented using the following procedures:

(1) A prize receipt shall be completed for each prize awarded at bingo games: Provided, That ~~cash and~~ merchandise prizes with a cost or fair market value of (~~fifteen~~) twenty dollars or less may be receipted on a single log sheet as allowed in subsection (4) of this section. The following minimum information shall be recorded for each prize awarded:

- (a) The date;
- (b) The game number;
- (c) The complete name and address of the winner. The

following provision does not apply to linked bingo prizes: Provided, That an address of the winner is not required if prizes less than twenty dollars or greater than \$300 are paid by check or a combination of cash or check and:

(i) Checks are drawn on the licensee's gambling bank account;

(ii) Checks are made payable only to the winner: Provided, That checks for prizes won by players under age eighteen may be made payable to the guardian or immediate family member accompanying the player;

(iii) The game number and prize receipt number are notated on the check;

(iv) Checks used are of a type that provides a duplicate copy. The copies become a part of the daily bingo records and must be maintained as such;

(v) All original checks are returned by the bank to the licensee. Original checks shall be available for inspection upon demand by the commission; and

(vi) Checks drawn on the licensee's gambling account are not cashed or otherwise redeemed by the licensee or on the licensee's premises.

(d) The dollar amount of the prize or the licensee's cost of noncash prizes;

(e) A full description of all noncash prizes;

(f) The check number, if any portion of the prize is paid by check; and

(g) The initials of the bingo worker making the payout and the cashier making the payment.

(2) Prize receipts shall be consecutively issued in an ascending order. Prize receipts bearing a number below the highest number issued during a session shall be voided and retained with the daily records.

(3) The original of each prize receipt shall be given to the winner and a duplicate copy shall be retained by the licensee as a part of its records for a period of not less than three years.

(4) ~~Cash and~~ merchandise prizes with a cost or fair market value of (~~fifteen~~) twenty dollars or less may be receipted on a (~~merchandise~~) prize receipt log. A separate (~~merchandise~~) prize receipt log shall be maintained for each session used, and retained as a part of the bingo daily records. At a minimum, the following information must be recorded on the log:

- (a) The date and session;
- (b) The game number;
- (c) The complete name of the winner printed;
- (d) The cost of the prize or fair market value of the prize if donated;
- (e) A full description of the prize;

- (f) The initials of the person distributing the prize; and
- (g) The criteria for awarding the prizes.
- (5) Prize receipts shall be printed by a commercial printer and meet the following standards:
 - (a) Manufactured of two-part, self-duplicating paper that provides for an original and a duplicate copy;
 - (b) Imprinted with the name of the licensee and a consecutive ascending number that does not repeat in at least 100,000 occurrences: Provided, That Class E and smaller licensees may utilize receipts that are not imprinted with the licensee's name and which the consecutive number does not repeat in at least 1,000 occurrences; and
 - (c) Provide space for the licensee to record the information required by subsection (1) (~~(above)~~) of this section.
- (6) All prize receipts purchased or otherwise obtained must be accounted for by the licensee. Prize receipts purchased or otherwise obtained by the licensee shall be documented on a vendor's invoice. This invoice, or a photocopy thereof, shall be maintained on the premises and available for inspection by commission staff. The following information shall be documented on the purchase invoice:
 - (a) Name of the vendor;
 - (b) Name of the purchasing organization;
 - (c) Date of purchase;
 - (d) Number of receipts purchased; and
 - (e) The beginning and ending receipt number.
- (7) Licensees may establish an accrued prize fund for any game or set of games that have a progressive prize or offer a jackpot prize if special conditions are met during the game. Contributions to the accrued prize fund shall be treated as prizes awarded during the current session if the following conditions are met:
 - (a) Each game or set of games that offers a prize included in the accrued prize fund must be identified by the licensee prior to making contributions for such games;
 - (b) The licensee shall maintain a record, in an approved format, of all such games with at least the following information:
 - (i) The name of the game or set of games;
 - (ii) The sessions at which the game or set of games is played;
 - (iii) The game number(s) at each of the sessions the game or set of games is played;
 - (iv) The amount that will be added to the accrued prize fund each time the game or set of games is played;
 - (v) A description of how the contribution amount was determined;
 - (vi) The maximum accrued prize fund balance that will be reached for all games; and
 - (vii) The date of the most recent changes to this record;
 - (c) Prize receipts will be issued only when the prize is actually awarded;
 - (d) Once an election is made to accrue prizes for a particular game or set of games, the predetermined contribution amount must be added to the accrued prize fund each time the game or set of games is played, until the accrued prize fund reaches the maximum balance;
 - (e) Once the maximum is reached, no contributions will be made until the accrued prize fund balance has been decreased for a prize paid;

- (f) Full details of accrued prizes outstanding at the end of each calendar quarter will be furnished on the licensee's activity report;
- (g) A reconciliation of the prize fund shall be made on each "Daily summary - Cash control" record;
- (h) The amount of prize accrued shall be deposited in the gambling receipts account per WAC 230-12-020;
- (i) The balance of the gambling receipts banking account shall not be reduced at any time below the amount of prizes accrued and currently being offered: Provided, That accrued prizes may be transferred to a special bank account, for this purpose, if the balance is maintained at a level equal to or greater than the amount of prizes accrued and currently being offered;
- (j) At no time shall the total accrued prize balance exceed two times the total amount of prizes available on the games identified in (a) of this subsection; and
- (k) The accrued prize fund shall not be utilized for any purpose other than accumulating bingo prizes and the balance shall not be reduced except under the following circumstances:
 - (i) When prizes are actually awarded;
 - (ii) If management elects to discontinue games for which prizes were accrued. In this event, the operator shall amend all activity reports and tax returns that are affected by the action and which have been filed.
- (8) Contributions made to an approved linked bingo prize shall be deposited into a separate account from the licensee's main gambling receipts account and shall be treated as prizes awarded during the session accrued.
- (9) Linked bingo main and bonus prizes awarded during a session may not be treated as a prize awarded during the current session.

WSR 07-11-080
PROPOSED RULES
GAMBLING COMMISSION
 [Filed May 15, 2007, 12:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-08-038.

Title of Rule and Other Identifying Information: WAC 230-30-045 Carry-over jackpot pull-tab series—Definitions—Requirements.

Hearing Location(s): La Quinta Inn and Suites, 1425 East 27th Street, Tacoma, WA 98421, (253) 383-0146, on July 13, 2007, at 9:30 a.m.

Date of Intended Adoption: July 13, 2007.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by July 1, 2007.

Assistance for Persons with Disabilities: Contact Gail Grate, Executive Assistant, by July 1, 2007, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The petitioner is requesting that the maximum prize limit for pull-tab carry-over jackpots be increased from \$2,000 to \$5,000, and the

maximum number of tabs per series be increased from 6,000 tabs to 10,000 tabs.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Richard Newgard, representing the Washington Charitable and Civic Gaming Association, private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule change clarifies language of rules without changing the effect.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

May 15, 2007
Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 410, filed 2/22/02, effective 7/1/02)

WAC 230-30-045 Carry-over jackpot pull-tab series—Definitions—Requirements. Operators may utilize pull-tab series that are specifically designed to include carry-over jackpots. The following definitions and requirements shall apply to these series:

Definitions.

(1) The following definitions apply to pull-tab series with carry-over jackpots:

(a) "Carry-over jackpot" means a prize pool that is composed of accumulated contribution amounts from pull-tab series which, if not won, are carried over to other pull-tab series;

(b) "Contribution amount" means the amount from each series which is added to the carry-over jackpot; and

(c) "Guaranteed prizes" means all prizes available to be won, excluding the contribution amount or carry-over jackpot;

Prize payout requirements.

(2) The following requirements apply to prizes and prize payout calculations for carry-over jackpots:

(a) Guaranteed prizes must be 60% or more of gross receipts available from the pull-tab series;

(b) The contribution amount for each series may not be more than five hundred dollars;

(c) The contribution amount and the method of play shall be determined by the manufacturer and disclosed on the flare;

Maximum jackpot amount.

(d) At no time shall an accumulated carry-over jackpot exceed ~~((two))~~ five thousand dollars. If the carry-over jackpot is awarded, the sum of the advance-level prize and the carry-over jackpot prize shall not exceed ~~((two))~~ five thousand dollars.

Jackpot must be carried over until won.

(e) Accumulated carry-over jackpots shall be carried over to subsequent series until won;

Jackpot must be paid out.

(f) The carry-over jackpot must be awarded. Failure to have sufficient funds available, or any attempt by an operator to utilize carry-over jackpots for personal or organizational purposes, shall be *prima facie* evidence of defrauding the players in violation of RCW 9.46.190;

Maximum prize amounts for series when jackpots are not awarded.

(g) If the jackpot is not awarded and is carried over to a new series, the sum of the advance-level prize and the consolation prize shall not exceed five hundred dollars;

Distribution of jackpots when a licensee ceases to operate.

(3) If a licensee ceases to operate gambling activities due to a sale, closure, or failure to maintain a valid gambling license, the carry-over jackpot shall be:

(a) Transferred to the new licensee, which has a valid gambling license. The new licensee shall operate the carry-over jackpot game until the prize is awarded;

(b) Awarded to a player by playing out the game prior to closure;

(c) Distributed to the Washington state council on problem gambling; or

(d) Distributed to a charitable or nonprofit organization licensed by the Washington state gambling commission;

Bonus pull-tab series.

(4) The following additional requirements apply to bonus pull-tab series with carry-over jackpots:

(a) The odds of winning the carry-over jackpot shall not exceed one winner out of ten chances, or the probability of winning the carry-over jackpot shall be .10 or higher, at the jackpot level;

(b) There may only be one advance level on the flare;

(c) There shall be at least one guaranteed chance to win the carry-over jackpot;

(d) All chances that are included on the flare shall be covered in a manner that prevents determination of the concealed numbers or symbols prior to being opened by the player. If perforated windows are used, the numbers or symbols must be covered by latex, foil, or other approved means; and

(e) Standards for bonus pull-tab flares, as set forth in WAC 230-30-106, shall apply;

Maximum number of tickets.

(5) The maximum ticket count for pull-tab series with carry-over jackpots shall be six thousand tickets;

Secondary win codes.

(6) The secondary win codes on pull-tab series with carry-over jackpots must not repeat within a three-year period;

Replacing series.

(7) Once it has been determined that no chances to win the carry-over jackpot remain in a series and the jackpot has not been won, the series shall be removed from play and replaced with a new series within seven operating days;

Transferring a jackpot to another game.

(8) If a carry-over jackpot is not won prior to removing a series from play, it shall be carried over to a new series within one operating day from when the series was removed from play. The accrued contribution amounts from all previous series shall be added to the contribution amount from the new series, up to two thousand dollars;

Recording names of winners.

(9) For carry-over jackpots in the amount of six hundred dollars and over, the winner's full name, address, and Social Security number shall be recorded on a separate form for income tax purposes;

Retention requirements.

(10) Each pull-tab series contributing to a specific carry-over jackpot must be retained as one series. The retention period for these series shall be as required by WAC 230-30-072(3): Provided, That the retention period shall start on the last day of the month in which the carry-over jackpot was awarded rather than when the series was removed from play; and

Documenting the flow of jackpots.

(11) Operators are required to maintain a separate record documenting the flow of carry-over jackpots from one game to another in a format prescribed by the commission;

Recordkeeping on cash basis only - exception.

(12) For the purposes of monthly records set forth in WAC 230-08-010, all operators shall record carry-over jackpots on a cash basis. This means that carry-over jackpot contribution amounts shall not be recorded on monthly records until the prize is awarded: Provided, That punch board/pull-tab licensees who also hold a Class F or above bingo license may accrue carry-over jackpot contribution amounts on their monthly records if the following conditions are met:

- (a) Prior approval is received from the director;
- (b) The contribution amounts, up to the point where the jackpot reaches the maximum, shall be recorded as prizes paid on the monthly records;
- (c) When the jackpot is awarded, only amounts not previously accrued, if any, shall be recorded as a prize paid;

(d) No more than five carry-over jackpot series shall be in play at once; and

(e) If the contribution amount is not deposited with the net receipts (required by WAC 230-12-020), a proper audit trail and adequate security over the funds must be maintained; and

Director approval required.

(13) The director shall approve the following aspects of all pull-tab games with carry-over jackpots prior to sale in Washington state:

- (a) The design, payout, method of play, and flare for each pull-tab series;
- (b) The manufacturing process for the pull-tab series and flares; and
- (c) The secondary win code system for the pull-tab series.

WSR 07-11-081
PROPOSED RULES
GAMBLING COMMISSION
 [Filed May 15, 2007, 12:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-08-039.

Title of Rule and Other Identifying Information: WAC 230-30-080 Punch board and pull-tab series restrictions—Prizes, size of game, and location of winners.

Hearing Location(s): La Quinta Inn and Suites, 1425 East 27th Street, Tacoma, WA 98421, (253) 383-0146, on July 13, 2007, at 9:30 a.m.

Date of Intended Adoption: July 13, 2007.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by July 1, 2007.

Assistance for Persons with Disabilities: Contact Gail Grate, Executive Assistant, by July 1, 2007, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The petitioner is requesting that the maximum prize limit for pull-tab series be increased from \$500 to \$2,500, and the maximum number of individual tabs be increased from 10,000 tabs to 25,000 tabs.

Games with a \$0.50 per tab cost have a maximum prize of \$500 per winning pull-tab.

Games with a \$1.00 per tab cost have a maximum prize of \$750 per winning pull-tab.

For games where merchandise prizes are awarded, the maximum prize must not exceed \$750, which includes the actual cost of the merchandise prize plus a markup.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Richard Newgard, representing the Washington Charitable and Civic Gaming Association, private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466;

Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule change clarifies language of rules without changing the effect.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

May 14, 2007
Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Orders 367 and 367-A, filed 10/9/98 and 12/1/98, effective 1/1/99)

WAC 230-30-080 Punch board and pull-tab series restrictions—Prizes, size of game, and location of winners. No operator, distributor, or manufacturer, or representative thereof shall possess, display, put out for play, sell, or otherwise transfer to any person in this state, or for use in this state, any punch board or pull-tab series which:

(1) Does not offer prizes that are equal to or greater than sixty percent of the total gross receipts available from the punch board or pull-tab series. The following applies to the sixty percent calculation:

(a) For the purposes of determining the percentage of prizes offered on any punch board, or in any pull-tab series, total merchandise prizes shall be computed at the amount actually paid by the licensed operator plus fifty percent of that actual cost. ~~((For any merchandise prize with an actual cost over five hundred dollars, the total cost plus markup in this subsection shall not exceed seven hundred fifty dollars;))~~ The actual merchandise cost plus the markup must not exceed two thousand five hundred dollars; and

(b) Prize and percentage requirements for progressive pull-tab series shall be calculated as set forth in WAC 230-30-025;

(2) Offers a single prize that exceeds:

~~((a))~~ Two thousand five hundred dollars in cash: Provided, That progressive jackpot pull-tab prizes, as authorized in WAC 230-30-025, and pull-tab series with carry-over jackpots, as authorized in WAC 230-30-045 shall be exempt from this requirement and shall be subject to the limits defined in those rules ~~((: Provided further, That the cash limit may be increased from five hundred dollars to seven hundred fifty dollars only on pull-tab series with a cost per tab of one dollar after approval by the director; or~~

~~(b) A merchandise prize for which the operator has expended more than five hundred dollars: Provided, That operators may expend more than five hundred dollars, not to exceed seven hundred fifty dollars, subject to the limitations set forth in subsection (1)(a) of this section);~~

(3) Has multiple winners on an individual pull-tab or punch that combined values exceed the single cash or merchandise prize limit in subsection (2) of this section;

(4) Offers prizes for purchasing the last ticket or last punch that exceeds:

(a) One hundred dollars cash; or

(b) Merchandise for which the licensee has expended more than one hundred dollars; or

(c) The highest prize offered, whichever is less;

(5) Contains more than ~~((ten))~~ twenty-five thousand individual pull-tabs: Provided, That progressive jackpot pull-tab series, as authorized by WAC 230-30-025, may contain up to fifty thousand individual pull-tabs;

(6) Utilizes a flare which does not meet the requirements of WAC 230-30-106;

(7) The winning punches or tabs have not been randomly distributed and mixed among all other punches or tabs in the board or series;

(8) The location, or approximate location, of any winning punches or tabs can be determined in advance of punching the punch board or opening the tabs in any manner or by any device, by markings on the board, tabs, or container, or by use of a light;

(9) There exists a key to any winning numbers or symbols; or

(10) Does not conform in any other respect to the requirements of WAC rules as to the manufacture, assembly, or packaging of punch boards or pull-tabs.

WSR 07-11-083
PROPOSED RULES
GAMBLING COMMISSION

[Filed May 15, 2007, 12:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-07-041.

Title of Rule and Other Identifying Information: WAC 230-40-010 Social card games—Rules of play—Types of card games authorized.

Hearing Location(s): La Quinta Inn and Suites, 1425 East 27th Street, Tacoma, WA 98421, (253) 383-0146, on July 13, 2007, at 9:30 a.m.

Date of Intended Adoption: July 13, 2007.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan2@wsgc.wa.gov, fax (360) 486-3625, by July 1, 2007.

Assistance for Persons with Disabilities: Contact Gail Grate, Executive Assistant, by July 1, 2007, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently, no more than two separate games can be played with a single hand of cards. The petitioner originally submitted a petition for rule change to remove any limits on the number of games that can be played with a single hand of cards. When the petition was up for filing at the March 2007 commission meeting, Mr. Snow withdrew the petition and said he would submit a revised petition at the April 2007 meeting. The petitioner stated his intent was to add a progressive jackpot component (considered a separate game) to three card poker. Three card poker currently offers two games within a hand. Shown

below is Mr. Snow's new petition requesting the limit, on the number of games that can be played with a hand of cards, be increased from two to three.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Shuffle Master, Inc., private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule change clarifies language of rules without changing the effect.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

May 15, 2007

Susan Arland

Rules Coordinator

AMENDATORY SECTION (Amending Order 424, filed 9/18/03, effective 1/1/04)

WAC 230-40-010 Social card games—Rules of play—Types of card games authorized. Social card games shall be played using rules and procedures as set forth in this section. Only card games that have been specifically authorized are allowed to be played in public or social card rooms.

Rules of play for all card games.

(1) Social card games shall be played in the following manner:

(a) The game must be played with one or more standard decks of playing cards or with approved electronic card facsimiles which meet the requirements of WAC 230-40-070 (1)(c): Provided, That cards may be removed to comply with rules of a specific game, such as pinochle;

(b) Players shall compete against all other players on an equal basis for nonhouse-banked games or against the licensee for house-banked games;

(c) Each player shall receive their own hand of cards and be responsible for decisions regarding such hand, such as whether to fold, discard, draw additional cards, or raise the wager;

(d) Players shall not place wagers on any other player's or the house's hand and no side bets between players are allowed: Provided, That the following shall not be in violation of this section:

(i) An insurance bet placed in the game of blackjack;

(ii) A tip wager made on behalf of a dealer; or

(iii) "Envy" provisions which allow a player to receive a prize if another player wins a jackpot or odds wager; and

(e) A player's win or loss shall be determined during the course of play of a single card game; and

(f) No more than ~~((two))~~ three separate games shall be played with a single hand of cards. For purposes of this sec-

tion, bonus features and progressive jackpots are considered a game: Provided, That bonus features that allow a player to receive an additional prize if another player achieves a specific hand, such as "envy" or "share the wealth" features, shall not be considered a separate game if the player does not have to place a separate wager to participate.

Nonhouse-banked card games authorized.

(2) Nonhouse-banked card games shall only be played in the manner set forth in *The New Complete Hoyle, Revised, Hoyle's Modern Encyclopedia of Card Games*, or a similar authoritative book on card games approved by the director: Provided, That each licensee may make immaterial modifications to each authorized game set out in Hoyle. The following nonhouse-banked card games are authorized:

(a) Poker;

(b) Hearts;

(c) Pinochle;

(d) Cribbage;

(e) Rummy;

(f) Panguingue (Pan);

(g) Pitch;

(h) Bid Whist;

(i) Other games or modifications to approved games may be approved by the director, or the director's designee, on a case-by-case basis. Requests for approval of a game must be submitted in writing, and include the rules of play and all wagering schemes.

House-banked card games authorized.

(3) House-banked card games shall be approved by the director, or the director's designee, on a case-by-case basis. Request for approval of a house-banked card game must be submitted in writing, including the rules of play and all wagering schemes. A list of all approved games, modifications to games, and rules of play shall be available at all commission offices. The director may approve games in which the determination of whether a player wins or loses depends upon one or more of the following:

(a) The player's hand is a specific:

(i) Pattern or ranking of cards (pair, straight, flush, royal flush, etc.);

(ii) Combination of cards (two queens of hearts, ace and jack of spades, three sevens, etc.); or

(iii) Value of the cards (seventeen, twenty-one, etc.); and/or

(b) The player has a higher ranking or value hand than the house/dealer/banker.

Removing an approved game from play.

(4) Once a game is approved for play, the director shall not remove it from the authorized list of games without providing licensees written notice. Licensees shall be afforded an opportunity to object to the director's decision. If an objection is filed, an administrative law judge shall review the director's decision utilizing the brief adjudicative procedures set forth in WAC 230-50-010.

Procedures for when a proposed game is denied.

(5) The licensee shall be notified in writing when the director denies a request for a new game or modification of a game. The notification shall include reasons for the denial and provide the petitioner all information necessary for a formal petition to the commission for rule making, amendments, or repeal, as set forth in WAC 230-50-800.

WSR 07-11-091
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed May 16, 2007, 10:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-06-051.

Title of Rule and Other Identifying Information: WAC 388-450-0215 How does the department estimate my assistance unit's income to determine my eligibility and benefits?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on June 26, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 27, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on June 26, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller by June 19, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amended rule will provide provisions for budgeting income that is received less frequently than monthly on an averaging basis even in the month of application.

Reasons Supporting Proposal: Revisions to the chapter are needed to clarify that pay received less frequently than monthly can be averaged even in the month of application and need not be budgeted in its entirety in that month.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.515, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.515, 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. 273.2.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Bill Callahan, 1009 College S.E., Lacey, WA 98504, (360) 725-4619.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses, it only

affects DSHS clients by defining how we determine the amount of income to budget when determining eligibility and benefit levels for department programs.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

May 8, 2007

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-16-109, filed 8/2/05, effective 10/1/05)

WAC 388-450-0215 How does the department estimate my assistance unit's income to determine my eligibility and benefits? The department uses prospective budgeting to determine if your assistance unit (AU) is eligible and to calculate your benefits.

(1) We determine if your AU is eligible for benefits and calculate your monthly benefits based on an estimate of your AU's income and expenses for that month. This is known as prospective budgeting.

(2) We base this estimate on what can be reasonably expected based on your current, past and future circumstances.

(3) We determine if our estimate is reasonable by looking at documents, statements, and other verification.

(4) We use two methods to estimate your AU's income:

(a) **Anticipating monthly income:** We estimate the actual amount of income you expect to receive in the month; and

(b) **Averaging income:** We estimate your income based on adding the total income you expect to receive for a period of time and dividing by the number of months in the time period.

(5) When we use the anticipating monthly method, we estimate the actual amount of income your AU expects to receive in the month. Your benefits will vary based on the income that is expected for that month.

(6) In general, you can choose which method we use to estimate your income. However, we **must** use the anticipating monthly method:

(a) For the month you apply for benefits(;) for any income your AU receives in that month(~~(-If we do not have to use the anticipating monthly method for any other reason))~~), we may average this income source for the remaining months of your certification period, unless we must use anticipating monthly for some other reason.

(i) Except, when you are paid less frequently than monthly. For income received less frequently than monthly, we will average your income even in the month of application.

(b) For all your AU's income in the following circumstances:

(i) If you receive SSI-related medical benefits under chapter 388-475 WAC; or

(ii) If you are a destitute migrant or destitute seasonal farmworker under WAC 388-406-0021, we must use the anticipating monthly method for the month your AU applied for benefits.

(c) For the income of any member of your AU who has income allocated to someone receiving SSI-related medical benefits under chapter 388-475 WAC;

(d) For the following sources of income to your AU:

(i) SSI; or

(ii) Social Security benefits.

(7) When we use the averaging method, we take the expected changes in your AU's income into consideration so your benefits do not change as much:

(a) If you receive your income weekly or every other week, we convert this income to a monthly amount. If you are paid:

(i) Weekly, we multiply your expected pay by 4.3; or

(ii) Every other week, we multiply your expected pay by 2.15.

(b) In most cases if you receive your income other than weekly or every other week, we estimate your expected income over the certification period by:

(i) Adding the total income in a representative time period;

(ii) Dividing by the number of pay periods in the time frame; and

(iii) Determining the monthly average from this amount.

(c) If you receive your yearly income over less than a year because you are self employed or work under a contract, we average this income over the year unless you are:

(i) Paid on an hourly or piecework basis; or

(ii) A migrant or seasonal farmworker under WAC 388-406-0021.

(8) If you report a change in your AU's income, and we expect the change to last for at least a month beyond the month you reported the change, we recalculate your AU's income based on this change.

(9) If your actual income is different than the income we estimated, we do not make you repay an overpayment under chapter 388-410 WAC or increase your benefits unless:

(a) You provided incomplete or false information; or

(b) We made an error in calculating your benefits.

WSR 07-11-102

PROPOSED RULES

HORSE RACING COMMISSION

[Filed May 16, 2007, 4:20 p.m.]

Supplemental Notice to WSR 07-07-045.

Preproposal statement of inquiry was filed as WSR 07-03-169.

Title of Rule and Other Identifying Information: Chapter 260-14 WAC, Special rules related to commissioners and commission employees.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98001, on July 12, 2007, at 9:30 a.m.

Date of Intended Adoption: July 12, 2007.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by July 9, 2007.

Assistance for Persons with Disabilities: Contact Patty Sorby by July 9, 2007, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 260-14 WAC, Special rules related to commissioners and commission employees, is being updated as part of the agency's regulatory reform effort and to update rules into clearer and more understandable language.

Reasons Supporting Proposal: Supports regulatory reform.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

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

May 15, 2007

R. J. Lopez

Deputy Secretary

Chapter 260-14 WAC

~~((SPECIAL))~~ RULES RELATING TO COMMISSIONERS AND COMMISSION EMPLOYEES

AMENDATORY SECTION (Amending WSR 04-05-090, filed 2/18/04, effective 3/20/04)

WAC 260-14-010 Definitions. ~~((For the purposes of chapter 260-14 WAC, unless otherwise indicated by the context in which the term is used, the following terms shall have the meaning set forth herein:))~~ The definitions in this section apply throughout these rules unless the context requires otherwise.

(1) "Commissioner(~~(:)~~)" ~~((shall mean any))~~ Δ member of the Washington state horse racing commission ~~((and any member of the immediate family of such commissioner)).~~

(2) "Employee(~~(:)~~)" ~~((shall mean))~~ Δ any full or part time employee of the commission ~~((not normally engaged in direct regulatory functions)).~~ ~~((Included in such group are the executive secretary, Olympia office personnel, and registration clerks.~~

(3) ~~"Regulatory employee," shall include all of the officials named in WAC 260-24-010 and any other employee engaged in direct regulatory functions.~~

(4) ~~"Thing of economic value," shall have the same meaning as that term has in chapter 42.52 RCW.)~~

AMENDATORY SECTION (Amending Order 73.3, filed 6/28/73)

WAC 260-14-020 Prohibited acts. No commissioner (~~(or employee or regulatory)~~) or employee (~~(shall)~~) may accept any thing of economic value, as defined in chapter 42.52 RCW, from any applicant, licensee, or association except as (~~(set forth in these rules)~~) allowed by law.

AMENDATORY SECTION (Amending Order 73.3, filed 6/28/73)

WAC 260-14-030 Ownership interest in associations. ~~((1))~~ No commissioner or employee (~~(or commissioner during his term of office, shall acquire)~~) may have any ownership interest in any association which seeks race meet dates. ~~((Any ownership interest in any such association owned prior to such membership on the commission or employment by the commission shall be disposed of within thirty days of the time such employee or commissioner accepts employment or takes office unless the commissioner or employee elects to place such ownership in a trust for the duration of his term of office or employment. In such case, said employee, or commissioner shall place such ownership interest in a trust approved by the commission, such trust to provide that any dividends or other profit distribution shall redound to the benefit of a charitable purpose approved by the commission, and that no ownership interest shall be returned to such commissioner or employee at the expiration of such trust unless an amount equal to any increment in value which may have occurred during such trust shall be paid by the commissioner or employee to a charity approved by the commission. In determining whether an increment in value has occurred the trust instrument may provide that a normal rate of interest on the ownership interest, had it been reduced to cash, need not be included in ascertaining such increment.~~

~~(2) No regulatory employee shall have an ownership interest in any association conducting a race meeting at which he is employed by the commission.~~

~~(3) Copies of any trust agreement by which a commissioner or employee retains an interest or potential interest in an association shall be filed with the commission and maintained in a separate file in the Olympia offices of said commission. Such file shall be open and available for public inspection during regular office hours of the commission.)~~

AMENDATORY SECTION (Amending WSR 04-21-053, filed 10/18/04, effective 11/18/04)

WAC 260-14-040 Wagering. ~~((1))~~ No (~~commissioner~~) commissioner, employee (~~(shall)~~), or spouse of a commissioner or employee may make any wager at a facility under the jurisdiction of the commission (~~(-~~

~~(2) No commission employee shall), nor may they make any wager on the outcome of any horse race at a meeting under the jurisdiction of the commission. ((Commission employee means both regulatory employee and employee as defined in WAC 260-14-010.~~

~~(3) No commissioner shall make any wager on the outcome of any horse race at a meeting under the jurisdiction of the commission.)~~

AMENDATORY SECTION (Amending WSR 04-19-046, filed 9/13/04, effective 10/14/04)

WAC 260-14-050 Ownership interests in race horses. ~~((1))~~ No (~~(regulatory employee)~~) commissioner or employee (~~(shall)~~) may have any ownership interest in any race horse running at any race meet under the jurisdiction of the commission.

~~((2) No commissioner shall have any ownership interest in any race horse running at any race meet under the jurisdiction of the commission.)~~

AMENDATORY SECTION (Amending Order 73.3, filed 6/28/73)

WAC 260-14-060 Performance of compensated services on behalf of associations prohibited. ~~((1))~~ No commissioner or employee of the commission (~~(shall)~~) may receive any compensation whatsoever from an association for any services performed for or on behalf of an association (~~(-~~

~~(2) No regulatory employee shall receive any compensation from an association for services) or performed during a race meet for which he or she is employed by the commission.~~

~~((3) Nothing in this rule shall be deemed to prohibit the performance of such services by a regulatory employee either before or after a race meet if authorization in writing is granted by the commission prior to the time any services for which compensation may be reasonably expected are performed. Such authorization may be obtained only in accordance with subparagraph (4) hereof.~~

~~(4) Upon receiving a request to perform services for which compensation shall be due for or on behalf of an association by a regulatory employee or an association or both, the executive secretary shall investigate and determine whether the performance of such services is bona fide. If he determines that the performance of such services is bona fide and that the compensation to be paid therefor is reasonably related to the performance of such services, he may authorize in writing such services to be performed pending final action by the commission. Should the commission later determine that the executive secretary was in error in granting such authorization, it shall promptly notify the regulatory employee and the association and such services shall thereupon immediately cease and no compensation may be paid such regulatory employee for services performed after such notification.~~

~~(5) Copies of written authorizations issued pursuant to this section shall be maintained in a separate file in the offices of the commission in Olympia, Washington, and shall be open and available for public inspection during regular office hours of said commission.)~~

AMENDATORY SECTION (Amending Order 73.3, filed 6/28/73)

WAC 260-14-070 Violations. (1) Any (~~(willful)~~) violation of any of the (~~(foregoing)~~) rules in this chapter by any commissioner (~~(shall)~~) will be (~~(deemed to be)~~) considered official misconduct (~~(in office)~~) and (~~(shall)~~) will be reported

by the executive secretary to the governor ((for appropriate action)).

(2) Any ((willful)) violation by any employee ((or regula-tory employee shall be deemed to be)) will be considered misconduct and ((shall)) will be grounds for ((immediate dis-charge)) discipline, including termination. ((In the event that such violation occurs between race meets by an employee normally employed for the duration of a race meet, such employee shall be deemed to be ineligible for employment by the commission at the pertinent race meet for a period of at least one year.))

WSR 07-11-105
PROPOSED RULES
GAMBLING COMMISSION

[Filed May 17, 2007, 7:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-07-054.

Title of Rule and Other Identifying Information: WAC 230-20-244 Electronic bingo card daubers—Definition—Operating restrictions—Standards.

Hearing Location(s): Hilton - Vancouver, 301 West 6th Street, Vancouver, WA 98660, on August 10, 2007, at 9:30 a.m.

Date of Intended Adoption: August 10, 2007.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by August 1, 2007.

Assistance for Persons with Disabilities: Contact Gail Grate, Executive Assistant, by August 1, 2007, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Printed bingo card faces must be issued to players that use electronic bingo card daubers. The petitioner requests that printed card faces no longer be issued to players unless requested. However, operators will keep the printed cards in a master index on-site so they are available for inspection.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Richard Newgard, representing the Washington Charitable and Civic Gaming Association, private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule change clarifies language of rules without changing the effect.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is

not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

May 15, 2007

Susan Arland

Rules Coordinator

AMENDATORY SECTION (Amending Orders 461 and 461-A, filed 8/14/06 and 8/23/06, effective 9/23/06)

WAC 230-20-244 Electronic bingo card daubers—

Definition—Operating restrictions—Standards. The commission deems that any device, apparatus, or scheme that allows a player in any gambling activity a material advantage over other players is against public policy and restriction of such is in the public's interest. Electronic bingo card marking devices or daubers are deemed to provide a player a material advantage unless operated in accordance with subsection (2) of this section. For purposes of this title, the following definitions, restrictions, and standards apply to such devices:

Definition.

(1) Electronic bingo card daubers are defined as electronic appliances used by players to identify bingo cards that contain numbers or symbols input by a player. These devices electronically store preprinted bingo cards purchased by a player, provide a means for players to input numbers or symbols called by the operator, compare the numbers or symbols input by the player to bingo cards previously stored in an electronic data base, and identify to the player those stored bingo cards that contain the numbers or symbols input by the player: Provided, That player-owned devices, which are not directly interfaced with or connected to equipment used to conduct bingo games or the electronic data base in which electronically generated bingo cards are stored in any manner, are not "electronic bingo card daubers" for purposes of this title;

Operating restrictions.

(2) Electronic bingo card daubers will not be deemed to provide players a material advantage and may be used by players in bingo games when operated in the following manner:

Player responsibilities.

(a) The player must perform at least the following functions:

(i) Input each number or symbol called by the operator into the memory of the dauber unit by use of a separate input function for each number symbol. Automatic or global marking of numbers or symbols is prohibited;

(ii) Notify the operator when a winning pattern or "bingo" occurs by means that do not utilize the dauber unit or the associated system; and

(iii) Identify the winning card and display the card to the operator;

Maximum number of cards to be played during each game.

(b) Each electronic dauber unit shall not allow a player to play more than sixty-six cards at one time.

(c) Each player shall not use more than one electronic dauber at any point in time. Provided, That a player can play an unlimited amount of disposable or hard bingo cards in addition to using one electronic dauber unit.

Reserving electronic bingo card daubers.

(d) Operators shall not reserve electronic daubers for any player. An operator must devise and disclose to players a scheme for assignment of dauber units to players during each session. Such schemes shall allow all players an equal opportunity to utilize the available dauber units. If a drawing is used to assign dauber units to players, the operator shall ensure that each player participating in the drawing has an equal chance to win: Provided, That operators that offer electronic dauber units shall reserve at least one device for players with disabilities that would restrict their ability to mark cards and such disabilities are consistent with definitions set forth in the Americans with Disabilities Act (ADA). If there are no requests for use of this unit prior to fifteen minutes before the scheduled start of the session, it may be made available for use by any players;

Fees.

(e) If operators charge players a fee for use of the electronic daubers, such fees must be a flat fee and shall not be based on the number or dollar value of cards purchased. Rental fees shall be considered bingo receipts for purposes of WAC 230-12-020: Provided, That players with disabilities that would restrict their ability to mark cards and such disabilities are consistent with the ADA shall not be required to pay a rental fee or to comply with minimum purchase requirements imposed on all players utilizing electronic daubers. Such players are required to comply with any minimum purchase requirement imposed on all players by an operator;

Card requirements.

(f) ~~(Each player)~~ Any organization utilizing ~~((an))~~ electronic daubers must have ~~((in their possession cards))~~ the cards printed, placed in a master index and available on-site for inspection at the request of a customer or agent of the Washington state gambling commission that meet all requirements of WAC 230-20-240 and 230-20-106. Electronic images of cards or faces stored in such devices are for player convenience only and are not bingo cards for purposes of this title;

Leasing by an operator.

(g) If the electronic daubers are leased to an operator, the lease cannot be based in whole or part on the amount of bingo card sales or rental income derived from such devices. Except that fees may be based on the number of cards sold to a device only for player selection games as described in WAC 230-20-241; and

Discounts and marketing schemes.

(h) The use of electronic daubers is prohibited when a licensee utilizes any marketing scheme for cards that results in a decrease in the per unit price of each card as the number

of cards purchased increases: Provided, That a single discount level is authorized for each type of card sold if:

- (i) The licensee has a minimum purchase requirement;
- (ii) The discount applies to all additional cards purchased; and
- (iii) "All you can play" schemes are prohibited;

Standards.

(3) Electronic bingo card daubers must meet the following standards:

- (a) Be manufactured by licensed manufacturers;
- (b) Be sold, leased, and serviced by licensed distributors or manufacturers: Provided, That operators may perform routine maintenance on devices under their control;
- (c) Not be capable of accessing the electronic computer system in any manner that would allow modification of the program which operates and controls the dauber units or the cards stored in the electronic data base; and
- (d) Be capable of complying with applicable requirements of WAC 230-20-106.

WSR 07-11-118
PROPOSED RULES
COUNTY ROAD
ADMINISTRATION BOARD

[Filed May 21, 2007, 11:09 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 136-400-010, 136-400-020, 136-400-030, 136-400-040, 136-400-050, 136-400-060, 136-400-065, 136-400-070, 136-400-080, 136-400-090, 136-400-100, 136-400-110 and 136-400-120, ferry capital improvement projects.

Hearing Location(s): County Road Administration Board, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, on July 26, 2007, at 2:00 p.m.

Date of Intended Adoption: July 26, 2007.

Submit Written Comments to: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, e-mail karen@crab.wa.gov, fax (360) 586-0386, by July 20, 2007.

Assistance for Persons with Disabilities: Contact Karen Pendleton by July 20, 2007, TTY (800) 833-6382 or (360) 753-5989.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 136-400 WAC, Proposal for clean-up of current language to better explain process of county ferry capital improvement program.

Statutory Authority for Adoption: Chapter 36.79 RCW.

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

Name of Proponent: [County road administration board], governmental.

Name of Agency Personnel Responsible for Drafting: Randy Hart, 2404 Chandler Court S.W., Suite 240, Olympia,

WA 98504-0913, (360) 753-5989; Implementation: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, (360) 753-5989; and Enforcement: Jay Weber, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, (360) 753-5989.

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.

May 21, 2007
Jay P. Weber
Executive Director

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-400-010 Purpose and authority. RCW 47.56.725(4) provides that the county road administration board may evaluate requests for county ferry capital improvement funds by Pierce, Skagit, Wahkiakum, and Whatcom counties, and, if approved by the board, submit said requests to the legislature for funding. This chapter describes the manner in which the county road administration board will implement the provisions of the act.

AMENDATORY SECTION (Amending Order 85, filed 10/23/91, effective 11/23/91)

WAC 136-400-020 Eligibility. Counties eligible to apply for county ferry capital improvement funds are Pierce, Skagit, Wahkiakum, and Whatcom.

AMENDATORY SECTION (Amending Order 85, filed 10/23/91, effective 11/23/91)

WAC 136-400-030 Definition of county ferry capital improvement projects. County ferry capital improvement projects shall include the following:

- (1) Purchase of new vessels;
- (2) Major vessel refurbishment (e.g., engines, structural steel, controls) that substantially extends the life of the vessel;
- (3) Facility refurbishment/replacement (e.g., complete replacement, major rebuilding or redecking of a dock) that substantially extends the life of the facility;
- (4) Installation of items that substantially improve county ferry facilities or operations;
- (5) Construction of infrastructure that provides new or additional access or increases the capacity of terminal facilities; and/or
- (6) Emergency repairs to correct damage to vessels or facilities caused by accidents or natural phenomena.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-400-040 Six-year and fourteen-year plan submittal. Each county's six-year program and fourteen-year long range county ferry capital improvement plan shall be prepared and adopted in accordance with RCW 36.81.121 and 36.54.015, respectively, and one copy shall be forwarded

to the county road administration board no later than December 31(~~(st)~~) of each year. The county's six-year program and fourteen-year county ferry capital improvement plan submitted in each odd-numbered year shall include all projects for which the county may request county ferry capital improvement funds during the biennium beginning on July 1(~~(st)~~) of that year. Project cost estimates shall be considered preliminary until a project application is submitted.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-400-050 Project application. The board will determine if a call for projects for county ferry capital improvement funds is required for the next biennium at the spring meeting of the odd-numbered year, based upon written requests from two or more eligible counties. Application forms and criteria will be determined and distributed to eligible requesting counties before the summer meeting of the odd-numbered year. Each application by a county for county ferry capital improvement funds shall be made no later than January 1(~~(st)~~) of even-numbered years for the biennium beginning on July 1(~~(st)~~) of the next odd-numbered year. The information submitted to the county road administration board shall include the application form and sufficient engineering drawings to accurately describe the complete project.

Project applications shall be submitted on application forms supplied by the county road administration board and shall include the following information:

- (1) Project description and scope;
- (2) Engineering analysis and cost estimate;
- (3) Evidence of application for outside funding through the public works trust fund or any other available revenue source;
- (4) Plan for utilization of outside funding that has been, will be, or may be awarded; and
- (5) Comprehensive project amortization and cash flow schedules.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-400-060 Technical review committee. A technical review committee shall be created to review project applications for county ferry capital improvement funds composed of the following members or their designees:

- (1) Executive director of the county road administration board(~~(, WSDOT assistant secretary for transit,)~~);
- (2) The director of highways and local programs or a designated representative appointed by the director of highways and local programs;
- (3) A WSDOT marine division engineer(~~(,)~~); and
- (4) A public works department representatives from each of the four participating counties.

The county representatives shall serve as ex officio, non-voting members of the technical review committee. The technical review committee shall (~~(recommend)~~) make recommendations on approval of projects that have been submitted in a timely manner and that:

- (~~(+)~~) (a) Meet the applicable statutes and the standards of this chapter; and

~~((2))~~ (b) Adhere to commonly held engineering practices and cost effectiveness.

The technical review committee's recommendations shall ~~((recommend))~~, as appropriate, include an appropriate local match on a project-by-project basis based upon the ~~((availability of))~~ local ~~((matching funds))~~ calculation under WAC 136-400-065. Written reports on each set of project ~~((recommended for approval))~~ recommendations shall be submitted to the county road administration board no later than thirty days prior to its regularly scheduled spring meeting. Technical review committee meetings shall be convened on an "as needed" basis by the executive director of the county road administration board, who shall serve as chairperson.

NEW SECTION

WAC 136-400-065 County ferry capital improvement funds local match calculation. The technical review committee's recommendations shall include an appropriate local match on a project-by-project basis based on the following criteria:

For county ferry capital improvement funds capital requests less than or equal to one million dollars, the local match rate recommendation will be a minimum of zero percent of the requested amount, but not to exceed twenty-five percent of the requested amount, depending upon the demonstrated availability of local funds.

For county ferry capital improvement funds capital requests greater than one million dollars, the local match rate recommendation will be calculated as follows:

(1) If the county has not formed a ferry district as authorized by chapter 36.54 RCW, the minimum local match rate recommendation will be sixty percent of the requested amount.

(2) If the county has formed a ferry district as authorized by chapter 36.54 RCW, the minimum local match rate recommendation is ten percent of the requested amount, but not to exceed a maximum local match rate recommendation of fifty percent of the requested amount, based on two criteria:

(a) An additional zero to twenty percent based upon the requesting county's ferry district property valuation percentage at the time of application:

(i) County-wide district = zero percent additional local match.

(ii) Island-only district = twenty percent additional local match.

(b) An additional zero to twenty percent based upon the requesting county's ferry district levy percentage devoted to capital improvement at the time of application:

(i) One hundred percent ferry district levy to capital improvement = zero percent additional local match.

(ii) Less than fifty percent ferry district levy to capital improvement = twenty percent additional local match.

Recommendations of actual additional percentages will be determined using actual percentages of valuation areas and levy capital dedication.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-400-070 County road administration board action. The county road administration board shall review project applications, along with the recommendations of the technical review committee, at its regular spring meeting in even-numbered years. At that time, it ~~((shall))~~ may approve those projects, which it finds:

(1) Meet the applicable statutes and the standards of this chapter; and

(2) Adhere to commonly held engineering practices and cost effectiveness, specifying the amount of approved funding which it recommends for such projects.

~~((The board shall determine a local matching percentage on a case-by-case basis, considering the availability of local matching funds and the recommendation of the technical review committee.))~~ Emergent projects may be considered by the county road administration board at any time upon recommendation by the executive director. On approved projects, the board shall determine a local matching percentage on a case-by-case basis, as described in WAC 136-400-065, considering the recommendation of the technical review committee. The board shall require evidence that each applicant has first sought funding through the public works trust fund ~~((and))~~ or other available revenue sources.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-400-080 Funding by the legislature. County ferry capital improvement project requests approved by the county road administration board shall be submitted to the legislature for funding out of amounts available under RCW 46.68.100(3) as part of the biennial or supplemental budget request of the county road administration board.

The county road administration board shall, within ten days of the signing of the transportation budget, notify each county having an approved project of such approval and of the amount of county ferry capital improvement funding allocated to each approved project. The county road administration board shall offer each county a contract for each approved project setting forth the terms and conditions under which funds will be provided.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-400-090 Limitation on use of county ferry capital improvement funds. County ferry capital improvement funds may be used for project design, construction, and right of way costs incurred after legislative approval. Emergency project costs may be eligible for retroactive payment upon approval by the county road administration board.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-400-100 Terms of CRAB/county contract. The CRAB/county contract shall include, but not be limited to, the following provisions:

(1) ~~((Such contract shall be valid and binding (and the county shall be entitled to receive ferry capital improvement funds) only))~~ If such contract is signed and returned to the county road administration board within forty-five days of its mailing by the county road administration board, it shall be valid and binding and the county shall be entitled to receive county ferry capital improvement funds.

(2) The project will be constructed in accordance with:

(a) The information furnished to the county road administration board; and

(b) The plans and specifications prepared under the supervision of the county engineer.

(3) The county will notify the county road administration board when a contract has been awarded ~~((and))~~, when construction has started, and when the project has been completed.

(4) The county road administration board will reimburse counties based on ~~((the basis of))~~ progress vouchers received and approved on individual projects, subject to the availability of county ferry capital improvement funds appropriated by the legislature.

(5) The county will reimburse the county road administration board in the event that a project post audit reveals ineligible expenditure of county ferry capital improvement funds. Said funds will be returned to the ~~((county-wide))~~ county fuel tax account for distribution in accordance with RCW 46.68.120.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-400-110 Voucher approval and payment.

The county road administration board shall prepare and distribute to all counties with approved ferry capital improvement projects, voucher forms for use in requesting progress and final payments for each approved ferry capital improvement project.

The county constructing each ferry capital improvement project may submit vouchers monthly as the work progresses and shall submit a final voucher after completion of each project for payment of the approved and funded share of the project cost.

The county road administration board shall approve such vouchers for payment to the county submitting the voucher. County ferry capital improvement fund warrants shall be transmitted directly to each county submitting a voucher. In the event that project funds remain unspent after the final project payment has been made, the unspent balance will be returned to the county-wide fuel tax account for distribution in accordance with RCW 46.68.120.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-400-120 Audit requirements. Audits of county ferry capital improvement projects may be conducted by the state auditor's office and will normally be conducted in conjunction with the county audits required by RCW 43.09.-260 and 36.80.080. Special audits of specific county ferry capital improvement projects not required by these statutes

may be accomplished at the request, and at the expense, of the county road administration board.

An audit of any county ferry capital improvement project shall include, but not be limited to, a review of the county's compliance with the provisions of the statute and these rules. The audit shall also include a review of the financial accounting and reporting of those funds associated with and received for the county ferry capital improvement project.

In the event that an exception is noted in the audit report, the county road administration board shall evaluate the noted discrepancy. Discrepancies may be cause for the county road administration board to order the payback of improperly expended county ferry capital improvement funds as provided in the county road administration board/county contract. Any such funds returned by a county to the county road administration board shall be returned to the county-wide fuel tax account for distribution in accordance with RCW 46.68.120.

**WSR 07-11-119
PROPOSED RULES
COUNTY ROAD
ADMINISTRATION BOARD**

[Filed May 21, 2007, 11:11 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 136-130-040 Project prioritization in northwest region (NWR), 136-161-080 Limitations on allocations of RATA funds to counties, 136-161-090 Limitations on use of RATA funds, and 136-161-110 Use of other funds to match RATA funds.

Hearing Location(s): County Road Administration Board, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, on July 26, 2007, at 2:00 p.m.

Date of Intended Adoption: July 26, 2007.

Submit Written Comments to: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, e-mail karen@crab.wa.gov, fax (360) 586-0386, by July 20, 2007.

Assistance for Persons with Disabilities: Contact Karen Pendleton by July 20, 2007, TTY (800) 833-6382 or (360) 753-5989.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 136-130-040 and 136-161-080, changes the maximum RATA contribution in the northwest region; and WAC 136-161-080 and 136-161-090, changes the percentage from 80% to 90% for projects approved by the CRABoard in the northwest region.

Statutory Authority for Adoption: Chapter 36.79 RCW.

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

Name of Proponent: [County road administration board], governmental.

Name of Agency Personnel Responsible for Drafting: Randy Hart, 2404 Chandler Court S.W., Suite 240, Olympia,

WA 98504-0913, (360) 753-5989; Implementation: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, (360) 753-5989; and Enforcement: Jay Weber, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, (360) 753-5989.

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.

May 21, 2007
Jay P. Weber
Executive Director

AMENDATORY SECTION (Amending WSR 03-11-046, filed 5/16/03, effective 6/16/03)

WAC 136-161-080 Limitations on allocations of RATA funds to counties. For any project program period, no county shall receive a RATA fund allocation greater than the following maximum project RATA contribution, or percentage of the forecasted regional apportionment amount:

(1) PSR: No maximum project RATA contribution; 40% limit on percentage of the forecasted regional apportionment amount;

(2) NWR: Maximum project RATA contribution is five hundred thousand dollars, except that on one project for each county there is a maximum RATA contribution of (~~seven hundred fifty thousand~~) one million dollars; twenty percent limit on percentage of the forecasted regional apportionment amount;

(3) NER: No maximum project RATA contribution; twelve and one-half percent limit on percentage of the forecasted regional apportionment amount;

(4) SWR: No maximum project RATA contribution; fifteen percent limit on percentage of the forecasted regional apportionment amount;

(5) SER: No maximum project RATA contribution; percentage varies by county as follows:

- | | |
|------------------------|------------------|
| (a) Asotin County | ten percent |
| (b) Benton County | fourteen percent |
| (c) Columbia County | eleven percent |
| (d) Franklin County | thirteen percent |
| (e) Garfield County | ten percent |
| (f) Kittitas County | thirteen percent |
| (g) Klickitat County | fourteen percent |
| (h) Walla Walla County | fourteen percent |
| (i) Yakima County | twenty percent |

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-161-090 Limitations on use of RATA funds. RATA funds requested and allocated to a project are limited to eighty percent in the NWR for projects approved by the CRABoard on and prior to April 30, 2008, and ninety percent in the NWR for projects approved thereafter, and ninety percent in the PSR, SWR, NER and SER, of the total

eligible project development costs, which include preliminary engineering and construction costs in all regions, and right of way costs in the PSR, NWR, NER and SER. Even though additional and eligible project development costs may be incurred by a county for a specific project, the maximum amount of RATA funds for that project is limited to the amount allocated and shown in the CRAB/county contract (see chapter 136-170 WAC), unless the allocation is increased pursuant to chapter 136-165 WAC.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-161-110 Use of other funds to match RATA funds. A county with an approved RAP project may use any other funds available for such project including federal, other state, private, and local funds, provided that the county will be required to use such other funds to match any RATA funds allocated to the project with a minimum of twenty percent other funds in the NWR for projects approved by the CRABoard on and prior to April 30, 2008, and ten percent other funds in the NWR for projects approved thereafter, and ten percent other funds in the PSR, SWR, NER, and SER.

AMENDATORY SECTION (Amending WSR 04-05-001, filed 2/4/04, effective 3/6/04)

WAC 136-130-040 Project prioritization in northwest region (NWR). Each county in the NWR may submit projects requesting RATA funds not to exceed five hundred thousand dollars per project, except that on one project for each county there is a maximum RATA contribution of (~~seven hundred fifty thousand~~) one million dollars; and forty percent of the forecasted regional apportionment. No bridge replacement projects will be funded. Each project shall be rated in accordance with the NWR RAP reconstruction or 3R rating procedures. NWR RAP reconstruction rating points shall be assigned on the basis of forty points for structural condition, forty points for geometrics, ten points for traffic volume, ten points for traffic accidents, five points for any project on a major collector (07), and ten points for any project on a rural principal arterial (02) or a rural minor arterial (06). Prioritization of NWR projects shall be on the basis of total NWR RAP rating points shown on the project worksheet and the prospectus form of the project application.

NWR RAP 3R rating points shall be assigned on the basis of thirty points for structural condition, twenty points for geometrics, ten points for traffic volume, ten points for traffic accidents, ten points for any project on a minor collector (08), and thirty points for 3R safety. Prioritization of NWR 3R projects shall be on the basis of total NWR 3R RAP rating points shown on the project worksheet and the prospectus form of the project application.

A total of twenty points representing local significance may be added to one project in each county's biennial submittal.

WSR 07-11-121
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed May 21, 2007, 3:18 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-221-150 Security and control of stored radioactive material and radiation machines.

Hearing Location(s): Department of Health, 111 Israel Road S.E., Town Center 2, Room 530, Tumwater, WA 98501, on June 27, 2007, at 10:00 a.m.

Date of Intended Adoption: August 6, 2007.

Submit Written Comments to: Arden Scroggs, Office of Radiation Protection, Radioactive Materials Section, P.O. Box 47827, Olympia, WA 98504-7827, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2255, by June 25, 2007.

Assistance for Persons with Disabilities: Contact Nancy Burgin by June 20, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule revises state regulations to match federal regulations regarding security for portable gauges containing licensed radioactive material. The federal rule requires licensees to use a minimum of two independent physical controls to secure portable gauges from unauthorized removal.

Reasons Supporting Proposal: The proposed rule adopts a federal rule change which Washington state is required to adopt for compatibility with the United States Nuclear Regulatory Commission regulations. Portable gauges contain radioactive material which, if compromised, could be hazardous to public health. Adopting national standards for security of portable gauges will reduce the potential for theft or unauthorized use of the radioactive material.

Statutory Authority for Adoption: RCW 70.98.050.

Statute Being Implemented: RCW 70.98.050.

Rule is necessary because of federal law, 10 C.F.R. 30.34(i).

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Arden Scroggs, Tumwater, Washington, (360) 236-3221.

No small business economic impact statement has been prepared under chapter 19.85 RCW. According to RCW 19.85.025(3) and 19.85.061, this proposed rule is exempt from the requirements of chapter 19.85 RCW because it adopts federal regulations (10 C.F.R. 30.34(i)) without material change. These rules are required in order to maintain a state program that is compatible with that of the Nuclear Regulatory Commission as specified under the terms of the formal agreement signed by the governor and the chairman of the commission.

A cost-benefit analysis is not required under RCW 34.05.328. According to RCW 34.05.328 (5)(b)(iii), this proposed rule is exempt from the requirements of RCW 34.05.-

328 because it adopts federal regulations without material change.

May 17, 2007

M. C. Selecky

Secretary

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-221-150 Security and control of ((stored)) radioactive material and radiation machines. (1) Licensed radioactive materials and registered radiation machines shall be secured from, or controlled in such a manner so as to prevent, unauthorized access or removal from the place of storage.

(2) Each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

(3) Licensed radioactive materials in an unrestricted area and not in storage shall be tended under the constant surveillance and immediate control of the licensee.

((↔)) (4) Registered radiation machines in an unrestricted area and not in storage shall be under the control of the registrant.

WSR 07-11-130

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed May 22, 2007, 9:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-09-013.

Title of Rule and Other Identifying Information: Chapter 388-845 WAC, Division of developmental disabilities (DDD) home and community based services waivers, specific sections and their impact may be found below (See Reviser's Note below).

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097, on July 25, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 26, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on July 25, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller by July 18, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DDD has had ongoing discussions with the federal Center for Medicare and Medicaid Services (CMS) and has received approval from CMS to amend its waivers under Section 1915 of the Social Security Act. These amendments also respond to the proposed order and settlement agreement under *Boyle v. Arnold-Williams* and incorporate the provisions of the letter of agreement between the state of Washington (office of financial management) and the Service Employees International Union (SEIU).

Reasons Supporting Proposal: These amendments are necessary to comply with the proposed order and settlement listed above and to allow the state of Washington to continue to claim federal matching funds under Title XIX of the Social Security Act.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: Title 71A RCW.

Rule is necessary because of federal court decision, United States District Court, Western District of Washington at Tacoma, Proposed Order and Settlement Agreement NO: C-01-5687 JKA.

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

Name of Agency Personnel Responsible for Drafting: Steve Brink, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail brinksc@dshs.wa.gov, (360) 725-3416, fax (360) 407-0955; Implementation: Shannon Manion, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail maniosk@dshs.wa.gov, (360) 725-3445, fax (360) 407-0955; and Enforcement: Don Clintzman, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail clintdl@dshs.wa.gov, (360) 725-3421, fax (360) 407-0955.

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

Small Business Economic Impact Statement

See Reviser's Note below.

A copy of the statement may be obtained by contacting Steve Brink, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, phone (360) 725-3416, fax (360) 407-0995, e-mail brinksc@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Steve Brink, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, phone (360) 725-3416, fax (390) 407-9055 [(360) 407-0995], e-mail brinksc@dshs.wa.gov.

May 15, 2007

Stephanie E. Schiller

Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 07-13 issue of the Register.

WSR 07-11-131

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed May 22, 2007, 9:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-07-096.

Title of Rule and Other Identifying Information: WAC 388-513-1325 Determining available income for a single client for long-term care (LTC) services.

Hearing Location(s): Blake Office Park East, Rose Room,

4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on June 26, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 27, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on June 26, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller by June 19, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

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

- DSHS is correcting WAC references to the appropriate SSI related WACs.
- DSHS is defining LTC services in the title as Institutional, Waiver, or Hospice.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530.

Statute Being Implemented: RCW 74.04.050, 74.04.-057, 74.08.090, 74.09.530.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lori Rolley, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2271.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rules and determined that no new costs will be imposed on small businesses or nonprofits.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt, per RCW 34.05.328 (5)(b) (vii), relating only to client medical or financial eligibility.

May 16, 2007

Stephanie E. Schiller, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 00-01-051, filed 12/8/99, effective 1/8/00)

WAC 388-513-1325 Determining available income for an SSI-related single client for long-term care (LTC) services (institutional, waiver or hospice). This section describes income the department considers available when determining an SSI-related single client's eligibility for LTC services (institutional, waiver or hospice).

(1) Refer to WAC 388-513-1330 for rules related to available income for legally married couples.

(2) The department must apply the following rules when determining income eligibility for SSI-related LTC services:

(a) WAC ((~~388-450-0005 (3) and (4), Income Ownership and availability~~)) 388-475-0600 Definition of income;

(b) WAC ((~~388-450-0085, Self-employment income—Allowable expenses~~)) 388-475-0650 Available income;

(c) WAC ((~~388-450-0210 (4)(b), (c), and (h), Countable income for medical programs~~)) 388-475-0700 Income eligibility;

(d) WAC ((~~388-506-0620, SSI-related medical clients~~)) 388-475-0750 Countable unearned income;

(e) WAC ((~~388-511-1130, SSI-related income availability~~)) 388-475-0840(3) Self employment income-allowable expenses; and

(f) WAC 388-513-1315 ((~~(15) and~~)) (16), Eligibility for long-term care (institutional, waiver(~~ed~~)), and hospice) services.

WSR 07-11-132

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed May 22, 2007, 9:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-086.

Title of Rule and Other Identifying Information: New chapter 388-829C WAC, Companion home residential services program.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on July 10, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 11, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on July 10, 2007.

Assistance for Persons with Disabilities: Contact DSHS by July 3, 2007, TTY (360) 664-6178 or (360) 664-6097 or by

e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the new companion home residential services chapter is to consolidate information governing the operation of companion home residential services for ease of reference by the user.

The division of developmental disabilities (DDD) is proposing to consolidate standards that were existing rule in chapters 388-825, 388-845, and 388-101 WAC. DDD is also putting existing requirements found in policy and contract into the proposed rule. This will consolidate the companion home residential services program into one chapter for easier reference.

There is a new requirement for companion home providers to keep property records for the companion home client.

This rule was originally proposed as chapter 388-821 WAC and included rules for alternative living services. This rule has been separated from the rules for alternative living services and is now chapter 388-829C WAC. These changes will make finding companion home residential services rules easier for the user.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: Title 71A RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Debbie Roberts, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3400; Implementation and Enforcement: Don Clintsman, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3426.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DDD has determined for this set of rules that alternative living providers are all small businesses and there will be no disproportionate impact. DDD has analyzed these proposed rules and concludes that costs to alternative living providers will be minor, if there are any costs at all.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Debbie Roberts, 640 Woodland Square Loop S.E., Lacey, WA 98504, phone (360) 725-3400, fax (360) 404-0955, e-mail roberdx@dshs.wa.gov.

May 15, 2007

Stephanie E. Schiller

Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 07-12 issue of the Register.

WSR 07-11-133
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed May 22, 2007, 9:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-086.

Title of Rule and Other Identifying Information: New chapter 388-829A WAC, Alternative living services.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on July 10, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 11, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on July 10, 2007.

Assistance for Persons with Disabilities: Contact DSHS by July 3, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the new alternative living chapter is to consolidate information governing the operation of alternative living services for ease of reference by the user.

The division of developmental disabilities (DDD) is proposing to consolidate standards that were existing rule in chapters 388-825, 388-845, and 388-101 WAC. DDD is also putting existing requirements found in policy and contract into the proposed rule. This will consolidate the alternative living services program into one chapter for easier reference.

There is a new requirement for providers to attend DDD specialty training within ninety days of serving a client.

This rule was originally proposed as chapter 388-821 WAC and included rules for companion home residential services. This rule has been separated from the rules for companion home residential services rules and is now chapter 388-829A WAC. These changes will make finding alternative living rules easier for the user.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: Title 71A RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Debbie Roberts, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3400; Implementation and Enforcement: Don Clintsman, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3426.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DDD has determined

for this set of rules that alternative living providers are all small businesses and there will be no disproportionate impact. DDD has analyzed these proposed rules and concludes that costs to alternative living providers will be minor, if there are any costs at all.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Debbie Roberts, 640 Woodland Square Loop S.E., Lacey, WA 98504, phone (360) 725-3400, fax (360) 404-0955, e-mail roberdx@dshs.wa.gov.

May 15, 2007

Stephanie E. Schiller

Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 07-12 issue of the Register.

WSR 07-11-134
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed May 22, 2007, 9:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-21-055.

Title of Rule and Other Identifying Information: WAC 388-444-0005 The food stamp employment and training (FS E&T) program—General requirements.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on June 26, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 27, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on June 26, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller by June 19, 2007, TTY (360) 664-6178 or phone (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amended rules update the requirements for the FS E&T program and adopt WorkFirst participation requirements in place of E&T requirements for persons who must participate in WorkFirst. The changes also allow the department to use the food stamp allotment and the TANF grant to determine the maximum monthly hours a WorkFirst participant may be engaged in work experience or unpaid work under the Fair Labor Standards Act. The Deficit Reduction Act provides provisions to deem hours of countable WorkFirst participation by way of using Fair Labor Standards Act regulations for E&T programs.

Reasons Supporting Proposal: The changes are necessary to support changes to the FS E&T program for persons receiving TANF and participating in WorkFirst. This is essential for state performance under the Deficit Reduction Act.

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

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.04.510, 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. 273.7, 7 C.F.R. 273.25.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: John Camp, 1009 College S.E., Lacey, WA 98504, (360) 725-4616.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by establishing participation requirements of the FS E&T program for households that receive Basic Food and adopting WorkFirst participation requirements in place of E&T requirements for households who receive TANF and must participate in WorkFirst activities.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." These rules establish participation requirements of the FS E&T program for households that receive Basic Food and adopting WorkFirst participation requirements in place of E&T requirements for households who receive TANF and must participate in WorkFirst activities.

May 18, 2007
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-24-026, filed 11/29/06, effective 1/1/07)

WAC 388-444-0005 Food stamp employment and training (FS E&T) program—General requirements. (1) To receive Basic Food some people must register for work and participate in the food stamp employment and training (FS E&T) program.

(2) We determine if you must register for work and participate in FS E&T under WAC 388-444-0010:

(a) If we require you to register for work and participate in FS E&T you are nonexempt from FS E&T.

(b) If you meet one of the conditions under WAC 388-444-0015, you are exempt from FS E&T. If you are exempt, you may choose to receive services through the FS E&T program.

(3) If you are nonexempt from FS E&T requirements, we register you for work:

(a) When you apply for Basic Food benefits or are added to someone's assistance unit; and

(b) Every twelve months thereafter.

(4) If you are nonexempt, you must meet all the FS E&T program requirements in subsections (5) through (7) of this section. If you fail to meet the requirements without good cause, we disqualify you from receiving Basic Food benefits:

(a) We define good cause for not meeting FS E&T requirements under WAC 388-444-0050; and

(b) We disqualify nonexempt persons who fail to meet E&T requirements as described under WAC 388-444-0055.

(5) If you are nonexempt, you must:

(a) Report to us or your FS E&T service provider and participate as required;

(b) Provide information regarding your employment status and availability for work when we ask for it;

(c) Report to an employer when we refer you; and

(d) Accept a bona fide offer of suitable employment. We define unsuitable employment under WAC 388-444-0060.

(6) If you are nonexempt, you must participate in one or more of the following FS E&T activities:

(a) Job search;

(b) Paid or unpaid work;

(c) Training or work experience;

(d) General education development (GED) classes; or

(e) English as a second language (ESL) classes.

(7) If you must participate in WorkFirst under WAC 388-310-0200, you have certain requirements for the Food Stamp Employment and Training Program:

(a) Your FS E&T requirement is to fully participate in the WorkFirst activities approved in your Individual Responsibility Plan (IRP) under WAC 388-310-0500; and

(b) If ~~((everyone who receives Basic Food with you receives TANF benefits and))~~ your IRP includes unpaid community service or work experience, we use your TANF grant and the Basic Food ((allotment)) benefits received by members of your TANF assistance unit to determine the maximum hours of unpaid work we include in your plan.

(8) Your FS E&T activities including paid or unpaid work **will not** exceed one hundred twenty hours a month whether you are exempt or nonexempt.

WSR 07-11-135

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed May 22, 2007, 9:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-17-137.

Title of Rule and Other Identifying Information: WAC 388-517-0310 Eligibility for federal medicare savings and state-funded Medicare buy-in programs and 388-517-0320 Medicare savings and state-funded Medicare buy-in programs cover some client costs.

Hearing Location(s): Blake Office Park East, Rose Room

4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on June 26, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 27, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on June 26, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller by June 19, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules to be consistent with federal rules with regard to copayments, policies, and program eligibility. This rule change is necessary to comply with federal program rules and to achieve clear and concise WAC. These rules are consistent with requirements in the Medicaid state plan.

Reasons Supporting Proposal: Continuation of federal financial participation.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.530.

Statute Being Implemented: 42 U.S.C., Section 1396a.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Carole McRae, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1250.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule-making action does not affect small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Per RCW 34.05.328 (5)(b)(vii), client eligibility rules for medical assistance programs are exempt from the cost-benefit analysis requirement of RCW 34.05.328.

May 15, 2007

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-14-125, filed 7/1/05, effective 8/1/05)

WAC 388-517-0310 Eligibility for federal medicare savings and state-funded medicare buy-in programs. (1) Persons eligible for any medicare savings programs (MSP) must:

(a) Be eligible for or receiving medicare Part A. Qualified disabled working individuals (QDWI) clients must be under age sixty-five;

(b) Meet program income standards, see WAC 388-478-0085; and

(c) Have resources at or below twice the resource standards for SSI and SSI related programs, see WAC ((388-478-0085(6))) 388-478-0080(4).

(2) MSP follow categorically needy program rules for SSI related ((rules)) individuals in chapter 388-475 WAC.

(3) MSP clients are entitled to a fair hearing when the department takes an adverse action such as denying or terminating MSP benefits.

(4) The department subtracts the allocations and deductions described under WAC 388-513-1380 from a long-term care client's countable income and resources when determining MSP eligibility:

(a) Allocations to a spouse and/or dependent family member; and

(b) Client participation in cost of care.

(5) Medicaid eligibility may affect MSP eligibility, as follows:

(a) Qualified medicare beneficiaries (QMB) and specified low income beneficiaries (SLMB) clients can receive medicaid and still be eligible to receive QMB or SLMB benefits.

(b) Qualified individuals (QI-1) and qualified disabled working individuals (QDWI) clients who begin to receive medicaid are no longer eligible for QI-1 or QDWI benefits.

(6) Every year, when the federal poverty level changes:

(a) The department adjusts income standards for MSP and state funded medicare buy-in programs, see WAC 388-478-0085.

(b) The department begins to count the annual Social Security cost-of-living (COLA) increase on April 1st each year when determining eligibility for MSP and state funded medicaid buy-in programs.

(7) There is no income limit for the state-funded medicare buy-in program. The state-funded medicare buy-in program is for clients who receive medicaid but do not qualify for the federal MSP.

AMENDATORY SECTION (Amending WSR 05-14-125, filed 7/1/05, effective 8/1/05)

WAC 388-517-0320 Medicare savings and state-funded medicare buy-in programs cover some client costs. (1) For qualified medicare beneficiary (QMB) clients, the department pays:

(a) ((Pays)) Medicare Part A premiums (if any);

(b) ((Pays)) Medicare Part B premiums;

(c) ((Pays all)) Coinsurance, deductibles ((as described in subsection (6) of this section);

(d) May pay Medicare Advantage Part C premiums, if cost effective, for those clients already enrolled in Medicare Advantage Part C at the time of application for Medicare Advantage Part C premium payment. (The department does not select a Medicare Advantage Part C plan for QMB clients);

(e) Pays all coinsurance deductibles and co-payments for QMB-eligible clients enrolled in Medicare Advantage Part C as described in subsection (6) of this section; and

(f) Pays QMB premiums the first of the month following the month that QMB eligibility is determined), and copayments for medicare Part A, Part B, and medicare advantage Part C with the following conditions:

(i) Only the Part A and Part B deductible, coinsurance, and copayments up to the medicare or medicaid allowed

amount, whichever is less, if the service is covered by medicare and medicaid.

(ii) Only the deductible, coinsurance, and copayments up to the medicare allowed amount if the service is covered only by medicare.

(d) Copayments for OMB-eligible clients enrolled in medicare advantage Part C up to the medicare or medicaid allowed amount whichever is less.

(e) OMB Part A and/or Part B premiums the first of the month following the month the OMB eligibility is determined.

(2) For specified low-income medicare beneficiary (SLMB) clients, the department pays medicare Part B premiums effective up to three months prior to the certification period if eligible for those months. No other payments are made for SLMBs.

(3) For qualified individual (QI-1) clients, the department pays medicare Part B premiums effective up to three months prior to the certification period if eligible for those months unless:

(a) The client receives medicaid categorically needy (CN) or medically needy (MN) benefits; and/or

(b) The department's annual federal funding allotment is spent. The department resumes QI-1 benefit payments the beginning of the next calendar year.

(4) For qualified disabled working individual (QDWI) clients, the department pays medicare Part A premiums effective up to three months prior to the certification period if eligible for those months. The department stops paying medicare Part A premiums if the client begins to receive CN or MN medicaid.

(5) For state-funded medicare buy-in program clients, the department pays ~~((Medicare))~~:

(a) Medicare Part B premiums; and

(b) Only the Part A and B co-insurance, deductibles, and co-payments ((described in subsection (6) of this section)) up to the medicare or medicaid allowed amount, whichever is less, if the service is covered by medicare and medicaid.

(6) For the dual-eligible client, the department ((limits payments for certain services, provided to Medicare savings and state-funded Medicare buy-in clients;)) pays as follows:

(a) ~~If the ((Medicaid payment rate is higher than the amount paid by Medicare, the department pays only the cost-sharing liability of the Medicare co-insurance charge))~~ service is covered by medicare and medicaid, medicaid pays only the deductible, and coinsurance up to the medicare or medicaid allowed amount, whichever is less; and

~~(b) ((For Medicaid clients who are entitled to Medicare Part A and/or Medicare Part B (referred to as "dual eligible" clients:~~

~~(i) The department pays the Medicare or Medicaid payment rate, whichever is less, for services covered by both Medicare and Medicaid; and~~

~~(ii) The department pays the Medicare deductibles and co-insurance services only covered by Medicare))~~ Copayments for medicare advantage Part C up to the medicare or medicaid allowed copayment amount, whichever is less;

(c) If no medicaid rate exists, the department will deny payment unless the client is also OMB then refer to section (1) above.

WSR 07-11-138

PROPOSED RULES

TRANSPORTATION IMPROVEMENT BOARD

[Filed May 22, 2007, 10:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-120.

Title of Rule and Other Identifying Information: Amending Title 479 WAC, Transportation improvement board.

Hearing Location(s): Red Lion Hotel - Port Angeles, 221 North Lincoln, Port Angeles, WA 98362, (360) 452-9215, on July 27, 2007, at 9:00 a.m.

Date of Intended Adoption: July 27, 2007.

Submit Written Comments to: Rhonda Reinke, P.O. Box 40901, Olympia, WA 98504-0901, e-mail rhondar@tib.wa.gov, fax (360) 586-1165, by July 20, 2007.

Assistance for Persons with Disabilities: Contact Eileen Bushman by July 16, 2007, (360) 586-1146.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update program changes that may include, but not [be] limited to, program name changes deleting programs no longer funded by the transportation improvement board (repealed by passage of I-695), and incorporating policy language into WACs.

Reasons Supporting Proposal: The Administrative Procedure Act, RCW 34.05.010 provides the definitions of agency policy and agency rule. At the advice of our assistant attorney general, it was recommended to incorporate our board policies into WACs since our current board policies are binding requirements (definition of a rule). This provides clear, defined rules for customer agencies to follow and to better understand the legislative intent of the transportation improvement board's programs; helps to establish mandatory standards for customer agencies; maintains the service provided to customer agencies in a consistent manner; and addresses general "housekeeping" issues in order to maintain accuracy.

Statutory Authority for Adoption: RCW 27.26.010 [47.26.010], 47.26.080, 47.26.084, 47.26.086, 47.26.115, 47.26.164, 27.26.340 [47.26.340], and 47.26.345.

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

Name of Proponent: Washington state transportation improvement board, governmental.

Name of Agency Personnel Responsible for Drafting: Rhonda Reinke, P.O. Box 40901, Olympia, WA 98504-0901, (360) 586-1155; Implementation and Enforcement: Stevan Gorcester, P.O. Box 40901, Olympia, WA 98504-0901, (360) 586-1139.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Customers are local government entities.

A cost-benefit analysis is not required under RCW 34.05.328. Not required under RCW 34.05.328(5).

May 22, 2007

Stevan Gorcester
Executive Director

AMENDATORY SECTION (Amending WSR 03-16-077, filed 8/4/03, effective 9/4/03)

WAC 479-01-010 Organization of the transportation improvement board. The transportation improvement board is a twenty-one member board, organized under the provisions of ~~((chapter 269, Laws of 1995))~~ RCW 47.26.121. The board administers the urban arterial trust account ~~((and)),~~ the transportation improvement account, and the small city pavement and sidewalk account. ~~((The board evaluates petitions requesting any additions to or deletions from the state highway system and forwards recommendations to the legislature. Board membership is defined in RCW 47.26.121.))~~

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-01-020 The time and place of board meetings. Regular public meetings of the board are held at least quarterly or more frequently as decided by a majority vote of the board. Regular ~~((public))~~ meetings ~~((of the board shall be))~~ are held on the fourth Friday of the month ~~((or the third Friday if)), unless the week of the fourth Friday ((is))~~ includes a holiday, wherein the board will determine the date of the meeting. Each ~~((such))~~ regular meeting ~~((shall be))~~ is held at the ~~((offices of the board in Olympia, Washington, and begin at the hour of 9:00 a.m. or at such other))~~ time and place as designated by the board. The meeting schedule, for the following calendar year, will be approved at least three months before the beginning of the year.

A special meeting of the board may be called by the chairperson or by a majority of the members of the board ~~((; by delivering personally or by mail)).~~ A written notice to all other board members ((of the board)) is required at least twenty-four hours before the time of ~~((such))~~ the meeting ~~((as specified in the notice)).~~ The notice calling a special meeting ~~((shall state))~~ will include:

- The purpose for ~~((which))~~ the meeting ~~((is called and))~~;
- The date ~~((; hour, and))~~;
- The time;
- The place ~~((of such meeting and))~~;

All provisions of RCW 47.26.150 transportation improvement board meetings, and chapter 42.30 RCW ((shall)) otherwise known as the Open Public Meetings Act will apply.

AMENDATORY SECTION (Amending WSR 95-04-072, filed 1/30/95, effective 3/2/95)

WAC 479-01-030 The address of the board. ~~((Persons wishing to obtain information or to make submissions or requests of any kind shall address their correspondence to:))~~ The official mailing address of the board is:

~~((Executive Director,))~~ Transportation Improvement Board
Post Office Box 40901
Olympia, Washington 98504-0901.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-01-040 Definitions and acronyms. ~~((For purposes of implementing the requirements of RCW 47.26.160 relative to the transportation improvement board,))~~ The following definitions ~~((shall))~~ and acronyms apply:

- (1) TIB - the transportation improvement board.
- (2) Board - the transportation improvement board refers to the group of board members defined in RCW 47.26.121 and does not include the executive director or staff.
~~((2) TIB - the transportation improvement board.))~~
- (3) Director - the executive director of the transportation improvement board.
- (4) Staff - refers to the employees of the transportation improvement board excluding the executive director.
- (5) Agency - all cities, towns, counties, and ~~((public transit agencies))~~ transportation benefit districts eligible to receive board funding.
- ~~((5))~~ (6) Local agency official - refers to a local agency elected official or staff who is authorized to sign contracts on the city, town, county, or transportation benefit district's behalf.
- (7) Urban area - ~~((the term "urban area" as used for the arterial improvement program and the transportation partnership program))~~ refers to the portion of a county within the federal urban area boundary as designated by ~~((FHWA))~~ the Federal Highway Administration and/or Washington state's Growth Management Act.
- (8) Six-year transportation plan - refers to the city or county six-year transportation plan for coordinated transportation program expenditures per RCW 35.77.010 and 36.81-121.
- (9) Small city - refers to an incorporated city or town with a population of less than five thousand.
- (10) Sidewalk program - refers to both the urban and small city sidewalk programs.
- (11) Population - is defined as office of financial management official published population at the time of application.
- (12) Highway urban area population - as published by the office of financial management.
- (13) Scope change - refers to a change in the physical characteristics and/or dimensions of a project.
- (14) RJT - route jurisdiction transfer.
- (15) RTP - road transfer program (also known as the City Hardship Assistance Program or CHAP).
- (16) UATA - urban arterial trust account.
- (17) TIA - transportation improvement account.
- (18) Matching funds - all funds contributed to a project other than TIB funds.

AMENDATORY SECTION (Amending WSR 03-16-077, filed 8/4/03, effective 9/4/03)

WAC 479-01-050 ((Administration)) Administrative costs. The ~~((board))~~ costs for ~~((necessary))~~ board activities, staff services, and facilities ~~((that are attributable to the urban arterial trust account and))~~ will be paid out of the transportation improvement account ~~((shall be paid))~~ and the urban

arterial trust account as determined by the biennial appropriation.

NEW SECTION

WAC 479-01-060 Executive director—Powers and duties. The board appoints an executive director who will serve at its pleasure to carry out the board priorities and the mission of the agency including the following administrative duties:

- (1) The executive director will direct and supervise all day-to-day activities of the staff.
- (2) The executive director is the appointing authority of the staff and may authorize subordinates to act in the executive director's place to carry out administrative duties.
- (3) The executive director has waiver authority for value engineering studies as described in WAC 479-05-040.
- (4) The executive director has sidewalk deviation authority as described in WAC 479-12-500 and 479-14-200.
- (5) The executive director has administrative increase authority for projects up to the following levels:
 - (a) Urban corridor program – fifteen percent of project costs or seven hundred fifty thousand dollars whichever is less.
 - (b) Urban arterial program – fifteen percent of project costs or seven hundred fifty thousand dollars whichever is less.
 - (c) Small city arterial program – up to one hundred twenty-five thousand dollars.
 - (d) Road transfer program – up to seventy-five thousand dollars.
 - (e) Sidewalk program – up to fifty thousand dollars.
 - (f) Small city preservation program – up to two hundred thousand dollars within available funding limitations.

NEW SECTION

WAC 479-05-011 Submission of proposed projects. A call for projects may be made as the board deems appropriate. Subsequent to a call, a priority array may be adopted. The array will be published and will list all approved applications.

Special funding programs or a special call for projects may be made by the board as funds allow.

NEW SECTION

WAC 479-05-012 Emergent nature project submission and limitations. An eligible agency may request the transportation improvement board consider a project for funding outside of the normal call for projects. To be considered as emergent nature, a project must demonstrate the following:

- (1) There has been a significant change in the location or development of traffic generators in the area of the project.
- (2) The work proposed is necessary to avoid or reduce serious traffic congestion in the area of the project in the near future.
- (3) A partially funded project that, if completed, would enable a community to secure an unanticipated economic development opportunity.

(4) Other funding sources the local agency has applied for or secured for the project.

(5) The funding of the project would not adversely impact currently funded projects.

The agency may be asked to make a presentation to the board on the project.

NEW SECTION

WAC 479-05-013 Urban project transfer for completion. If an urban project meets the criteria of both the urban arterial trust account (UATA) and transportation improvement account (TIA), the funding source for the project may be transferred from one account to the other as the board deems necessary to ensure project completion.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-05-020 Six-year transportation (~~programs for urban areas~~) plan. ~~((The))~~ Projects selected in the priority array must be included in the local agency's six-year transportation ~~((programs of agencies required, respectively, by RCW 35.77.010, 36.81.121 and 35.58.2795 must have proposed transportation improvement board projects included))~~ plan prior to ~~((board approval of funds))~~ receiving authorization to proceed on the project.

~~((A copy of the six-year transportation program including the proposed projects to be approved shall be submitted to the board along with a copy of the resolution of the city or county adopting such program.))~~

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-05-030 (~~Six-year financial plan~~) A registered professional engineer must be in charge. ~~((At the beginning of each fiscal year the board shall update its six-year financial plan to determine the amount of estimated revenue to be available for new project starts in the ensuing biennium. The estimate of funds for new project starts shall take into consideration projects approved by the board for the design phase where construction funding approval is pending.))~~ All projects using UATA or TIA funds will be supervised by a professional engineer registered in the state of Washington.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-05-040 Value engineering study requirements. A value engineering ~~((studies shall be))~~ study is required ~~((in accordance with the policy adopted by the board))~~ for urban projects with total cost exceeding two and one-half million dollars or when determined by the executive director to be in the best interest of the project.

NEW SECTION

WAC 479-05-041 When a value engineering study may be waived. If the project meets one of the following criteria, the study is automatically waived:

- (1) Project receives less than twenty percent in TIB funds; or
- (2) Project is construction only.

The executive director has the discretion to waive the value engineering study requirement if the total project cost is less than five million dollars.

The board has the discretion to waive the value engineering study requirement on any project.

NEW SECTION

WAC 479-05-051 Project phases. Projects authorized by the board are divided into the following phases:

- (1) Design phase – documents that must be received prior to phase approval include:

- (a) Signed funding status form confirming that the funding partners are fully committed;
- (b) Page from the adopted six-year transportation plan which lists the project;
- (c) Signed fuel tax agreement; and if applicable
- (d) Consultant agreement (small city arterial and small city sidewalk programs only).

- (2) Bid phase – documents that must be received prior to phase approval include:

- (a) Signed bid authorization form that contains:
 - (i) Plans and specification package;
 - (ii) Written confirmation of funding partners; and
 - (iii) Confirmation that full funding is available for the project;
- (b) Signed confirmation that right of way is acquired or possession and use agreement is in place;
- (c) Engineer's estimate is in final format; and if applicable:
 - (i) Consultant agreement (small city arterial and small city sidewalk programs only);
 - (ii) Certification that a cultural resource assessment was completed;
 - (iii) Traffic signal warrants.

- (3) Construction phase – documents that must be received prior to phase approval include:

- (a) Updated cost estimate form signed by a local agency official and the project engineer;
- (b) Bid tabulations; and
- (c) Description of cost changes.
- (4) Project closeout phase – documents that must be received prior to phase approval include:
 - (a) Updated cost estimate form signed by a local agency official and the project engineer;
 - (b) Final summary of quantities; and
 - (c) Accounting history signed by a local agency official or the financial manager.

NEW SECTION

WAC 479-05-052 Project modification and scope change. The executive director may approve scope changes except the following which require the board's approval:

- (1) A change in the project limits with a request for an increase in funding beyond the executive director's administrative authority in WAC 479-01-060;
- (2) Adding or decreasing through lanes;
- (3) Adding or eliminating grade separations;
- (4) Reducing limits greater than one hundred lineal feet;
- (5) Inclusion or exclusion of major project element that may be considered a scope change by the executive director; or
- (6) Changes to project components that were used to rate the project.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-05-060 Methods of construction. All construction (~~(by agencies)~~) using (~~(board)~~) UATA or TIA funds shall be advertised, competitively bid and contracted, except:

- (1) Utility and railroad relocations and adjustments; ~~((and))~~
- (2) ~~((Installation of traffic control devices, if accomplished by the personnel of the agency-~~

~~A competitive bid is not required for projects which meet the requirements of))~~ Government force work;

- (3) Work eligible from the small works roster; and
- (4) Local agencies may be otherwise exempt from bidding requirements if so authorized by an applicable statute contained in chapter(s) 36.77, 35.22, 35.23, ((and)) or 35.27 RCW.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-05-080 Standard specifications. The current edition of *the Standard Specifications for Road, Bridge, and Municipal Construction* or equivalent, ~~((shall be included in any contract entered into by an agency using))~~ will be used as the standard for construction of board ((funds)) funded projects.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-05-100 Utility ~~((and railroad))~~ adjustments ~~((and))~~ or relocations. Utility ~~((and railroad))~~ adjustments ~~((and))~~ or relocations may be ~~((performed by negotiated contract with the owner of those facilities. The administering agency shall review and approve a written statement that includes the items of work and an estimate of cost prepared by the utility or railroad for the work required as a result of the improvement. Updated statements of items of work and estimates of cost may be reviewed and approved by the administering agency. All costs of utility and railroad adjustments, as finally approved by the administering agency, shall be subject to audit. If federal aid highway funds are included in the project, the negotiated contract shall~~

include the applicable provisions of federal Highway Administration policies and procedures prescribed in 23 C.F.R. 140, 23 C.F.R. 645 and 23 C.F.R. 646, Federal Aid Policy Guide)) reimbursed using the following criteria:

(1) If it is a direct cost for utility adjustments that are owned by the local government;

(2) If the utility provider owns the property in fee title; or

(3) If the utility franchise agreement requires the local agency to pay for those utility adjustments or relocations required by state or local government.

Upgrading of utilities is not eligible for reimbursement by UATA or TIA funds.

If the proposed work will cause a significant change in scope, the agency must seek board approval.

NEW SECTION

WAC 479-05-101 Railroad adjustments or relocation. Railroad adjustments or relocations may be reimbursed using the following criteria:

(1) TIB will reimburse the local agency for reasonable and necessary costs.

(2) There is a direct impact within the project limits.

Improvements beyond the necessary replacement costs to mitigate the impacts of the project will not be reimbursed.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-05-120 Street illumination and traffic control devices. Traffic control devices (~~(included in a participating))~~ for an approved project may be purchased and installed (~~(by the employees and with the equipment and materials of the local governmental units subject to the limits of)~~ under RCW 35.22.620(3), 35.23.352(1), and 36.77.065 (3) ~~by:~~ ((Provided, That the basis for payment of board funds is reimbursement of the appropriate portion of actual cost of such work, subject to audit.))

(1) The contractor for the construction phase of the project; or

(2) Local agency employees.

UATA or TIA funds may be used in the costs to underground service connections for street illumination and traffic signal services within the approved project scope.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-05-130 Project landscaping and aesthetic improvements. ~~((Board funds may be used at the appropriate matching ratio in the cost of landscaping and the use of other plantings and supporting materials within the project right of way to a maximum of three percent of the total authorized project costs. Provided, That requests for increases in the authorized amount of board funds to cover landscaping and related costs shall be considered jointly with other cost increases and approval of all such requests shall be limited to the amount authorized by WAC 479-05-250 to be approved by the director. Erosion control treatment shall not be considered a part of landscaping costs.~~

The three percent limitation for landscaping and related costs shall not affect the agency's authority to include landscaping and the use of other plantings or supporting materials in the project in amounts that exceed the three percent limit provided they are paid for solely with funds other than board supplied funds.)) Cost of landscaping and aesthetic improvements is limited to three percent of the total eligible authorized project costs.

(1) Landscaping includes:

(a) Cost of trees, shrubs, sod, and other plant material.

(b) Top soil and bark.

(c) Irrigation and tree grates.

(d) Labor for installation.

(2) Aesthetic improvement includes:

(a) Ornamental lighting.

(b) The local agency share of the cost of undergrounding of utilities.

(c) Public art.

(d) Special surfacing treatments (stamped concrete, pavers).

(e) Labor for installation.

(3) Items not considered landscaping or aesthetic improvements are:

(a) Erosion control treatments.

(b) Wetland mitigation (plantings) required by federal or state regulations.

(c) Property restoration.

Requests for increases in landscaping and related costs are subject to WAC 479-05-201, 479-05-202, and 479-05-203. Landscaping costs in excess of the three percent limit may be paid for by funding sources other than TIB funds.

NEW SECTION

WAC 479-05-131 Mitigation costs and limitations. Mitigation costs may include:

(1) Sound walls/berms: Unless required by specific regulations, TIB will not participate in this cost.

(2) Superfund sites: TIB funds will not participate in the cost of cleanup.

(3) Bridges: Bridge designs exceeding the most cost effective are not eligible for participation.

(4) Wetlands: Mitigation in excess of what is required by federal or state requirements is not eligible to be reimbursed.

UATA or TIA funds may not be used for excessive design, mitigation beyond federal or state requirements, or other unusual project features.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-05-140 Acquisition of rights of way. Right of way for board funded projects shall be acquired in accordance with chapters 8.26 RCW and 468-100 WAC. Reimbursement of right of way acquisition costs are eligible within the design phase of the project.

At bid phase, right of way acquisitions should be completed and certified. If all right of way cannot be certified, the local agency must have possession and use agreements for the remaining parcels.

NEW SECTION

WAC 479-05-141 What is eligible for reimbursement of right of way costs. Only the square footage needed for the roadway is eligible to be reimbursed, unless:

- (1) It is deemed by TIB to be in the best interest of the project to purchase the entire parcel;
 - (2) An entire parcel take is required by local resolution;
- or
- (3) An uneconomic remnant will remain.

If after the completion of the project, the uneconomic remnant is sold, transferred, or rezoned to make it an economic remnant, the proceeds of any sale will be placed back in the local agency's motor vehicle fund to be used for road improvement purposes only.

In the event the project is not built, TIB funds expended for right of way may be requested to be refunded to the board.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-05-170 ((Reimbursable costs for)) Reimbursement of engineering costs. Design and construction engineering costs eligible for reimbursement ((shall be)) are limited to twenty-five percent of the approved contract bid amount ((including adjustments for change orders and actual quantity amounts during construction and agency force construction)), excluding special studies or right of way costs.

Surveying and materials testing costs, even if they are part of the contract costs, are considered part of construction engineering and are subject to the twenty-five percent limit. Exceptions to the twenty-five percent engineering limit may be considered ((by the board)) for small city projects when an unforeseen issue arises that is beyond the control of the local agency. The local agency may request an increase through WAC 479-05-202 processes. ((Agency costs for value engineering and other special studies and right of way appraisals and acquisition costs will not be used to determine the amount subject to the limit.))

NEW SECTION

WAC 479-05-171 Reimbursement of cultural resource assessment costs for TIB funded projects. If a cultural resource assessment is required by the state department of archaeology and historical preservation, TIB will reimburse the normal costs required for the assessment. The assessment is considered part of design engineering, is not a special study, and not included in the twenty-five percent limitation in WAC 479-05-170.

NEW SECTION

WAC 479-05-201 When an agency may request an increase in TIB funds. Local agencies may request an increase in funds at the bid, construction, and project closeout phases.

NEW SECTION

WAC 479-05-202 How an agency requests an increase in TIB funds. Increases in TIB funds may be requested by the lead local agency and submitted to TIB staff through the bid authorization form or updated cost estimate form.

The executive director will consider increase requests up to the levels in WAC 479-01-060.

Increase requests above the executive director administrative authority require board action. The local agency may be asked to prepare and make a presentation to the board justifying the increase.

NEW SECTION

WAC 479-05-203 Criteria the board and the executive director use when reviewing increase requests. The board and executive director will consider the following when reviewing increase requests:

- (1) Whether the granting of the request will obligate funding beyond an acceptable level or will adversely affect authorized funds previously approved by the board.
- (2) Whether the request would fund expansion of the scope of work beyond that approved at design phase.
- (3) Whether the local agency should have anticipated an increase would be necessary at the outset of the project.
- (4) Requests for increases at construction phase will take priority over other phase requests.
- (5) Local agency funding partner ability to contribute to the increased costs.
- (6) Other criteria on a case-by-case basis.

NEW SECTION

WAC 479-05-204 If an increase is not approved. An agency request for an increase in funds may go to either the executive director or the board, as described in WAC 479-05-202, depending on the size of the request:

- (1) If the executive director hears the request and does not approve it, the local agency may:
 - (a) Proceed with the project, paying for any additional costs with local or other funds;
 - (b) Withdraw the request for participation;
 - (c) Request a formal review of the executive director's decision by the board; or
 - (d) Submit a request to the executive director to reduce the scope of the project as provided in WAC 479-05-052.
- (2) If the board hears the request and does not approve it, the local agency may:
 - (a) Proceed with the project, paying for additional costs;
 - (b) Withdraw the request for participation; or
 - (c) Request a scope modification or reduction as provided in WAC 479-05-052.

In either case, the project will need to retain a usable and functional improvement to be granted a scope reduction.

NEW SECTION

WAC 479-05-211 When a project is considered delayed. Projects are considered delayed when one of the following occurs:

- (1) Urban corridor program projects do not reach construction phase within five years and six months.
- (2) Urban arterial program projects do not reach construction phase within four years and six months.
- (3) All other programs must reach construction phase within two years and six months.

The date funding is made available to the local agency by TIB is the starting point in calculating the delay date.

NEW SECTION

WAC 479-05-212 The stages of delayed projects. For TIB funded projects, there are three stages of delay:

- (1) Stage 1 delay - if the project does not meet the project target date per WAC 479-05-211.
- (2) Stage 2 delay - if the project does not meet the revised bid date as agreed in Stage 1 delay under WAC 479-05-213(1), or one year after Stage 1 delay.
- (3) Stage 3 delay - if the project does not meet the revised bid date as agreed to under Stage 2 delay under WAC 479-05-213(2), or one year after Stage 2 delay.

The executive director has discretion when moving projects from one stage of delay to the next and may consider pending bid dates or other indications or impending progress.

NEW SECTION

WAC 479-05-213 Review and consequences of delay. Delayed projects will be reviewed as follows:

- (1) Stage 1 - agency plan letter. The TIB staff report the delayed project to the board at a regularly scheduled board meeting. The executive director requests a letter from the local agency to respond with a progress plan to get back on schedule.
- (2) Stage 2 - explanation and commitment. The local agency provides TIB staff with an explanation of why the project continues to be delayed and a commitment date which is acceptable to the executive director or board.
- (3) Stage 3 - hearing. If the agency misses the agreed upon date(s) or deadlines set in the Stage 2 review, the agency will be provided a hearing in front of the board at the next regularly scheduled meeting. The result of the hearing will include an absolute date for resolution which is agreed to by the board.

If the local agency does not meet the absolute date for resolution as agreed to by the board in the Stage 3 hearing, the project may be suspended or the agency may be requested to withdraw the project and reapply for funding in a later application cycle.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 479-05-010	Time and place for submission of proposed transportation improvement board projects.
WAC 479-05-050	Procedures for project approval.
WAC 479-05-070	Registered engineer in charge.
WAC 479-05-090	Design standards for transportation improvement board projects.
WAC 479-05-110	Undergrounding utilities.
WAC 479-05-150	Inclusion of bicycle facilities in transportation improvement board projects.
WAC 479-05-160	Reimbursable costs.
WAC 479-05-180	Direct costs.
WAC 479-05-190	Indirect costs.
WAC 479-05-200	Partial or progress payments for project costs.
WAC 479-05-210	Record requirements.
WAC 479-05-220	Audits of project records.
WAC 479-05-230	Expenditure schedule of board funds.
WAC 479-05-240	Procedure to request increase in board funds.
WAC 479-05-250	Review of delayed projects.
WAC 479-05-260	Recovery of board funds on canceled projects.
WAC 479-05-270	Identification and consideration of surplus funds on authorized board projects.
WAC 479-05-280	Funding shortfall.
WAC 479-05-290	Over-programming of funds.

Chapter 479-14 WAC

~~((SUBMISSION OF PROPOSED)) TRANSPORTATION IMPROVEMENT ACCOUNT PROJECTS ((TO TRANSPORTATION IMPROVEMENT BOARD))~~

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-14-005 Purpose and authority. ~~((RCW 47.26.084 and 47.26.086 provides that))~~ The transportation

improvement board (~~shall~~) adopts reasonable rules necessary to implement the transportation improvement account.

NEW SECTION

WAC 479-14-006 Previously funded projects.

Projects are not eligible to compete for funding within the term limits of a previously funded project for a period of ten years from contract completion. A project that is divided into multiple phases is not considered a previously funded project.

NEW SECTION

WAC 479-14-011 Program funded from the transportation improvement account. The transportation improvement account funds the urban corridor program.

NEW SECTION

WAC 479-14-111 Who is eligible to receive urban corridor program funding. Eligible agencies are:

- (1) Counties that have an urban area;
- (2) Incorporated cities with a population of five thousand or more; and
- (3) Transportation benefit districts.

Generally, the eligible agency will be designated as the project lead. However, the executive director may designate another agency as lead in the best interest of project completion or for convenience to both parties.

NEW SECTION

WAC 479-14-121 What projects are eligible for urban corridor program funding. Eligible projects are:

- (1) Improvements on federally classified arterials; or
- (2) Within the urban growth area in counties which are in full compliance with Washington state's Growth Management Act.

Any urban street that is not functionally classified at the time of award must obtain functional classification prior to approval to expend board funds.

Sidewalks are required on both sides of the arterial unless a deviation is granted under WAC 479-14-200.

NEW SECTION

WAC 479-14-131 Award criteria for the urban corridor program. The board establishes the following criteria for use in evaluating urban corridor program grant applications:

- (1) Mobility improvements - includes system connectivity, improves flow of vehicles and freight, and extends or completes corridor for network connections.
- (2) Local support - demonstrates initiative to achieve full funding and project completion.
- (3) Growth and development improvements - provides or improves access to urban centers, economic development, supports annexation agreements, and increases residential density.

(4) Safety improvements - addresses accident reduction, elimination of roadway hazards, corrects roadway deficiencies, and eliminates railroad at-grade crossing.

(5) Mode accessibility - additions to or enhancements of high occupancy vehicle and nonmotorized transportation modes.

NEW SECTION

WAC 479-14-141 Regions of the urban corridor program. The board allocates urban corridor program funding across three regions to ensure statewide distribution of funds. The three regions are as follows:

(1) Puget Sound region includes eligible agencies within King, Pierce, and Snohomish counties.

(2) East region includes eligible agencies within Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties.

(3) West region includes eligible agencies within Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, Kitsap, Lewis, Mason, Pacific, San Juan, Skagit, Skamania, Thurston, Wahkiakum, and Whatcom counties.

NEW SECTION

WAC 479-14-151 Funding distribution formula for the urban corridor program. The statewide distribution of urban corridor program funds is allocated between regions according to the following formula:

The average of the ratios of region urban area population (RUP) divided by the statewide urban population (SUP) plus region functionally classified lane miles within the urban area (RFC) divided by statewide functionally classified lane miles within urban areas (SFC).

$$\frac{(RUP/SUP) + (RFC/SFC)}{2}$$

The board may adjust the regional allocation by plus or minus five percent to fully fund the approved list of regional projects. When requested by the board, TIB staff will update the regional allocation to ensure equitable distribution of funds.

NEW SECTION

WAC 479-14-161 Matching requirement for the urban corridor program. The urban corridor program provides funding which will be matched by other funds as follows:

- (1) For cities:
 - (a) If the city valuation is under \$1.0 billion, the matching rate is ten percent of total project costs.
 - (b) If the city valuation is \$1.0 billion to \$2.5 billion, the rate is fifteen percent of total project costs.
 - (c) If the city valuation is over \$2.5 billion, the rate is twenty percent of total project costs.
- (2) For counties:

(a) If the road levy valuation is under \$3.0 billion, the rate is ten percent of total project costs.

(b) If the road levy valuation is between \$3.0 billion to \$10.0 billion, the rate is fifteen percent of total project costs.

(c) If the road levy valuation is over \$10.0 billion, the rate is twenty percent of total project costs.

The board uses the current published valuation from the department of revenue.

NEW SECTION

WAC 479-14-200 Sidewalk deviation authorities for urban corridor program. The board recognizes the need for pedestrian facilities on arterial roadways and has required that sidewalks be provided under the urban corridor program. A sidewalk deviation may be requested by the lead agency and may be granted under the following authorities:

(1) The executive director has administrative authority to grant sidewalk deviations as follows:

(a) On both sides if the roadway is a ramp providing access to a limited access route;

(b) On both sides of a designated limited access facility if:

(i) Route is signed to prohibit pedestrians; or

(ii) Pedestrian facilities are provided on an adjacent parallel route;

(c) On one side if the roadway is a frontage road immediately adjacent to a limited access route; or

(d) On one side if the roadway is immediately adjacent to a railroad or other facility considered dangerous to pedestrians.

(2) All other sidewalk deviation requests require board action.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 479-14-008	Definitions.
WAC 479-14-010	Programs funded from the transportation improvement account.
WAC 479-14-100	Intent of the transportation partnership program.
WAC 479-14-110	Priority criteria for the transportation partnership program.
WAC 479-14-120	Establishing regions for transportation partnership program.
WAC 479-14-130	Apportionment of funds to transportation partnership program regions.
WAC 479-14-140	Eligible transportation partnership program projects.

WAC 479-14-150	Designation of lead agency for transportation partnership program projects.
WAC 479-14-160	Verification of coordination with planning authority for transportation partnership program projects.
WAC 479-14-170	Planning requirements for multiagency transportation partnership program projects.
WAC 479-14-180	Local/private matching funds on transportation partnership program projects.
WAC 479-14-190	Certification of local/private matching funds for transportation partnership program projects.

Chapter 479-12 WAC

~~((SUBMISSION OF PROPOSED)) URBAN ARTERIAL TRUST ACCOUNT PROJECTS ((TO TRANSPORTATION IMPROVEMENT BOARD))~~

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-12-005 Purpose and authority. ~~((RCW 47.26.160 provides that))~~ The transportation improvement board ~~((shall))~~ adopts reasonable rules necessary to implement the urban arterial trust account.

NEW SECTION

WAC 479-12-006 Previously funded projects. Projects are not eligible to compete for funding within the termini limits of a previously funded project for a period of ten years from contract completion. A project that is divided into multiple phases or stages is not considered a previously funded project.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-12-011 Programs funded from the urban arterial trust account. ~~((Funds from))~~ The urban arterial trust account ~~((shall))~~ funds the ~~((arterial improvement program, the small city program, the city hardship assistance program, and the pedestrian safety and mobility program))~~ following programs:

- (1) The urban arterial program;
- (2) The small city arterial program; and
- (3) The sidewalk programs:
 - (a) Urban sidewalk program;
 - (b) Small city sidewalk program.

NEW SECTION

WAC 479-12-111 Who is eligible to receive urban arterial program funding. Agencies eligible to receive urban arterial program funds are:

- (1) Incorporated cities with a population of five thousand or greater.
- (2) Incorporated cities with a population less than five thousand which are located in a federal urban area.
- (3) Counties with a federally designated urban area.

Generally, the eligible agency will be designated as the project lead. However, the executive director may designate another agency as lead in the best interest of project completion or for convenience to both parties.

NEW SECTION

WAC 479-12-121 What projects are eligible for urban arterial program funding. Eligible projects are improvements located on a route with an urban federal functional classification.

Any urban street that is not functionally classified at the time of award must obtain functional classification prior to approval to expend board funds.

For the urban arterial program, sidewalks are required on both sides of the roadway unless a sidewalk deviation is granted by the executive director or board through WAC 479-12-500.

NEW SECTION

WAC 479-12-131 Award criteria for the urban arterial program. The board establishes the following criteria for use in evaluating urban arterial program grant applications:

- (1) Safety improvements - addresses accident reduction, eliminates roadway hazards, and corrects roadway deficiencies.
- (2) Mobility improvements - improves level of service, improves access to generators, and connects urban street networks.
- (3) Pavement condition - replaces or rehabilitates street surfaces and structural deficiencies.
- (4) Mode accessibility - provides additional high occupancy vehicle lanes, bus volume, or nonmotorized facilities.
- (5) Local support - demonstrates initiative to achieve full funding and project completion.

NEW SECTION

WAC 479-12-141 Regions of the urban arterial program. The board allocates urban arterial program funding across five regions to ensure statewide distribution of funds. The five regions are as follows:

- (1) Puget Sound region includes eligible agencies within King, Pierce, and Snohomish counties.
- (2) Northwest region includes eligible agencies within Clallam, Island, Jefferson, Kitsap, San Juan, Skagit, and Whatcom counties.

(3) Northeast region includes eligible agencies within Adams, Chelan, Douglas, Ferry, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, and Whitman counties.

(4) Southeast region includes eligible agencies within Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Klickitat, Walla Walla, and Yakima counties.

(5) Southwest includes eligible agencies within Clark, Cowlitz, Grays Harbor, Lewis, Mason, Pacific, Skamania, Thurston, and Wahkiakum counties.

NEW SECTION

WAC 479-12-151 Funding distribution formula for the urban arterial program. The statewide distribution of urban arterial program funds is allocated between regions according to the following formula:

The average of the ratios of region urban area population (RUP) divided by statewide urban population (SUP) plus the region functionally classified lane miles within the urban area (RFC) divided by statewide functionally classified lane miles within urban areas (SFC).

The equation is as follows:

$$\frac{(RUP/SUP) + (RFC/SFC)}{2}$$

The board may adjust the regional allocation by plus or minus five percent to fully fund the approved list of regional projects. When requested by the board, TIB staff will update the regional allocation to ensure equitable distribution of funds.

NEW SECTION

WAC 479-12-161 Matching requirement for the urban arterial program. The urban arterial program provides funding which will be matched by other funds as follows:

- (1) For cities:
 - (a) If the city valuation is under \$1.0 billion, the matching rate is ten percent of total project costs.
 - (b) If the city valuation is \$1.0 billion to \$2.5 billion, the rate is fifteen percent of total project costs.
 - (c) If the city valuation is over \$2.5 billion, the rate is twenty percent of total project costs.
- (2) For counties:
 - (a) If the road levy valuation is under \$3.0 billion, the rate is ten percent of total project costs.
 - (b) If the road levy valuation is between \$3.0 billion to \$10.0 billion, the rate is fifteen percent of total project costs.
 - (c) If the road levy valuation is over \$10.0 billion, the rate is twenty percent of total project costs.

The board uses the current valuations from the department of revenue.

NEW SECTION

WAC 479-12-211 Who is eligible to receive small city arterial program funding. An eligible agency is an incorporated city or town that has a population of less than five thousand.

NEW SECTION

WAC 479-12-221 What projects are eligible for small city arterial program funding. To be eligible for funding, a proposed project must improve an arterial that meets at least one of the following standards:

- (1) Serves as a logical extension of a county arterial or state highway through the city; or
- (2) Acts as a bypass or truck route to relieve the central core area; or
- (3) Serves as a route providing access to local facilities such as:
 - (a) Schools;
 - (b) Medical facilities;
 - (c) Social centers;
 - (d) Recreational areas;
 - (e) Commercial centers;
 - (f) Industrial sites.

Sidewalks are required on one side of the roadway unless a deviation is granted under WAC 479-12-500.

NEW SECTION

WAC 479-12-231 Award criteria for the small city arterial program. The board establishes the following criteria for use in evaluating small city arterial program grant applications:

- (1) Safety improvement - projects that address accident reduction, hazard elimination, and roadway deficiencies.
- (2) Pavement condition - replaces or rehabilitates street surfaces and structural deficiencies.
- (3) Local support - projects that improve network development and address community needs.

NEW SECTION

WAC 479-12-241 Regions of the small city arterial program. The board allocates small city arterial program funding across three regions to ensure statewide distribution of funds. The three regions are as follows:

- (1) Puget Sound region includes eligible agencies within King, Pierce, and Snohomish counties.
- (2) East region includes eligible agencies within Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties.
- (3) West region includes eligible agencies within Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, Kitsap, Lewis, Mason, Pacific, San Juan, Skagit, Skamania, Thurston, Wahkiakum, and Whatcom counties.

NEW SECTION

WAC 479-12-251 Funding distribution formula for the small city arterial program. The statewide distribution of small city arterial program funds is allocated between regions according to the following formula:

Region small city population divided by statewide small city population.

The board may adjust the regional allocation by plus or minus five percent to fully fund the approved list of regional projects. When requested by the board, staff will update the regional allocations to ensure equitable distribution of funds.

NEW SECTION

WAC 479-12-261 Matching requirement for the small city arterial program. There is no match requirement for cities with a population of five hundred or less. Cities with a population over five hundred must provide a minimum match of five percent of the total project cost.

NEW SECTION

WAC 479-12-402 Sidewalk program subprograms. In order to provide equity for project grant funding, the sidewalk program is divided into the urban sidewalk program and the small city sidewalk program.

NEW SECTION

WAC 479-12-411 Who is eligible to receive sidewalk program funding. Each of the subprograms has separate criteria for agency eligibility as follows:

- (1) Urban sidewalk program agency eligibility:
 - (a) Incorporated cities with a population of five thousand and over.
 - (b) Incorporated cities with a population less than five thousand which are located within a federally designated urban area.
 - (c) Counties with a federally designated urban area.
- (2) Small city sidewalk program agency eligibility:
 - (a) Incorporated cities with a population under five thousand.

NEW SECTION

WAC 479-12-421 What projects are eligible for sidewalk program funding. Minimum project requirements for each subprogram are as follows:

- (1) Urban sidewalk program project eligibility:
 - (a) Must be on or related to a functionally classified route; and
 - (b) Primary purpose of the project is transportation and not recreation.
- (2) Small city sidewalk program project eligibility:
 - (a) The project must be located on or related to a street within the TIB designated arterial system; and
 - (b) Primary purpose of the project is transportation and not recreation.

For both of the subprograms, TIB does not participate in the cost for right of way acquisitions.

For the urban sidewalk program, TIB does not provide funding increases.

NEW SECTION

WAC 479-12-431 Award criteria for the sidewalk program. The board establishes the following criteria for use

in evaluating sidewalk program grant applications for both urban and small city sidewalk projects:

- (1) Safety improvement - projects that address hazard mitigation and accident reduction.
- (2) Pedestrian access - projects that improve or provide access to facilities including:
 - (a) Schools;
 - (b) Public buildings;
 - (c) Central business districts;
 - (d) Medical facilities;
 - (e) Activity centers;
 - (f) High density housing (including senior housing);
 - (g) Transit facilities;
 - (h) Completes or extends existing sidewalks.
- (3) Local support - addresses local needs and is supported by the local community.

NEW SECTION

WAC 479-12-441 Regions of the sidewalk program.

The board allocates sidewalk program funding across three regions to ensure statewide distribution of funds. The three regions are as follows:

- (1) Puget Sound region includes eligible agencies within King, Pierce, and Snohomish counties.
- (2) East region includes eligible agencies within Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties.
- (3) West region includes eligible agencies within Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, Kitsap, Lewis, Mason, Pacific, San Juan, Skagit, Skamania, Thurston, Wahkiakum, and Whatcom counties.

NEW SECTION

WAC 479-12-451 Distribution formula for the sidewalk program. For the purpose of allocating funds, the sidewalk program is divided into two subprograms, the urban sidewalk program and the small city sidewalk program. The distribution formulas are as follows:

- (1) Urban sidewalk program - the average of the ratios of region urban area population (RUP) divided by statewide urban population (SUP) plus region functionally classified lane miles within the urban area (RFC) divided by statewide functionally classified lane miles within urban areas (SFC).

The equation is as follows:

$$\frac{(RUP/SUP) + (RFC/SFC)}{2}$$

- (2) Small city sidewalk program - region small city population divided by statewide small city population.

For either program, the board may adjust regional allocations by plus or minus five percent to fully fund the approved list of regional projects. When requested by the board, staff will update the regional allocations to ensure equitable distribution of funds.

NEW SECTION

WAC 479-12-461 Matching requirement for the sidewalk program. The sidewalk program provides funding which will be matched by other funds as follows:

- (1) The urban sidewalk program requires a match of at least twenty percent of total project costs.
- (2) Small city sidewalk program matching rates are dependent on the city population as follows:
 - (a) Cities with a population of five hundred and below are not required to provide matching funds.
 - (b) Cities with a population over five hundred but less than five thousand, require a match of at least five percent of the total project costs.

NEW SECTION

WAC 479-12-500 Sidewalk deviation authority for urban arterial program and small city arterial program.

The transportation improvement board recognizes the need for pedestrian facilities on arterial roadways and has required that sidewalks be provided under the urban arterial program and small city arterial program. A sidewalk deviation may be requested by the lead agency and may be granted under the following authorities:

- (1) The executive director has administrative authority to grant sidewalk deviations as follows:
 - (a) On one side if the roadway is a frontage road immediately adjacent to a limited access route;
 - (b) On one side if the roadway is immediately adjacent to a railroad or other facility considered dangerous to pedestrians;
 - (c) On both sides if the roadway is a ramp providing access to a limited access route; or
 - (d) On both sides of a designated limited access facility if:
 - (i) Route is signed to prohibit pedestrians; or
 - (ii) Pedestrian facilities are provided on an adjacent parallel route.
- (2) All other sidewalk deviation requests require board action.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 479-12-008	Definitions.
WAC 479-12-100	Intent of the arterial improvement program.
WAC 479-12-110	Priority criteria for arterial improvement program projects.
WAC 479-12-120	Establishing regions for arterial improvement program.
WAC 479-12-130	Apportionment of funds to arterial improvement program regions.

WAC 479-12-140	Eligible arterial improvement program projects.	<u>AMENDATORY SECTION</u> (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)
WAC 479-12-150	Matching ratios for arterial improvement program projects.	WAC 479-02-010 Purpose. The purpose of this chapter shall be to ensure compliance by the ((Washington)) transportation improvement board with the provisions of <u>chapter 42.56 RCW</u> ((42.17.250 through 42.17.348)) dealing with public records.
WAC 479-12-200	Intent of the small city program.	
WAC 479-12-210	Priority criteria for small city program projects.	<u>AMENDATORY SECTION</u> (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)
WAC 479-12-220	Establishing regions for small city program.	WAC 479-02-050 Public records officer. ((The transportation improvement board public records shall be in the charge of the executive secretary who shall be the public records officer for the board. The person so designated shall be officed in the Transportation Improvement Boards office in Olympia, Washington. The public records officer shall be responsible for implementation of the board's rules and regulations regarding release of public records, coordinating staff efforts of the board in this regard and generally ensuring compliance of the staff with the public records disclosure requirements of chapter 1, Laws of 1973-)) <u>The executive secretary is the public records officer for the transportation improvement board. The public records officer is responsible for implementation of the board's rules and regulations regarding release of public records and ensuring compliance with the public records disclosure requirements of chapter 42.56 RCW.</u>
WAC 479-12-230	Apportionment of funds to small city program regions.	
WAC 479-12-240	Eligible small city program projects.	
WAC 479-12-250	Matching requirements for small city program projects.	
WAC 479-12-300	Intent of the city hardship assistance program.	
WAC 479-12-310	Priority criteria for city hardship assistance program projects.	
WAC 479-12-340	Eligible city hardship assistance program agencies or streets.	<u>AMENDATORY SECTION</u> (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)
WAC 479-12-350	Matching ratios for city hardship assistance program projects.	WAC 479-02-060 Public records available. All public records ((of the board as)) defined in ((chapter 42.17)) RCW <u>42.17.020</u> are ((deemed)) available for public inspection and copying ((pursuant to these rules:)) unless the record falls within the specific exemptions of <u>chapter 42.56 RCW</u> ((42.17.310)) or other <u>specific statute</u> ((that exempts or prohibits disclosure of specific information or records)).
WAC 479-12-360	Allowable city hardship assistance program activities.	
WAC 479-12-370	City hardship assistance program participation with other funds.	<u>AMENDATORY SECTION</u> (Amending WSR 95-04-072, filed 1/30/95, effective 3/2/95)
WAC 479-12-400	Intent of pedestrian safety and mobility program.	WAC 479-02-070 Requests for public records. ((Subject to the provisions of subsection (3) of this section, public records are obtainable by members of the public when those members of the public comply with the following procedures: (1) A request shall be addressed to the public records officer. Such request shall include the following:)) <u>Public records requests should be sent to the public records officer at the office location using the following procedures:</u>
WAC 479-12-410	Priority criteria for pedestrian safety and mobility projects.	<u>(1) To ensure accuracy, any requests for public records should be made in writing and may be mailed, e-mailed, faxed, or delivered to the office during business hours.</u>
WAC 479-12-420	Establishing regions for the pedestrian safety and mobility program.	<u>(2) For prompt response, the following information should be provided in the request:</u>
WAC 479-12-430	Apportionment of funds to pedestrian safety and mobility program regions.	<u>(a) The name of the person requesting the record((-));</u>
WAC 479-12-440	Eligible pedestrian safety and mobility projects.	<u>(b) The ((time of day and calendar)) date on which the request ((was)) is made((-));</u>

(c) ~~((If the matter requested is referenced within the current index maintained by the board, a reference to the requested record as it is described in such current index.~~

~~(d) If the requested matter is not identifiable by reference to the board's current index, a statement that identifies the specific record requested.~~

~~(e)) A specific description of the material requested;~~

~~(d) A verification that the records requested ~~((shall)) will~~ not be used to compile a sales list or used for commercial ~~((sales list.~~~~

~~(2) The public records officer shall inform the member of the public making the request whether the requested record is available for inspection or copying at the Transportation Improvement Boards office in Olympia, Washington.~~

~~(3) When it appears that a request for a record is made by or on behalf of a party to a lawsuit or a controversy to which the board is also a party or when such a request is made by or on behalf of an attorney for such a party the request shall be referred to the assistant attorney general assigned to the board for appropriate response)) gain;~~

~~(e) Instructions as to whether the requestor wants to view the document at the TIB offices, receive a copy by mail, or receive an electronic copy if available.~~

~~(3) TIB's public records request form is available on the web site.~~

NEW SECTION

WAC 479-02-075 Response to requests. Upon receiving a request, the public records officer will respond within five business days in writing or by e-mail acknowledging receipt of the request and with one or more of the following:

(1) The requested record;

(2) An estimate of the time it will take to provide the record or a schedule for providing the records in installments, including:

(a) An estimate of the copying and shipping costs of the record; and

(b) A request for advanced partial payment of the copy and shipping costs;

(3) A request for further information or identification of the desired public records;

(4) A request for verification that the records requested will not be used to compile a sales list, or that the records will not be sold for commercial gain; or

(5) A denial of the request pursuant to WAC 479-02-110.

AMENDATORY SECTION (Amending WSR 91-13-056, filed 6/17/91, effective 7/18/91)

WAC 479-02-080 Availability ~~((for public inspection and copying of public records—Office hours))~~. Public records ~~((shall)) will~~ be available for inspection and copying during the normal business hours of the board. ~~((For the purposes of this chapter, the))~~ Normal office hours ~~((shall be))~~ are from 8:00 a.m. to 5:00 p.m., Monday through Friday, ~~((excluding legal))~~ except state holidays.

AMENDATORY SECTION (Amending WSR 91-13-056, filed 6/17/91, effective 7/18/91)

WAC 479-02-090 Inspection and copying cost. (1) No fee ~~((shall be))~~ is charged for inspection of public records.

(2) The board ~~((shall impose))~~ will charge a reasonable ~~((charge))~~ fee for providing copies of public records ~~((and for the use by any person of agency equipment to copy records; such charges shall not exceed the amount necessary to reimburse the board for its actual costs incident to such copying. Actual costs shall include the labor costs of staff, machine cost and paper cost necessary to provide copies of requested records))~~ as provided in RCW 42.56.120.

AMENDATORY SECTION (Amending WSR 95-04-072, filed 1/30/95, effective 3/2/95)

WAC 479-02-100 Protection of public records. ~~((In order to implement the provisions of RCW 42.17.290, requiring agencies to enact reasonable rules))~~ To protect public records ~~((from damage or disorganization)),~~ the following rules have been adopted~~((:))~~:

(1) Copying of public documents ~~((shall))~~ will be done by ~~((the board personnel and))~~ staff or under ~~((the))~~ their supervision ~~((of said personnel, upon the request of members of the public under the procedures set down in WAC 479-02-070)).~~

(2) ~~((No document shall be physically removed by a member of the public from the area designated by the board for the public inspection of documents for any reason whatever.~~

~~((3) When a member of the public requests to examine an entire file or group of documents, as distinguished from a request to examine certain individual documents which can be identified and supplied by themselves, the board shall be allowed a reasonable time to inspect the file to determine whether information protected from disclosure by RCW 42.17.310, is contained therein, and the board shall not be deemed in violation of its obligation to reply promptly to requests for public documents by reason of causing such an inspection to be performed))~~ Public documents will not be removed by the requestor.

(3) Inspection of documents will be monitored by staff.

(4) If a request is submitted to examine or copy an entire file or group of documents, the public records officer will review the file and identify any protected records under RCW 42.17.310. A reasonable time to do the review will be given to the public records officer without being in violation of the obligation to reply promptly.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-02-110 Denial of request. ~~((1) The executive director shall determine which public records requested in accordance with these rules are exempt under the provisions of RCW 42.17.310 or other statute.~~

(2) Each denial of a request for a public record shall be accompanied by a written statement to the person requesting the record clearly specifying the reasons for denial, including a statement of the specific exemption authorizing the with-

holding of the record and a brief explanation of how the exemption applies to the record withheld.)) Whenever the record requested clearly falls within the statutory exemptions of chapter 42.56 RCW, or when the exempt status of the record is unclear:

(1) The public records officer will consult with the assistant attorney general to determine if a requested public record is exempt; and

(2) Any denial of a request based upon an exemption will be made by a written statement to the requestor together with specific explanation of the reasons for and how to request a review of the exemption.

AMENDATORY SECTION (Amending WSR 95-04-072, filed 1/30/95, effective 3/2/95)

WAC 479-02-120 Review of agency denial. ~~((When ever a person objects to a conclusion that))~~ Denial of a public records ~~((is exempt from disclosure, the person may))~~ request ~~((the attorney general to review the matter))~~ will be in accordance with RCW ~~((42.17.325))~~ 42.56.530.

AMENDATORY SECTION (Amending WSR 95-04-072, filed 1/30/95, effective 3/2/95)

WAC 479-02-130 Records index. ~~((The board has available for public inspection and copying at its offices in Olympia a current index of the following records:~~

~~(a) State legislation and proposed rules and regulations pertaining to board standards;~~

~~(b) Those statements of policy and interpretations of policy, statute and bylaws which have been adopted by the board;))~~ The public records officer will maintain a current index of board records.

(1) The following list of records is included in the index:

(a) Legislation, rules, and regulations of the board;

(b) Bylaws adopted by the board;

(c) Minutes of board meetings;

(d) Resolutions approved by the board;

(e) ~~((TIB))~~ Program guidelines;

(f) Program reports and publications~~((;~~

~~((g) Budgets and expenditures;~~

~~((h) TIB project administration and accounting files)).~~

(2) ((A system of indexing shall be as follows:

~~((a) The indexing system will be administered by the board's public record officer.~~

~~((b) Copies of the index shall be available for public inspection and copying in the manner provided in chapter 479-02 WAC.~~

~~((c))~~ The public records officer ((shall)) will update the index at least once a year ((and shall revise the index)) or when deemed necessary by the ((board)) executive director.

(3) The index will be available for inspection and copying as other public records.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 479-510-450 Transportation Equity Act for the 21st Century or its successor acts, enhancement program account—Eligibility.

WAC 479-510-460 Transportation Equity Act for the 21st Century or its successor acts, enhancement program account—Criteria.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 479-17-100 Transportation Equity Act for the 21st Century or its successor acts, surface transportation program, statewide competitive program account—Eligibility.

WAC 479-17-200 Transportation Equity Act for the 21st Century or its successor acts, statewide competitive program account—Criteria.

WAC 479-17-300 Transportation Equity Act for the 21st Century or its successor acts, enhancement program account—Eligibility.

WAC 479-17-400 Transportation Equity Act for the 21st Century or its successor acts, enhancement program account—Criteria.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 479-15-005 Purpose and authority.

WAC 479-15-008 Definitions.

WAC 479-15-010 Programs funded from the public transportation systems account.

WAC 479-15-100 Intent of the public transportation systems program.

WAC 479-15-110 Priority criteria for public transportation systems program.

WAC 479-15-120	Establishing regions for public transportation systems program.
WAC 479-15-130	Apportionment of funds to public transportation systems program regions.
WAC 479-15-140	Eligible public transportation systems program projects.

Chapter 479-06 WAC

FINANCIAL REQUIREMENTS

NEW SECTION

WAC 479-06-010 Transportation improvement board sixteen-year financial plan. The board will update its sixteen-year financial plan at the beginning of each fiscal year. The financial plan will include estimated revenue to be available for new project starts in the ensuing biennium based on forecast council's revenue forecast. Other factors included are fund balance, bond debt, interest revenue, legislative appropriation, projected expenditures by program, and any other issues that may impact new project starts.

NEW SECTION

WAC 479-06-020 Reimbursable costs. Costs must be reasonable and chargeable to the project to be eligible for reimbursement. Project costs eligible for reimbursement are defined as direct and indirect.

NEW SECTION

WAC 479-06-030 Direct costs. Direct costs eligible for reimbursement are costs that are directly charged to the project and may include:

- (1) Agency direct labor and employee benefits:
 - (a) Salaries and wages of agency nonadministrative employees working directly on the project as documented by payroll records.
 - (b) Employee benefits are calculated as a percentage of direct labor dollars as set by the board and include:
 - (i) F.I.C.A. (Social Security) - employer's share;
 - (ii) Retirement benefits (employer's share of actual cost);
 - (iii) Hospital, health, dental and other welfare insurance;
 - (iv) Life insurance;
 - (v) Industrial and medical insurance.
 - (c) Employee leave:
 - (i) Vacation;
 - (ii) Sick leave;
 - (iii) Holiday pay;
 - (iv) Civil leave.
- (2) Contract engineering services as specified by a consultant agreement.
- (3) Permit fees.
- (4) Right of way acquired for the project includes the following costs:
 - (a) Purchase cost of all property and property rights needed for specific projects in accordance with chapter 8.26

RCW including access rights, easements, losses in property value or damages (if any);

(b) Salaries, expenses, or fees of appraisers, negotiators and attorneys.

(5) Contract construction work.

(6) Project specific capital equipment acquisition approved by the board.

(7) Project specific vehicle and equipment charges will be reimbursed based on the actual rental cost paid for the equipment. If agency owned equipment is used, rental rates established by the agency's "equipment rental and revolving fund" will be reimbursed. All vehicle and equipment costs will be charged the agency standard rate for all projects regardless of the source of funding. Agencies without an equipment revolving fund will be reimbursed based on rates published by department of transportation for similar equipment.

(8) Project specific direct materials, supplies, and services used for projects will be reimbursed based on actual cost.

NEW SECTION

WAC 479-06-040 Indirect/overhead costs. Indirect or overhead costs are common administrative cost objectives that cannot be easily charged to the project. Indirect costs incurred by an agency for administrative costs will be reimbursed up to a maximum of ten percent of the direct labor costs.

NEW SECTION

WAC 479-06-050 Progress payments. Payments of funds are governed by the following:

(1) Incurred costs must be in conformity with all applicable federal and state laws, rules, regulations, and procedures.

(2) Agencies will submit requests for payment on forms prescribed by the board. Requests for payment will be submitted as the project progresses.

(3) The director may require a payment to be divided into installments if one of the following criteria is met:

(a) The agency has not billed for six months or longer;

(b) The agency has billed for an amount over the director determined level; or

(c) Cash balance of the account is below fifty percent of the minimum operating reserve.

(4) Costs incurred prior to phase approval are not eligible for reimbursement.

NEW SECTION

WAC 479-06-060 Financial records requirement. (1) Agencies must maintain documents that support project costs incurred. The supporting documentation may be required by the board for first project payment and at other times during the project life.

(2) Records must be maintained in accordance with the *Records Retention Schedule* as published by the secretary of state's office.

NEW SECTION

WAC 479-06-070 Project record review. Project records may be reviewed by the board to ensure that project costs are eligible for reimbursement. The records may be requested at any time during the project.

NEW SECTION

WAC 479-06-080 Final settlement. Up to five percent of total transportation improvement board funds may be retained until the agency submits final, complete, and accurate closeout documentation for a project.

A unilateral closeout of a project may be initiated by the board when an agency has not responded to requests for final documentation and all funds are expended.

NEW SECTION

WAC 479-06-090 Recovery of board funds on canceled projects. If the grant award was made as a result of falsification, negligence, or deliberate misrepresentation on the part of the agency, the board may require repayment of funds. An agency is not responsible to repay transportation improvement board funds if the effort was made in good faith and circumstances are beyond the agency's control.

NEW SECTION

WAC 479-06-100 Programming of funds. The transportation improvement board selects projects based on an estimate of fund balance, projected revenues, current project expenditures, and future program obligations. The amount allocated per program will not exceed projected cash needs for a six-year period.

WSR 07-11-140**PROPOSED RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed May 22, 2007, 10:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-04-065.

Title of Rule and Other Identifying Information: Division of developmental disabilities (DDD) voluntary placement program rules: Amending WAC 388-826-0085 and 388-826-0130; and new sections WAC 388-826-0129 What are the residential settings that DDD uses to provide voluntary placement program services?, 388-826-0135 When does DDD administer the foster care rate assessment?, 388-826-0136 How often does DDD administer the foster care rate assessment tool?, 388-826-0138 What questions are asked in the foster care rate assessment tool and how are the licensed foster home provider's answers scored?, 388-826-0145 How does DDD determine the foster care level from the raw

score?, and 388-826-0175 How does DDD determine the rate that is paid to support a child in a licensed group facility?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on June 26, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 27, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on June 26, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by June 22, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule change describes how rates are set for foster homes and other settings in the DDD voluntary placement program (VPP). The foster care rate assessment (FCRA) is used in the DDD VPP. The FCRA has been used for the last five years to set specialized rates for foster homes that accept children with developmental disabilities in the VPP for placement. The assessment and the algorithms underlying the assessment are described in this rule.

Reasons Supporting Proposal: The rule describes the method currently used by DDD to set specialized rates for licensed child foster homes.

Statutory Authority for Adoption: RCW 74.13.750.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Rita Dickey, P.O. Box 45310, Olympia, WA 98504, (360) 725-3403.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. This rule does not meet the definition of a significant rule, as defined in RCW 34.05.328 (5)(c)(iii).

May 14, 2007

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-04-088, filed 1/31/06, effective 3/2/06)

WAC 388-826-0085 What other DDD services are available for a child through the voluntary placement program? (1) When a parent signs a voluntary placement agreement and the child is placed (~~in the VPP~~) outside the parental home, the child will no longer be eligible for services from the state-funded family support (~~(opportunity)~~) program (~~(or the Medicaid personal care program)~~).

(2) Children living with their parents may receive personal care services provided under chapter 388-71 WAC.

(3) If the child is covered under the DDD core waiver as described in chapter 388-845 WAC, the child will receive the services identified on the plan of care.

NEW SECTION

WAC 388-826-0129 What are the residential settings that DDD uses to provide voluntary placement program services? DDD voluntary placement program services may be provided in a:

- (1) Licensed foster home;
- (2) Licensed group care facility;
- (3) Licensed staffed residential home; or
- (4) Licensed child placing agency.

AMENDATORY SECTION (Amending WSR 06-04-088, filed 1/31/06, effective 3/3/06)

WAC 388-826-0130 How ~~((is the foster care rate determined in VPP))~~ does DDD determine the rate that is paid to support a child in a licensed foster home? DDD determines the rate that is paid to support a child in a licensed foster home by adding:

(1) The basic foster care room and board rate (~~((is))~~) published annually by children's administration (~~((each year-See))~~) per WAC 388-25-0120.

(2) ~~((The foster care assessment is completed annually by DDD to determine the amount of any specialized rate that will be paid to the foster parent in addition to the basic rate.~~

~~((3) The department administers the assessment with the foster parent. Based on information given by the foster parent and information gathered by the department, the standardized assessment will determine a score and assign a level.~~

~~((4) Algorithms determine the score corresponding to the care needs for each child. Each level is assigned a rate. The rate will be paid to the foster parent caring for the child))~~ The specialized rate identified after administering the foster care rate assessment (FCRA) tool.

NEW SECTION

WAC 388-826-0135 When does DDD administer the foster care rate assessment tool? DDD administers the foster care rate assessment tool within thirty days from the date of the child's admission to a licensed foster home.

NEW SECTION

WAC 388-826-0136 How often does DDD administer the foster care rate assessment tool? (1) DDD administers the foster care rate assessment tool on an annual basis, between the months of November and February so rates can be updated by April 1 of each year.

(2) DDD does not have to re-administer the foster care rate assessment if it was administered within ninety days of February 1.

(3) The FCRA may be re-administered if a significant change is reported that affects the child's need for support

(e.g., changes in medical condition, behavior, caregiver status, etc.).

NEW SECTION

WAC 388-826-0138 What questions are asked in the foster care rate assessment tool and how are the licensed foster home provider's answers scored? The foster care rate assessment tool consists of thirteen questions that are scored by DDD based on discussion between the DSHS representative and the licensed foster home provider.

(1) Daily Living: Include the average number of hours per day spent caring for this child beyond what is expected for his/her age on daily living tasks including dressing, grooming, toileting, feeding and providing specialized body care.

Answers	Score
0 to 1	30
2 to 5	91
6 to 9	213
10 to 20	396
Over 20	609

(2) Physical Needs: What is the average number of hours per day beyond what is expected for his/her age providing assistance not included in the "daily living" category above? (e.g., wheelchairs, prosthetics, and other assistive devices, dental/orthodontic, communication (speech, hearing, sight), airway management (monitors, ventilators), pressure sores and/or intravenous nutrition.)

Answers	Score
0 to 1	30
2 to 5	91
6 to 20	274
Over 20	609

(3) Behavioral Needs: What is the average number of hours per day the foster parent(s) will need to spend supporting and supervising the child due to behaviors disorders, emotional disorders, and mental disorders?

Answers	Score
0 to 1	30
2 to 5	91
6 to 13	335
14 to 24	578
Over 24	731

(4) Participation in Child's Therapeutic Plan: Include the average number of hours per week implementing a plan prescribed by a professional related to the child's physical, behavioral, emotional or mental therapy.

(a) Physical therapeutic plan (e.g., meeting with providers, attending therapy or directly giving physical, occupational or post-surgical therapy.)

Answers	Score
0 to 1	4
2 to 3	13
4 to 9	30
10 to 46	65

(b) Participation in emotional/behavioral support plan (e.g., meeting with providers, attending therapy or directly supporting therapeutic plan.)

Answers	Score
0 to 1	4
2 to 3	13
4 to 19	48
20 to 60	104
Over 60 hours/week	390

(5) Arranging, Scheduling and Supervising Activities: Indicate the average number of hours per week scheduling appointments and accompanying the child.

(a) Medical/Dental (e.g., transporting and waiting for medical services including doctor visits, dental visits, rehabilitation, and therapy visits.)

Answers	Score
0 to 1	4
2 to 5	13
6 to 14	39
Over 14 hours/week	82

(b) Community activities (e.g., transporting and waiting during events including recreation, leisure, sports or extra-curricular activities.)

Answers	Score
0 to 1	4
2 to 3	13
4 to 7	30
8 to 20	48
Over 20 hours/week	130

(6) House Care: Indicate the average number of times per week to repair, clean or replace household items, including medical equipment, over and above normal wear and tear, due to:

(a) Chronic conditions (e.g., lack of personal control resulting in bed-wetting or incontinence, lack of muscle control or unawareness of the consequences of physical actions.)

Answers	Score
0 to 1	6
2 to 7	24
8 to 19	58
20 to 38	91
Over 38 times per week	238

(b) Destructive behavior (e.g., lack of emotional control resulting in damage or destruction of property.)

Answers	Score
0 to 1	6
2 to 3	15
4 to 9	28
10 to 22	58
Over 22 times per week	162

(7) Development and Socialization: Indicate the average number of hours per week to provide guidance and assistance.

(a) Direct developmental assistance (e.g., helping with homework and readiness to learn activities.)

Answers	Score
0 to 1	4
2 to 3	13
4 to 11	30
12 to 30	87
Over 30 hours/week	249

(b) Professional interaction (e.g., meeting with teachers, visiting the school either planned or in crisis, speaking on the phone with school personnel, participating in individual education plan development and review.)

Answers	Score
0 to 1	4
2 to 3	13
4 to 5	22
6 to 12	30
Over 12 hours/week	82

(c) Socialization and functional life skills (e.g., helping the child build skills, make choices and take responsibility, learn about the use of money, relate to peers, adults and family members and explore the community.)

Answers	Score
0 to 1	4
2 to 7	22
8 to 19	56
20 to 60	173
Over 60 hours/week	403

(8) Shared Parenting: Indicate the average number of hours per week to work with the birth parents and/or siblings, including assisting in the care of the child during visits, demonstrating care techniques, planning and decision making.

Answers	Score
0 to 1	4
2 to 3	13
4 to 12	30
Over 12	82

NEW SECTION

WAC 388-826-0145 How does DDD determine the foster care level from the raw score? The following are the foster care levels based on the range of aggregate scores:

Level	Low Score	High Score
1	0	320
2	321	616
3	617	1501
4	1502	2085
5	2086	2751
6	2752	9999999

A standardized rate for specialized services is assigned to each level one through six. The standardized rate is published by DDD. The rate is paid monthly to the foster parent in addition to the basic rate.

NEW SECTION

WAC 388-826-0175 How does DDD determine the rate that is paid to support a child in a licensed group care facility? A rate is negotiated by contract between DDD and the licensed group care facility.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-826-0140 What areas are covered in the foster care assessment?

WSR 07-11-141
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Health and Recovery Services Administration)
 [Filed May 22, 2007, 11:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-04-017.

Title of Rule and Other Identifying Information: **Part 1 of 4: WAC 388-530-1000 Outpatient drug program—General and 388-530-1050 Definitions.**

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097, on June 26, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 27, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on June 26, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, by June 19, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The health and recovery services administration (HRSA) is amending chapter 388-530 WAC, Pharmacy services. A complete reorganization of the pharmacy chapter was necessary prior to the implementation of the new ProviderOne point-of-sale system. Changes to WAC 388-530-1000 and 388-530-1050 include:

- Organizing the sections in a logical order;
- Clarifying the existing language;
- Updating WAC references; and
- Clarifying existing definitions, adding new definitions, and removing unnecessary definitions.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.08.-090, 74.09.530, and 74.09.700.

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

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

Name of Agency Personnel Responsible for Drafting: Wendy Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Siri Childs, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1564.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule and concluded that no new costs will be imposed on businesses affected by them. The preparation of a comprehensive SBEIS is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Siri Childs, P.O. Box 45506, Health and Recovery Service Administration, Olympia, WA 98504-5506, phone (360) 725-1564, fax (360) 586-9727.

May 16, 2007

Stephanie E. Schiller
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

WAC 388-530-1000 Outpatient drug program—General. (1) The ~~((department reimburses))~~ purpose of the outpatient drug program is to pay pharmacy providers for outpatient prescription drugs, devices, and pharmaceutical supplies according to department rules and subject to the ~~((exceptions))~~ limitations and ~~((restrictions listed))~~ requirements in this chapter.

- (2) The department reimburses ~~((only pharmacies that:~~
- ~~(a) Are department-enrolled providers; and~~
 - ~~(b) Meet the general requirements for providers described under WAC 388-502-0020.~~

(3) To be both covered and reimbursed under this chapter, prescription drugs must be) for outpatient prescription drugs, devices, and pharmaceutical supplies that are:

(a) ((Medically necessary as defined in WAC 388-500-0005)) Covered. Refer to WAC 388-530-2000 for covered drugs, devices, and pharmaceutical supplies and to WAC 388-530-2100 for noncovered drugs and pharmaceutical supplies;

(b) ((Within the scope of coverage of an eligible client's medical assistance program. Refer to WAC 388-501-0060 and 388-501-0065 for scope of coverage information)) Prescribed by a provider with prescribing authority (see exceptions for family planning in WAC 388-530-2000 (1)(b));

(c) ((For a medically accepted indication appropriate to the client's condition)) Within the scope of an eligible client's medical assistance program;

(d) ((Billed according to the conditions under WAC 388-502-0150 and 388-502-0160)) Medically necessary as defined in WAC 388-500-0005 and determined according to the process found in WAC 388-501-0165; and

(e) ((Billed according to the conditions and requirements of this chapter)) Authorized, as required within this chapter;

(f) Billed according to WAC 388-502-0150 and 388-502-0160; and

(g) Billed according to the requirements of this chapter.

(3) The department may not pay for prescriptions written by healthcare practitioners whose application for a core provider agreement (CPA) has been denied, or whose CPA has been terminated.

(4) ((Acceptance and filling of a prescription for a client eligible for a medical care program constitutes acceptance of the department's rules and fees. See WAC 388-502-0100 for general conditions of payment)) The department may not pay for prescriptions written by non-CPA healthcare practitioners who do not have a current core provider agreement with the department when the department determines there is a potential danger to the client's health and/or safety.

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 05-02-044, filed 12/30/04, effective 1/30/05)

WAC 388-530-1050 Definitions. ((The following)) In addition to the definitions and abbreviations ((and those)) found in WAC 388-500-0005, Medical definitions, the following definitions apply to this chapter.

"Active ingredient" ((means)) - The chemical component of a drug responsible for a drug's prescribed/intended therapeutic effect. The ((medical assistance administration (MAA)) department limits coverage of active ingredients to those with an eleven-digit national drug code (NDC) and those specifically authorized by ((MAA)) the department.

"Actual acquisition cost (AAC)" ((means the actual price)) -The net cost a provider paid for a drug, device, or supply marketed in the package size ((of drug)) purchased((; or sold by a particular manufacturer or labeler)). ((Actual acquisition cost is calculated based on factors including, but not limited to:

(1) Invoice price, including other invoice-based considerations, such as prompt payment discounts;

(2) Order quantity and periodic purchase volume discount policies of suppliers (wholesalers and/or manufacturers);

(3) Membership/participation in purchasing cooperatives;

(4) Advertising and other promotion/display allowances, free merchandise deals; and

(5) Transportation or freight allowances)) The ACC includes discounts, rebates, charge backs and other adjustments to the price of the drug, device or supply, but excludes dispensing fees.

"Administer" ((means)) - The direct application of a prescription drug by injection, inhalation, ingestion, or any other means, to the body of a patient by a practitioner, or at the direction of the practitioner.

"Appointing authority" ((means;)) - For the evidence-based prescription drug program of the participating agencies in the state-operated health care programs, the following persons acting jointly: The administrator of the health care authority (HCA), the secretary of the department of social and health services (DSHS), and the director of the department of labor and industries (L&I).

"Automated authorization" - Adjudication of claims using submitted NCPDP data elements or claims history to verify that the department's authorization requirements have been satisfied without the need for the department to request additional clinical information.

"Automated maximum allowable cost (AMAC)" ((means)) - The rate established by the ((medical assistance administration (MAA)) department for a multiple-source drug that is not on the maximum allowable cost (MAC) list and that is designated by two or more products at least one of which must be under a federal drug rebate contract.

"Average Manufacturer Price (AMP)" - The average price paid to a manufacturer by wholesalers for drugs distributed to retail pharmacies.

"Average Sales Price (ASP)" - The weighted average of all non-federal sales to wholesalers net of charge backs, discounts, rebates, and other benefits tied to the purchase of the drug product, whether it is paid to the wholesaler or the retailer.

"Average wholesale price (AWP)" ((means)) - The average price of a drug product that is calculated from wholesale list prices nationwide at a point in time and reported to the ((medical assistance administration (MAA) by MAA's)) department by the department's drug ((pricing)) file contractor.

(("Certified average wholesale price (CAWP)" means the price certified by the First Data Bank to be the actual average wholesale price of an infusion, injectable, or inhalation drug marketed by a manufacturer or labeler who is subject to a consent order with the United States Department of Justice regarding the reporting of average wholesale price(s).))

"Combination drug" ((means)) - A commercially available drug including two or more active ingredients.

"Compendia of drug information" includes the following:

(1) The American Hospital Formulary Service Drug Information;

(2) The United States Pharmacopeia Drug Information; and

(3) DRUGDEX Information System.

"Compounding" ((means)) - The act of combining two or more active ingredients or adjusting therapeutic strengths in the preparation of a prescription.

~~("Contract drugs" means drugs manufactured or distributed by manufacturers/labelers who signed a drug rebate agreement with the federal Department of Health and Human Services (DHHS).)~~

"Deliver or delivery" ((means)) - The transfer of a drug or device from one person to another.

"Dispense as written (DAW)" ((means)) - An instruction to the pharmacist forbidding substitution of a generic drug or a therapeutically equivalent product for the specific drug product prescribed.

"Dispensing fee" ((means)) - The fee the ((medical assistance administration (MAA)) department sets to ((reimburse)) pay pharmacy providers for dispensing ((MAA)) department-covered prescriptions. The fee is ((MAA's)) the department's maximum reimbursement for expenses involved in the practice of pharmacy and is in addition to ((MAA's payment)) the department's reimbursement for the costs of covered ingredients.

"Drug Evaluation Matrix" - The criteria-based scoring sheet used to objectively and consistently evaluate the food and drug administration (FDA) approved drugs to determine drug coverage status.

"Drug file" ((means)) - A list of drug products, pricing and other information provided to the ((medical assistance administration's (MAA's) drug data base)) department and maintained by a drug file contractor.

"Drug file contractor" ((also referred to as **"drug pricing file contractor,"** means the entity which has contracted to provide the medical assistance administration (MAA), at specified intervals, the latest information and/or data base on drugs and related supplies produced, prepared, processed, packaged, labeled, distributed, marketed, or sold in the marketplace. Contractor provided information includes, but is not limited to, identifying characteristics of the drug (national drug code, drug name, manufacturer/labeler, dosage form, and strength) for the purpose of identifying and facilitating payment for drugs billed to MAA) - An entity which has been contracted to provide regularly updated information on drugs and related supplies at specified intervals, for the purpose of pharmaceutical claim adjudication. Information is provided specific to individual national drug codes, including product pricing.

"Drug rebates" ((means payments)) - Reimbursements provided by pharmaceutical manufacturers to state medicaid programs under the terms of the manufacturers' agreements with the department of health and human services (DHHS).

"Drug-related supplies" ((means)) - Nondrug items necessary for the administration, delivery, or monitoring of a drug or drug regimen.

"Drug use review (DUR)" ((means)) - A review of covered outpatient drug((s)) use that assures prescriptions are

appropriate, medically necessary, and not likely to result in adverse medical outcomes.

"Effectiveness" - The extent to which a given intervention is likely to produce beneficial results for which it is intended in ordinary circumstances.

"Efficacy" - The extent to which a given intervention is likely to produce beneficial effects in the context of the research study.

"Emergency kit" ((means)) - A set of limited pharmaceuticals furnished to a nursing facility by the pharmacy that provides prescription dispensing services to that facility. Each kit is specifically set up to meet the emergency needs of each nursing facility's client population and is for use during those hours when pharmacy services are unavailable.

"Endorsing practitioner" ((means)) - A practitioner who has reviewed the Washington preferred drug list (PDL) and has enrolled with the health care authority (HCA), agreeing to allow therapeutic interchange (substitution) of a preferred drug for any nonpreferred drug in a given therapeutic class on the Washington PDL.

"Estimated acquisition cost (EAC)" ((means the medical assistance administration's)) - The department's estimate of the price providers generally and currently pay for a drug marketed or sold by a particular manufacturer or labeler.

"Evidence-based practice center" ((means)) - A research organization that has been designated by the Agency for Healthcare Research and Quality (AHRQ) of the U.S. government to conduct systematic reviews of all the evidence to produce evidence tables and technology assessments to guide health care decisions.

~~("Expedited prior authorization (EPA)" means the process for authorizing selected drugs in which providers use a set of numeric codes to indicate to the medical assistance administration (MAA) the acceptable indications, conditions, diagnoses, and criteria that are applicable to a particular request for drug authorization.~~

"Experimental drugs" means drugs the Food and Drug Administration (FDA) has not approved, or approved drugs when used for medical indications other than those listed by the FDA.

"Expired drug" means a drug for which the shelf life expiration date has been reached.)

"Federal upper limit (FUL)" ((means)) - The maximum allowable ((payment)) reimbursement set by the centers for medicare and medicaid services (CMS) ((formerly known as HCFA)) for a multiple-source drug.

"Four brand name prescriptions per calendar month limit" ((means)) - The maximum number of paid prescription claims for brand name drugs that ((MAA)) the department allows for each client in a calendar month without a complete review of the client's drug profile.

~~("Generic code number sequence number" means a number used by the medical assistance administration's drug file contractor to group together products that have the same ingredients, route of administration, drug strength, and dosage form. It is applied to all manufacturers and package sizes.)~~

"Generic drug" ((means)) - A nonproprietary drug that is required to meet the same bioequivalency tests as the original brand name drug.

"Inactive ingredient" ((means)) - A drug component that remains chemically unchanged during compounding but serves as the:

(1) Necessary vehicle for the delivery of the therapeutic effect; or

(2) Agent for the intended method or rate of absorption for the drug's active therapeutic agent.

"Ingredient cost" ((means)) - The portion of a prescription's cost attributable to the covered drug ingredients or chemical components.

"Less than effective drug" or **"DESI"** means a drug for which:

(1) Effective approval of the drug application has been withdrawn by the Food and Drug Administration (FDA) for safety or efficacy reasons as a result of the drug efficacy study implementation (DESI) review; or

(2) The secretary of the department of health and human services (DHHS) has issued a notice of an opportunity for a hearing under section 505(e) of the federal Food, Drug, and Cosmetic Act on a proposed order of the secretary to withdraw approval of an application for such drug under such section because the secretary has determined the drug is less than effective for some or all conditions of use prescribed, recommended, or suggested in its labeling.

"Long-term therapy" ((means)) - A drug regimen a client receives or will receive continuously through and beyond ninety days.

~~("MAA preferred drug list (PDL)" means the medical assistance administration's (MAA's) list of drugs of choice within selected therapeutic drug classes:)~~

"Maximum allowable cost (MAC)" ((means)) - The maximum amount that the ~~((medical assistance administration pays))~~ department reimburses for a ~~((specific dosage form and strength of a multiple source))~~ drug ~~((product))~~, device, or supply.

"Medically accepted indication" ((means)) - Any use for a covered outpatient drug:

(1) Which is approved under the federal Food, Drug, and Cosmetic Act; or

(2) The use of which is supported by one or more citations included or approved for inclusion in any of the compendia of drug information, as defined in this chapter. The department considers the compendia to support the use only when the use is evidence-based.

"Modified unit dose delivery system" (also known as blister packs or "bingo/punch cards") ((means)) - A method in which each patient's medication is delivered to a nursing facility:

(1) In individually sealed, single dose packages or "blisters"; and

(2) In quantities for one month's supply, unless the prescriber specifies a shorter period of therapy.

"Multiple-source drug" ((means)) - A drug marketed or sold by:

(1) Two or more manufacturers or labelers; or

(2) The same manufacturer or labeler:

(a) Under two or more different proprietary names; or

(b) Under a proprietary name and a generic name.

"National drug code (NDC)" ((means)) - The eleven-digit number the FDA and manufacturer or labeler assigns to

a pharmaceutical product and attaches to the product container at the time of packaging. The NDC is composed of digits in 5-4-2 groupings. The first five digits comprise the labeler code assigned to the manufacturer by the Food and Drug Administration (FDA). The second grouping of four digits is assigned by the manufacturer to describe the ingredients, dose form, and strength. The last grouping of two digits describes the package size.

"Noncontract drugs" - Are drugs manufactured or distributed by manufacturers/labelers who have not signed a drug rebate agreement with the federal Department of Health and Human Services.

"Nonpreferred drug" ((means)) - A drug that has not been selected as a preferred drug within the therapeutic class(es) of drugs on the preferred drug list.

"Obsolete NDC" ((means)) - A national drug code replaced or discontinued by the manufacturer or labeler.

"Over-the-counter (OTC) drugs" ((means)) - Drugs that do not require a prescription before they can be sold or dispensed.

"Peer reviewed medical literature" ((means)) - A research study, report, or findings regarding the specific use of a drug that has been submitted to one or more professional journals, reviewed by experts with appropriate credentials, and subsequently published by a reputable professional journal. A clinical drug study used as the basis for the publication must be a double blind, randomized, placebo or active control study.

"Pharmacist" ((means)) - A person licensed in the practice of pharmacy by the state in which the prescription is filled.

"Pharmacy" ((means)) - Every location licensed by the state board of pharmacy in the state where the practice of pharmacy is conducted.

"Pharmacy and Therapeutic (P&T) Committee" - The independent Washington state committee created by RCW 41.05.021 (1)(a)(iii) and 70.14.050. At the election of the department, the committee may serve as the drug use review board provided for in WAC 388-530-4000.

"Point-of-sale (POS)" ((means)) - A pharmacy claims processing system capable of receiving and adjudicating claims on-line.

"Practice of pharmacy" ((means)) - The practice of and responsibility for:

(1) Accurately interpreting prescription orders;

(2) Compounding drugs;

(3) Dispensing, labeling, administering, and distributing of drugs and devices;

(4) Providing drug information to the client that includes, but is not limited to, the advising of therapeutic values, hazards, and the uses of drugs and devices;

(5) Monitoring of drug therapy and use;

(6) Proper and safe storage of drugs and devices;

(7) Documenting and maintaining records;

(8) Initiating or modifying drug therapy in accordance with written guidelines or protocols previously established and approved for a pharmacist's practice by a practitioner authorized to prescribe drugs; and

(9) Participating in drug ~~((utilization))~~ use reviews and drug product selection.

"Practitioner" ((means)) - An individual who has met the professional and legal requirements necessary to provide a health care service, such as a physician, nurse, dentist, physical therapist, pharmacist or other person authorized by state law as a practitioner.

"Preferred drug" ((means)) - D drug(s) of choice within a selected therapeutic class that are selected based on clinical evidence of safety, efficacy, and effectiveness.

"Preferred drug list (PDL)" - The department's list of drugs of choice within selected therapeutic drug classes.

"Prescriber" ((means)) - A physician, osteopathic physician/surgeon, dentist, nurse, physician assistant, optometrist, pharmacist, or other person authorized by law or rule to prescribe drugs. See WAC 246-863-100 for pharmacists' prescriptive authority.

"Prescription" ((means)) - An order for drugs or devices issued by a practitioner authorized by state law or rule to prescribe drugs or devices, in the course of the practitioner's professional practice, for a legitimate medical purpose.

"Prescription drugs" ((means)) - Drugs required by any applicable federal or state law or regulation to be dispensed by prescription only or that are restricted to use by practitioners only.

~~("Prior authorization program" means a medical assistance administration (MAA) program, subject to the requirements of 42 U.S.C. 1396r-8 (d)(5), that may require, as a condition of payment, that a drug on MAA's drug file be prior authorized. See WAC 388-530-1200.)~~

"Prospective drug use review (Pro-DUR)" ((means)) - A process in which a request for a drug product for a particular client is screened, before the product is dispensed, for potential drug therapy problems.

"Reconstitution" ((means)) - The process of returning a single active ingredient, previously altered for preservation and storage, to its approximate original state. Reconstitution is not compounding.

"Retrospective drug use review (Retro-DUR)" ((means)) - The process in which ((client's)) drug utilization is reviewed on an ongoing periodic basis to identify patterns of fraud, abuse, gross overuse, or inappropriate or ((unnecessary)) not medically necessary care.

"Risk/benefit ratio" ((means)) - The result of assessing the side effects of a drug or drug regimen compared to the positive therapeutic outcome of therapy.

"Single source drug" ((means)) - A drug produced or distributed under an original new drug application approved by the Food and Drug Administration (FDA).

"Substitute" ((means)) - To replace a prescribed drug, with the prescriber's authorization, with:

- (1) An equivalent generic drug product of the identical base or salt as the specific drug product prescribed; or
- (2) A therapeutically equivalent drug other than the identical base or salt.

"Systematic review" ((means)) - A specific and reproducible method to identify, select, and appraise all the studies that meet minimum quality standards and are relevant to a particular question. The results of the studies are then analyzed and summarized into evidence tables to be used to guide evidence-based decisions.

"TCS" See **"therapeutic consultation service."**

"Terminated NDC" ((means)) - An eleven-digit national drug code (NDC) that is discontinued by the manufacturer for any reason. The NDC may be terminated immediately due to health or safety issues or it may be phased out based on the product's shelf life.

"Therapeutic alternative" ((means)) - A drug product that contains a different chemical structure than the drug prescribed, but is in the same pharmacologic or therapeutic class and can be expected to have a similar therapeutic effect and adverse reaction profile when administered to patients in a therapeutically equivalent dosage.

"Therapeutic class" ((means)) - A group of drugs used for the treatment, remediation, or cure of a specific disorder or disease.

"Therapeutic consultation service (TCS)" ((means)) ~~the prescriber and a medical assistance administration (MAA) designated clinical pharmacist jointly review prescribing activity when drug claims for a medical assistance client exceed program limitations)~~ The department's clinical pharmacist consultation service offered to prescribers as a resource for optimizing prescription drug therapy, or required when drug claims for a client exceed designated thresholds.

"Therapeutic interchange" ((means)) - To dispense a therapeutic alternative to the prescribed drug when an endorsing practitioner who has indicated that substitution is permitted, prescribes the drug. See therapeutic interchange program (TIP).

"Therapeutic interchange program (TIP)" ((means)) - The process developed by participating state agencies under RCW 69.41.190 and 70.14.050, to allow prescribers to endorse a Washington preferred drug list, and in most cases, ((required)) requires pharmacists to automatically substitute a preferred, equivalent drug from the list.

"Therapeutically equivalent" ((means)) - Drug products that contain different chemical structures but have the same efficacy and safety when administered to an individual, as determined by:

- (1) Information from the Food and Drug Administration (FDA);
- (2) Published and peer-reviewed scientific data;
- (3) Randomized controlled clinical trials; or
- (4) Other scientific evidence.

"Tiered dispensing fee system" ((means)) - A system of paying pharmacies different dispensing fee rates, based on the individual pharmacy's total annual prescription volume and/or the drug delivery system used.

"True unit dose delivery" ((means)) - A method in which each patient's medication is delivered to the nursing facility in quantities sufficient only for the day's required dosage.

"Unit dose drug delivery" ((means)) - True unit dose or modified unit dose delivery systems.

"Usual and customary charge" ((means)) - The fee that the provider typically charges the general public for the product or service.

"Washington preferred drug list (Washington PDL)" ((means)) - The list of drugs selected by the appointing authority to be used by applicable state agencies as the

basis for purchase of drugs in state-operated health care programs.

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 07-11-142
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed May 22, 2007, 11:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-04-017.

Title of Rule and Other Identifying Information: **Part 2 of 4:** WAC 388-530-2000 Covered—Outpatient prescription drugs, devices, and pharmaceutical supplies, 388-530-2100 Noncovered—Outpatient drugs and pharmaceutical supplies, 388-530-3000 When the department requires authorization, 388-530-3100 How the department determines when a drug requires authorization, 388-530-3200 The department's authorization process, 388-530-4000 Drug use review (DUR) board, 388-530-4050 Drug use and claims review, 388-530-4100 Washington preferred drug list (PDL), and 388-530-4150 Therapeutic interchange program (TIP).

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on June 26, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 27, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on June 26, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller by June 19, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The health and recovery services administration (HRSA) is amending chapter 388-530 WAC, Pharmacy services. A complete reorganization of the pharmacy chapter was necessary prior to the implementation of the new ProviderOne point-of-sale system. Changes include:

- Organizing the sections in a logical order;
- Removing redundant or outdated sections;
- Clarifying the existing language;
- Eliminating circular references;
- Clarifying department coverage and authorization rules;
- Updating WAC references.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.08.-090, 74.09.530, and 74.09.700.

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

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

Name of Agency Personnel Responsible for Drafting: Wendy Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Siri Childs, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1564.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule and concluded that no new costs will be imposed on businesses affected by them. The preparation of a comprehensive SBEIS is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Siri Childs, P.O. Box 45506, Health and Recovery Service Administration, Olympia, WA 98504-5506, phone (360) 725-1564, fax (360) 586-9727.

May 16, 2007

Stephanie E. Schiller
Rules Coordinator

COVERAGE

NEW SECTION

WAC 388-530-2000 Covered—Outpatient prescription drugs, devices, and pharmaceutical supplies. (1) The department covers:

(a) Outpatient drugs, including over-the-counter drugs, as defined in WAC 388-530-1050, subject to the limitations and requirements in this chapter, when:

(i) The drug is approved by the Food and Drug Administration (FDA);

(ii) The drug is for a medically accepted indication as defined in WAC 388-530-1050;

(iii) The drug is not excluded from coverage under WAC 388-530-2100; and

(iv) The manufacturer has a signed drug rebate agreement with the federal department of health and human services (DHHS). Exceptions to the drug rebate requirement are described in WAC 388-530-7500 which describes the drug rebate program.

(b) Family planning drugs, devices, and supplies per chapter 388-532 WAC and as follows:

(i) Over-the-counter (OTC) family planning drugs, devices, and supplies without a prescription when the department determines it necessary for client access and safety.

(ii) Family planning drugs that do not meet the federal drug rebate requirement in WAC 388-530-7500 on a case-by-case basis; and

(iii) Contraceptive patches, contraceptive rings, and oral contraceptives, only when dispensed in at least a three-month supply, unless otherwise directed by the prescriber (emergency contraceptive pills are not subject to the at-least-three-month supply limitation).

(c) Prescription vitamins and mineral products, only as follows:

(i) When prescribed for clinically documented deficiencies;

(ii) Prenatal vitamins, when prescribed and dispensed to pregnant women; or

(iii) Fluoride varnish for children under the early and periodic screening, diagnosis, and treatment (EPSDT) program.

(d) Drug related devices and pharmaceutical supplies as an outpatient pharmacy benefit when:

(i) Prescribed by a provider with prescribing authority;

(ii) Essential for the administration of a covered drug;

(iii) Not excluded from coverage under WAC 388-530-2100; and

(iv) Determined by the department, that a product covered under Chapter 388-543 Durable medical equipment and supplies should be available at retail pharmacies.

(e) Preservatives, flavoring and/or coloring agents, only when used as a suspending agent in a compound.

(2) Coverage determinations for the department are decided by:

(a) The department in consultation with federal guidelines; or

(b) The drug use review (DUR) board; and

(c) The department's medical consultants and the department's pharmacist(s).

(3) The department does not reimburse for any drug, device, or pharmaceutical supply not meeting the coverage requirements under this section.

NEW SECTION

WAC 388-530-2100 Noncovered—Outpatient drugs and pharmaceutical supplies. (1) The department does not cover:

(a) A drug that is:

(i) Not approved by the Food and Drug Administration (FDA);

(ii) Prescribed for non-medically accepted indication;

(iii) Prescribed for indication or dosing unproven for efficacy or safety; or

(iv) Prescribed for a dose or dosage schedule that is not evidenced-based.

(b) A drug prescribed:

(i) For weight loss or gain;

(ii) For infertility, frigidity, impotency;

(iii) For sexual or erectile dysfunction;

(iv) For cosmetic purposes or hair growth; or

(v) To promote tobacco cessation, except as described in WAC 388-533-0345 (3)(d) tobacco cessation for pregnant women.

(c) Drugs used to treat sexual or erectile dysfunction, in accordance with section 1927 (d)(2)(K) of the Social Security Act, unless such drugs are used to treat a condition other than sexual or erectile dysfunction, and these uses have been approved by the Food and Drug Administration.

(d) Drugs listed in the federal register as "less-than-effective" ("DESI" drugs) or which are identical, similar, or related to such drugs.

(e) Outpatient drugs for which the manufacturer requires as a condition of sale that associated tests or monitoring ser-

VICES be purchased exclusively from the manufacturer or manufacturer's designee.

(f) A product:

(i) With an obsolete national drug code (NDC) for more than two years;

(ii) With a terminated NDC;

(iii) Whose shelf life has expired; or

(iv) Which does not have an eleven-digit NDC.

(g) Any drug regularly supplied by other public agencies as an integral part of program activity (e.g., immunization vaccines for children).

(h) Free pharmaceutical samples.

AUTHORIZATION

NEW SECTION

WAC 388-530-3000 When the department requires authorization. Pharmacies must obtain authorization for covered drugs, devices, or pharmaceutical supplies in order to receive reimbursement when:

(1) The department's pharmacists and medical consultants:

(a) Have determined that authorization for the drug, device, or pharmaceutical supply is required, as described in WAC 388-530-3100; or

(b) Have not yet reviewed the manufacturer's dossier of drug information submitted in the Academy of Managed Care Pharmacy (AMCP) format.

(2) The drug, device, or pharmaceutical supply is in the therapeutic drug class on the Washington Preferred Drug List and the product is one of the following:

(a) Nonpreferred as described in WAC 388-530-4100; and

(i) The prescriber is a non-endorsing practitioner; or

(ii) The drug is designated as exempt from the therapeutic interchange program per WAC 388-530-4100(6) or WAC 388-530-4150 (2)(c);

(b) Preferred for a special population or specific indication and has been prescribed by a non-endorsing practitioner under conditions for which the drug, device, or pharmaceutical supply is not preferred; or

(c) Determined to require authorization for safety.

(3) The department designates specific:

(a) Clients or groups of clients as requiring authorization to safeguard their health and to promote safety, efficacy, and effectiveness of drug therapy; or

(b) Prescribers as requiring authorization because the prescriber is under department review or is sanctioned for substandard quality of care.

(4) Utilization indicates there is a client health and safety concern or the potential of misuse and abuse. Examples of utilization concerns include:

(a) Multiple prescriptions filled of the same drug in the same calendar month;

(b) Prescriptions filled earlier than necessary for optimal therapeutic response;

(c) Therapeutic duplication;

(d) Therapeutic contraindication;

(e) Excessive dosing, excessive duration of therapy, or sub-therapeutic dosing as determined by FDA labeling or the compendia of drug information;

(f) Number of brand prescriptions filled per calendar month; and

(g) Number of prescriptions filled per month in total or by therapeutic drug class.

(5) The pharmacy requests reimbursement in excess of the maximum allowable cost and the drug has been prescribed with instructions to dispense as written.

NEW SECTION

WAC 388-530-3100 How the department determines when a drug requires authorization. (1) The department's pharmacists and medical consultants evaluate new covered drugs, new covered indications, or new dosages approved by the Food and Drug Administration (FDA) to determine the drug authorization requirement.

(a) The clinical team uses a drug evaluation matrix to evaluate and score the benefit/risk assessment and cost comparisons of drugs to similar existing drugs based on quality evidence contained in compendia of drug information and peer-reviewed medical literature.

(b) In performing this evaluation the clinical team may consult with other department clinical staff, financial experts, and program managers. The department may also consult with an evidence-based practice center, the drug use review (DUR) board, and/or medical experts in this evaluation.

(c) Information reviewed in the drug evaluation matrix includes, but is not limited to, the following:

(i) The drug, device, or pharmaceutical supply's benefit/risk ratio;

(ii) Potential for clinical misuse;

(iii) Potential for client misuse/abuse;

(iv) Narrow therapeutic indication;

(v) Safety concerns;

(vi) Availability of less costly therapeutic alternatives; and

(vii) Product cost and outcome data demonstrating the drug, device, or pharmaceutical supply's cost effectiveness.

(d) Based on the clinical team's evaluation and the drug evaluation matrix score, the department may determine that the drug, device, or pharmaceutical supply:

(i) Requires authorization;

(ii) Requires authorization to exceed department established limitations; or

(iii) Does not require authorization.

(2) Drugs in therapeutic classes on the Washington Preferred Drug list are not subject to determination of authorization requirements through the drug evaluation matrix. Authorization requirements are determined by their preferred status according to WAC 388-530-4100.

(3) The department periodically reviews existing drugs, devices, or pharmaceutical supplies and reassigns authorization requirements as necessary according to the same provisions as outlined above for new drugs, devices, or pharmaceutical supplies.

(4) For any drug, device, or pharmaceutical supply with limitations or requiring authorization, the department may

elect to apply automated authorization criteria according to WAC 388-530-3200.

NEW SECTION

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 pharmaceutical 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, pharmaceutical 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).

(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 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 alternative between two or more products of equal effectiveness.

(5) The department evaluates request for authorization of covered drugs, devices, and 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.

QUALITY OF CARE

NEW SECTION

WAC 388-530-4000 Drug use review (DUR) board.

In accordance with 42 CFR 456.716, the department establishes a drug use review (DUR) board.

(1) The DUR board:

(a) Includes health professionals who are actively practicing and licensed in the state of Washington and who have recognized knowledge and expertise in one or more of the following:

(i) The clinically appropriate prescribing of outpatient drugs;

(ii) The clinically appropriate dispensing and monitoring of outpatient drugs;

(iii) Drug use review, evaluation, and intervention; and

(iv) Medical quality assurance.

(b) Is made up of at least one-third but not more than fifty-one percent physicians, and at least one-third pharmacists.

(2) The department may appoint members of the pharmacy and therapeutics committee established by the health care authority (HCA) under chapter 182-50 WAC or other qualified individuals to serve as members of the DUR board.

(3) The DUR board meets periodically to:

(a) Advise the department on drug use review activities;

(b) Review provider and patient profiles;

(c) Review scientific literature to establish evidence-based guidelines for the appropriate use of drugs, including the appropriate indications and dosing;

(d) Recommend adoption of standards and treatment guidelines for drug therapy;

(e) Recommend interventions targeted toward correcting drug therapy problems; and

(f) Produce an annual report.

(4) The department has the authority to accept or reject the recommendations of the DUR board in accordance with 42 CFR 456.716(c).

NEW SECTION

WAC 388-530-4050 Drug use and claims review. (1)

The department's drug use review (DUR) consists of:

(a) A prospective drug use review (Pro-DUR) that requires all pharmacy providers to:

(i) Obtain patient histories of allergies, idiosyncrasies, or chronic condition(s) which may relate to drug utilization;

(ii) Screen for potential drug therapy problems; and

(iii) Counsel the patient in accordance with existing state pharmacy laws and federal regulations.

(b) A retrospective drug use review (Retro-DUR), in which the department provides for the ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care among physicians, pharmacists, and individuals receiving benefits.

(2) The department reviews a periodic sampling of claims to determine if drugs are appropriately dispensed and billed. If a review of the sample finds that a provider is inappropriately dispensing or billing for drugs, the department may implement corrective action that includes, but is not limited to:

(a) Educating the provider regarding the problem practice(s);

(b) Requiring the provider to maintain specific documentation in addition to the normal documentation requirements regarding the provider's dispensing or billing actions;

(c) Recouping the payment for the drug(s); and/or

(d) Terminating the provider's core provider agreement (CPA).

NEW SECTION

WAC 388-530-4100 Washington preferred drug list (PDL). Under RCW 69.41.190 and 70.14.050, the department, and other state agencies cooperate in developing and maintaining the Washington preferred drug list.

(1) Washington state contracts with evidence-based practice center(s) for systematic reviews of drug(s).

(2) The pharmacy and therapeutics (P&T) committee reviews and evaluates the safety, efficacy, and outcomes of

prescribed drugs, using evidence-based information provided by the evidence-based practice center(s).

(3) The P&T committee makes recommendations to state agencies as to which drug(s) to include on the Washington PDL, under chapter 182-50 WAC.

(4) The appointing authority makes the final selection of drugs included on the Washington PDL.

(5) Drugs in a drug class on the Washington PDL, that have been studied by the evidence-based practice center(s) and reviewed by the P&T committee, and which have not been selected as preferred are considered nonpreferred drugs and are subject to the therapeutic interchange program (TIP) and dispense as Written (DAW) rules under WAC 388-530-4150.

(6) Drugs in a drug class on the Washington PDL that have not been studied by the evidence-based practice center(s) and have not been reviewed by the P&T committee will be treated as nonpreferred drugs not subject to the dispense as written (DAW) or the therapeutic interchange program (TIP).

(7) A nonpreferred drug, which the department determines as covered, is considered for authorization after the client has:

(a) Tried and failed or is intolerant to at least one preferred drug; and

(b) Met department established criteria for the nonpreferred drug.

(8) Drugs in a drug class on the Washington PDL may be designated as preferred drugs for special populations or specific indications.

(9) Drugs in a drug class on the Washington PDL may require authorization for safety.

(10) Combination drugs are not on the Washington PDL and are considered for authorization according to WAC 388-530-3100.

NEW SECTION

WAC 388-530-4150 Therapeutic interchange program (TIP). This section contains the department's rules for the endorsing practitioner therapeutic interchange program (TIP). TIP is established under RCW 69.41.190 and 70.14.050. The statutes require state-operated prescription drug programs to allow physicians and other prescribers to endorse a Washington preferred drug list (PDL) and, in most cases, requires pharmacists to automatically substitute a preferred, equivalent drug from the list.

(1) The therapeutic interchange program (TIP) applies only to drugs:

(a) Within therapeutic classes on the Washington PDL;

(b) Studied by the evidence-based practice center(s);

(c) Reviewed by the P&T committee; and

(d) Prescribed by an endorsing practitioner.

(2) TIP does not apply:

(a) To drugs that require authorization;

(b) To drugs with specific limitations;

(c) When the pharmacy and therapeutics (P&T) committee determines that TIP does not apply to the therapeutic class on the PDL; or

(d) To a drug prescribed by a nonendorsing practitioner.

(3) A practitioner who wishes to become an endorsing practitioner must specifically enroll with the health care authority (HCA) as an endorsing practitioner, under the provisions of chapter 182-50 WAC.

(4) When an endorsing practitioner writes a prescription for a client for a nonpreferred drug, or for a preferred drug for a special population or indication other than the client's population or indication, and indicates that substitution is permitted, the pharmacist must:

(a) Dispense a preferred drug in that therapeutic class in place of the nonpreferred drug; and

(b) Notify the endorsing practitioner of the specific drug and dose dispensed.

(5) When an endorsing practitioner determines that a nonpreferred drug is medically necessary, all of the following apply:

(a) The practitioner must indicate that the prescription is to be dispensed as written (DAW);

(b) The pharmacist dispenses the nonpreferred drug as prescribed; and

(c) The department does not require prior authorization to dispense the nonpreferred drug in place of a preferred drug except when the drug requires authorization for safety.

(6) In the event the following therapeutic drug classes are on the Washington PDL, pharmacists will not substitute a preferred drug for a nonpreferred drug in these therapeutic drug classes when the endorsing practitioner prescribes a refill (including the renewal of a previous prescription or adjustments in dosage, and samples):

(a) Antipsychotic;

(b) Antidepressant;

(c) Chemotherapy;

(d) Antiretroviral;

(e) Immunosuppressive; or

(f) Immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks.

WSR 07-11-143

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed May 22, 2007, 11:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-04-017.

Title of Rule and Other Identifying Information: **Part 3 of 4: WAC 388-530-4200 Therapeutic consultation services (TCS), 388-530-5000 Billing requirements—Pharmacy claim payment, 388-530-5050 Billing requirements—Point-of-sale (POS) system/prospective drug use review (Pro-Dur), 388-530-5100 Billing requirements—Unit dose, 388-530-6000 Mail-order services, 388-530-7000 Reimbursement, 388-530-7050 Reimbursement—Dispensing fee determination, 388-530-7100 Reimbursement—Pharmaceutical sup-**

plies, and 388-530-7150 Reimbursement—Compounded prescriptions.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on June 26, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 27, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on June 26, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller by June 19, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The health and recovery services administration (HRSA) is amending chapter 388-530 WAC, Pharmacy services. A complete reorganization of the pharmacy chapter was necessary prior to the implementation of the new ProviderOne point-of-sale system and also to be in compliance with the reimbursement changes mandated by the Centers for Medicare/Medicaid Services (CMS) regarding the new FUL, AMP, and ASP pricing. Changes include:

- Organizing the sections in a logical order;
- Removing redundant or outdated sections;
- Clarifying the existing language;
- Eliminating circular references;
- Clarifying department billing requirements;
- Updating WAC references.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.08.-090, 74.09.530, and 74.09.700.

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

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

Name of Agency Personnel Responsible for Drafting: Wendy Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Siri Childs, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1564.

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May 16, 2007

Stephanie E. Schiller
Rules Coordinator

NEW SECTION

WAC 388-530-4200 Therapeutic consultation service (TCS). (1) The department provides a therapeutic consultation service (TCS) to aid appropriate utilization of prescription drugs, improve quality of care and health care outcomes for clients, and promote cost effectiveness.

(2) TCS review is required when a drug claim exceeds the limits set by the department on brand name prescriptions per calendar month, number of total prescriptions per calendar month, or number of prescriptions per calendar month by drug class. Drugs on the Washington preferred drug list (PDL) do not count against the limit.

(3) Through TCS, the department provides a complete drug profile review for each client who exceeds monthly prescription limits. The department excludes the following from per calendar month limits:

- (a) Antidepressants;
- (b) Antipsychotics;
- (c) Chemotherapy;
- (d) Contraceptives;
- (e) HIV;
- (f) Immunosuppressants; and
- (g) Hypoglycemia rescue agents.

(4) When a pharmacy provider submits a claim that exceeds the per-calendar-month prescription limitation for a client, the department notifies the pharmacy provider that a TCS review is required.

(5) The TCS review process includes all of the following:

(a) Pharmacy provider requirements:

(i) The pharmacy provider notifies the prescriber that the prescriber or prescriber designee must call the TCS toll-free telephone number to begin a TCS review according to subsection (2) of this section; and

(ii) If the TCS review cannot take place due to the prescriber's or prescriber designee's unavailability, the pharmacy provider has the option to dispense an emergency supply of the requested drug only when given in an emergency. The department must receive justification within seventy-two hours of the fill date, excluding weekends and Washington state holidays.

(b) Prescriber requirements:

(i) When the pharmacy provider contacts the client's prescriber as described in subsection (5)(a)(i) of this section, the prescriber or prescriber designee calls the TCS toll-free telephone number to contact the department designee (designated clinical pharmacist) to begin a TCS review;

(ii) After the prescriber or prescriber designee and the department designee review the client's drug profile and discuss clinically sound options and cost effective alternative drug(s), the prescriber does one of the following:

(A) Changes the prescription to an alternate drug or preferred drug and contacts the client's pharmacy with the new prescription;

(B) Provides the department designee with medical justification for the requested drug and the department designee authorizes the drug under the provisions of medical necessity as defined in WAC 388-500-0005; or

(C) Does not agree to prescribe an alternate drug or preferred drug and does not provide medical justification for the

requested drug. The department designee authorizes only a one-month supply of the requested drug.

(c) The department designee responsibilities:

(i) Notifies the pharmacy provider by facsimile, electronic mail, or telephone call, the results of the TCS review.

(ii) Notifies the department's clinical program staff when concerns for client safety are identified during the TCS reviews.

(iii) Contacts other prescribers identified during the TCS review when opportunities to further improve the client's healthcare outcome are discovered.

BILLING

NEW SECTION

WAC 388-530-5000 Billing requirements—Pharmacy claim payment. (1) When billing the department for pharmacy services, providers must:

(a) Use the appropriate department claim form or electronic billing specifications;

(b) Include the actual eleven-digit national drug code (NDC) number of the product dispensed from a rebate eligible manufacturer;

(c) Bill the department using metric decimal quantities which is the National Council for Prescription Drug Programs (NCPDP) billing unit standard;

(d) Meet the general provider documentation and record retention requirements in WAC 388-502-0020; and

(e) Maintain proof of delivery receipts.

(i) When a provider delivers an item directly to the client or the client's authorized representative, the provider must be able to furnish proof of delivery including signature, client's name and a detailed description of the item(s) delivered.

(ii) When a provider mails an item to the client, the provider must be able to furnish proof of delivery including a mail log.

(iii) When a provider uses a delivery/shipping service to deliver items, the provider must be able to furnish proof of delivery and it must:

(A) Include the delivery service tracking slip with the client's name or a reference to the client's package(s); the delivery service package identification number; and the delivery address.

(B) Include the supplier's shipping invoice, with the client's name; the shipping service package identification number; and a detailed description(s).

(iv) Make proof of delivery receipts available to the department, upon request.

(2) When billing drugs under the expedited authorization process, providers must insert the authorization number which includes the corresponding criteria code(s) in the appropriate data field on the drug claim.

(3) Pharmacy services for clients on restriction under WAC 388-501-0135 must be prescribed by the client's primary care provider and are paid only to the client's primary pharmacy, except in cases of:

(a) Emergency;

(b) Family planning services; or

(c) Services properly referred from the client's assigned pharmacy or physician/ARNP.

NEW SECTION

WAC 388-530-5050 Billing requirements—Point-of-sale (POS) system/prospective drug use review (Pro-DUR). (1) Pharmacy claims for drugs and other products listed in the department's drug file and billed to the department by national drug code (NDC) are adjudicated by the department's point-of-sale (POS) system. Claims must be submitted for payment using the billing unit standard identified in WAC 388-530-5000.

(2) All pharmacy drug claims processed through the POS system undergo a system-facilitated prospective drug use review (Pro-DUR) screening as a complement to the Pro-DUR screening required of pharmacists.

(3) If the POS system identifies a potential drug therapy problem during Pro-DUR screening, a message will alert the pharmacy provider indicating the type of potential problem. The alerts regarding possible drug therapy problems include, but are not limited to:

(a) Therapeutic duplication;

(b) Duration of therapy exceeds the recommended maximum period;

(c) Drug-to-drug interaction;

(d) Drug disease precaution;

(e) High dose;

(f) Ingredient duplication;

(g) Drug-to-client age conflict;

(h) Drug-to-client gender conflict; or

(i) Refill too soon.

(4) The department provides pharmacy providers with a list of codes from which to choose in overriding POS system alert messages. These codes come from the national council for prescription drug programs (NCPDP).

(5) The dispensing pharmacist evaluates the potential drug therapy conflict and enters applicable NCPDP codes representing their professional interaction.

(a) If the resolution to the conflict satisfies department requirements, the claim will be processed accordingly.

(b) If the resolution to the conflict does not satisfy department requirements, the department requires prior authorization. This includes all claims for which an alert message is triggered in the POS system and an NCPDP override code is not appropriate.

(6) The department requires providers to retain documentation of the justification for the use of payment system override codes as described in subsections (4) and (5) of this section. The department requires the documentation be retained for the same period as that described in WAC 388-502-0020.

(7) POS/Pro-DUR screening is not applicable to pharmacy claims included in the managed care capitated rate.

NEW SECTION

WAC 388-530-5100 Billing requirements—Unit dose. (1) To be eligible for a unit dose dispensing fee from the department, a pharmacy must:

(a) Notify the department in writing of its intent to provide unit dose service;

(b) Identify the nursing facility(ies) to be served;

(c) Indicate the approximate date unit dose service to the facility(ies) will commence; and

(d) Follow department requirements for unit dose payment.

(2) Under a unit dose delivery system, a pharmacy must bill only for the number of drug units actually used by the medical assistance client in the nursing facility, except as provided in subsections (3), (4), and (5) of this section. It is the unit dose pharmacy provider's responsibility to coordinate with nursing facilities to ensure that the unused drugs the pharmacy dispensed to clients are returned to the pharmacy for credit.

(3) The pharmacy must submit an adjustment form or claims reversal of the charge to the department for the cost of all unused drugs returned to the pharmacy from the nursing facility on or before the sixtieth day following the date the drug was dispensed, except as provided in subsection (5) of this section. Such adjustment must conform to the nursing facility's monthly log as described in subsection (7) of this section.

(4) The department pays a unit dose provider a dispensing fee when a provider-packaged unit dose prescription is returned, in its entirety, to the pharmacy. A dispensing fee is not paid if the returned prescription is for a drug with a manufacturer-designated unit dose national drug code (NDC). In addition to the dispensing fee paid under this subsection, the provider may bill the department one unit of the tablet or capsule but must credit the department for the remainder of the ingredient costs for the returned prescription.

(5) Unit dose providers do not have to credit the department for federally designated schedule two drugs which are returned to the pharmacy. These returned drugs must be disposed of according to federal regulations.

(6) Pharmacies must not charge clients or the department a fee for repackaging a client's bulk medications in unit dose form. The costs of repackaging are the responsibility of the nursing facility when the repackaging is done:

(a) To conform with a nursing facility's drug delivery system; or

(b) For the nursing facility's convenience.

(7) The pharmacy must maintain detailed records of medications dispensed under unit dose delivery systems. The pharmacy must keep a monthly log for each nursing facility served, including but not limited to the following information:

(a) Facility name and address;

(b) Client's name and patient identification code (PIC);

(c) Drug name/strength;

(d) National drug code (NDC);

(e) Quantity and date dispensed;

(f) Quantity and date returned;

(g) Value of returned drugs or amount credited;

(h) Explanation for no credit given or nonreusable returns; and

(i) Prescription number.

(8) Upon the department's request, the pharmacy must submit copies of the logs referred to in subsection (7) of this section.

(9) When the pharmacy submits the completed annual prescription volume survey to the department, it must include an updated list of all nursing facilities currently served under unit dose systems.

MAIL ORDER SERVICES

NEW SECTION

WAC 388-530-6000 Mail-order services. The department provides a contracted mail-order pharmacy service for client use. The mail-order contractor is selected as a result of a competitive procurement process.

(1) The contracted mail-order pharmacy service is available as an option to all medical assistance clients, subject to the:

(a) Scope of the client's medical care program;

(b) Availability of services from the contracted mail-order provider; and

(c) Special terms and conditions described in subsection (2) and (3) of this section.

(2) The mail-order prescription service may not dispense medication in a quantity greater than authorized by the prescriber. (See RCW 18.64.360(5), Nonresident pharmacies.)

(3) Prescribed medications may be filled by the mail-order pharmacy service within the following restrictions:

(a) Drugs available from mail-order in no more than a ninety day supply include:

(i) Preferred drugs (see WAC 388-530-4100);

(ii) Generic drugs; and

(iii) Drugs that do not have authorization requirements (see WAC 388-530-3000 through WAC 388-530-3200).

(b) Drugs available in no more than a thirty-four-day supply:

(i) Controlled substances (schedules II through V); and

(ii) Drugs having authorization requirements (see WAC 388-530-3000).

(c) Other pharmacy restrictions (chapter 388-530 WAC, Pharmacy services) continue to apply.

(4) The contracted mail-order pharmacy services are reimbursed at levels lower than those established for the regular outpatient pharmacy services.

REIMBURSEMENT

NEW SECTION

WAC 388-530-7000 Reimbursement. (1) The department's total reimbursement for a prescription drug must not exceed the lowest of:

(a) Estimated acquisition cost (EAC) plus a dispensing fee;

(b) Maximum allowable cost (MAC) plus a dispensing fee;

(c) Federal upper limit (FUL) plus a dispensing fee;

(d) Actual acquisition cost (AAC) plus a dispensing fee for drugs purchased under section 340B of the Public Health Service (PHS) Act;

(e) Automated maximum allowable cost (AMAC) plus a dispensing fee; or

(f) The provider's usual and customary charge to the non-medicaid population.

(2) The department selects the sources for pricing information used to set EAC and MAC.

(3) The department may solicit assistance from pharmacy providers, pharmacy benefit managers (PBM), other government agencies, actuaries, and/or other consultants when establishing EAC and/or MAC.

(4) The department reimburses a pharmacy for the least costly dosage form of a drug within the same route of administration, unless the prescriber has designated a medically necessary specific dosage form or the department has selected the more expensive dosage form as a preferred drug.

(5) If the pharmacy provider offers a discount, rebate, promotion or other incentive which directly relates to the reduction of the price of a prescription to the individual non-medicaid customer, the provider must similarly reduce its charge to the department for the prescription.

(6) If the pharmacy provider gives an otherwise covered product for free to the general public, the pharmacy must not submit a claim to the department.

(7) The department does not reimburse for:

(a) Prescriptions written on pre-signed prescription blanks filled out by nursing facility operators or pharmacists;

(b) Prescriptions without the date of the original order;

(c) Drugs used to replace those taken from a nursing facility emergency kit;

(d) Drugs used to replace a physician's stock supply;

(e) Outpatient drugs, biological products, insulin, supplies, appliances, and equipment included in other reimbursement methods including, but not limited to:

(i) Diagnosis-related group (DRG);

(ii) Ratio of costs-to-charges (RCC);

(iii) Nursing facility daily rates;

(iv) Managed care capitation rates;

(v) Block grants; or

(vi) Drugs prescribed for clients who are on the department's hospice program when the drugs are related to the client's terminal illness and related condition.

NEW SECTION

WAC 388-530-7050 Reimbursement—Dispensing fee determination. (1) Subject to the provisions of WAC 388-530-7000 and the exceptions permitted in WAC 388-530-2000, the department pays a dispensing fee for each covered, prescribed drug.

(2) The department does not pay a dispensing fee for non-drug items, devices, or pharmaceutical supplies.

(3) The department adjusts the dispensing fee by considering factors including, but not limited to:

(a) Legislative appropriations for vendor rates;

(b) Input from provider and/or advocacy groups;

(c) Input from state-employed or contracted actuaries; and

(d) Dispensing fees paid by other third-party payers, including, but not limited to, health care plans and other states' medicaid agencies.

(4) The department uses a tiered dispensing fee system which pays higher volume pharmacies at a lower fee and lower volume pharmacies at a higher fee.

(5) The department uses total annual prescription volume (both medicaid and non-medicaid) reported to the department to determine each pharmacy's dispensing fee tier.

(a) A pharmacy which fills more than thirty-five thousand prescriptions annually is a high-volume pharmacy. The department considers hospital-based pharmacies that serve both inpatient and outpatient clients as high-volume pharmacies.

(b) A pharmacy which fills between fifteen thousand one and thirty-five thousand prescriptions annually is a mid-volume pharmacy.

(c) A pharmacy which fills fifteen thousand or fewer prescriptions annually is a low-volume pharmacy.

(6) The department determines a pharmacy's annual total prescription volume as follows:

(a) The department sends out a prescription volume survey form to pharmacy providers during the first quarter of the calendar year;

(b) Pharmacies return completed prescription volume surveys to the department each year. Pharmacy providers not responding to the survey by the specified date are assigned to the high volume category;

(c) Pharmacies must include all prescriptions dispensed from the same physical location in the pharmacy's total prescription count;

(d) The department considers prescriptions dispensed to nursing facility clients as outpatient prescriptions; and

(e) Assignment to a new dispensing fee tier is effective on the first of the month, following the date specified by the department.

(7) A pharmacy may request a change in dispensing fee tier during the interval between the annual prescription volume surveys. The pharmacy must substantiate such a request with documentation showing that the pharmacy's most recent six-month dispensing data, annualized, would qualify the pharmacy for the new tier. If the department receives the documentation by the twentieth of the month, assignment to a new dispensing fee tier is effective on the first of the following month.

(8) The department grants general dispensing fee rate increases only when authorized by the legislature. Amounts authorized for dispensing fee increases may be distributed non-uniformly (e.g., tiered dispensing fee based upon volume).

(9) The department may pay true unit dose pharmacies at a different rate for unit dose dispensing.

NEW SECTION

WAC 388-530-7100 Reimbursement—Pharmaceutical supplies. (1) The department reimburses for selected pharmaceutical supplies through the pharmacy point-of-sale (POS) system when it is necessary for client access and safety.

(2) The department bases reimbursement of pharmaceutical items or supplies that are not payable through the POS on department-published fee schedules.

(3) The department uses any or all of the following methodologies to set the maximum allowable reimbursement rate for pharmaceutical items, devices, and pharmaceutical supplies:

(a) A pharmacy provider's acquisition cost. Upon review of the claim, the department may require an invoice which must show the name of the item, the manufacturer, the product description, the quantity, and the current cost including any free goods associated with the invoice;

(b) Medicare's reimbursement rate for the item; or

(c) A specified discount off the item's list price or manufacturer's suggested retail price (MSRP).

(4) The department does not pay a dispensing fee for nondrug items, devices, or pharmaceutical supplies. See WAC 388-530-7050.

NEW SECTION

WAC 388-530-7150 Reimbursement—Compounded prescriptions. (1) The department does not consider reconstitution to be compounding.

(2) The department covers a drug ingredient used for a compounded prescription only when the manufacturer has a signed rebate agreement with the federal department of health and human services (DHHS).

(3) The department considers bulk chemical supplies used in compounded prescriptions as nondrug items, which do not require a drug rebate agreement. The department covers such bulk chemical supplies only as specifically approved by the department.

(4) The department reimburses pharmacists for compounding drugs only if the client's drug therapy needs are unable to be met by commercially available dosage strengths and/or forms of the medically necessary drug.

(a) The pharmacist must ensure the need for the adjustment of the drug's therapeutic strength and/or form is well documented in the client's file.

(b) The pharmacist must ensure that the ingredients used in a compounded prescription are for an approved use as defined in "medically accepted indication" in WAC 388-530-1050.

(5) The department requires that each drug ingredient used for a compounded prescription be billed to the department using its eleven-digit national drug code (NDC) number.

(6) Compounded prescriptions are reimbursed as follows:

(a) The department allows only the lowest cost for each covered ingredient, whether that cost is determined by actual acquisition cost (AAC), estimated acquisition cost (EAC), federal upper limit (FUL), maximum allowable cost (MAC), automated maximum allowable cost (AMAC), or amount billed.

(b) The department applies current prior authorization requirements to drugs used as ingredients in compounded prescriptions, except as provided under subsection (6)(c) of this section. The department denies payment for a drug requiring authorization when authorization is not obtained.

(c) The department may designate selected drugs as not requiring authorization when used for compounded prescrip-

tions. For the list of selected drugs, refer to the department's prescription drug program billing instructions.

(d) The department pays a dispensing fee as described under WAC 388-530-7050 for each drug ingredient used in compounding when the conditions of this section are met and each ingredient is billed separately by the eleven digit NDC.

(e) The department does not pay a separate fee for compounding time.

(7) The department requires pharmacists to document the need for each inactive ingredient added to the compounded prescription. The department limits reimbursement to the inactive ingredients that meet the following criteria. To be reimbursed by the department, each inactive ingredient must be:

(a) A necessary component of a compounded drug; and

(b) Billed by an eleven digit national drug code (NDC).

WSR 07-11-144

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed May 22, 2007, 11:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-04-017.

Title of Rule and Other Identifying Information: **Part 4 of 4:** WAC 388-530-7200 Reimbursement—Out-of-state prescriptions, 388-530-7250 Reimbursement—Miscellaneous, 388-530-7300 Reimbursement—Requesting a change, 388-530-7350 Reimbursement—Unit does drug delivery, 388-530-7400 Reimbursement—Compliance packaging services, 388-530-7500 Reimbursement—Drug rebate requirement, 388-530-7600 Reimbursement—Clients enrolled in managed care, 388-530-7700 Reimbursement—Dual eligible clients/medicare, 388-530-7800 Reimbursement—Clients with third party liability, 388-530-7900 Drugs purchased under the Public Health Service (PHS) Act, 388-530-8000 Reimbursement method—Estimated acquisition cost (EAC), 388-530-8050 Reimbursement—Federal upper limit (FUL), 388-530-8100 Reimbursement—Maximum allowable cost (MAC), and 388-530-8150 Reimbursement—Automated maximum allowable cost (AMAC).

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097, on June 26, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 27, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on June 26, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller by June 19, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The health and recovery services administration (HRSA) is amending chapter 388-530 WAC, Pharmacy services. A complete reorganization of the pharmacy chapter was necessary prior to the implementation of the new ProviderOne point-of-sale system and also to be in compliance with the reimbursement changes mandated by the Centers for Medicare/Medicaid Services (CMS) regarding the new FUL, AMP, and ASP pricing. Changes include:

- Organizing the sections in a logical order;
- Removing redundant or outdated sections;
- Clarifying the existing language;
- Adding information on Medicare Part D, managed care, and dual eligible clients;
- Eliminating circular references;
- Updating WAC references.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.08.-090, 74.09.530, and 74.09.700.

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

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

Name of Agency Personnel Responsible for Drafting: Wendy Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Siri Childs, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1564.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule and concluded that no new costs will be imposed on businesses affected by them. The preparation of a comprehensive SBEIS is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Siri Childs, P.O. Box 45506, Health and Recovery Service Administration, Olympia, WA 98504-5506, phone (360) 725-1564, fax (360) 586-9727.

May 16, 2007
Stephanie E. Schiller
Rules Coordinator

NEW SECTION

WAC 388-530-7200 Reimbursement—Out-of-state prescriptions. (1) The department reimburses out-of-state pharmacies for prescription drugs provided to an eligible client within the scope of the client's medical care program if the pharmacy:

- (a) Contracts with the department to be an enrolled provider; and
- (b) Meets the same criteria the department requires for in-state pharmacy providers.

(2) The department considers pharmacies located in bordering areas listed in WAC 388-501-0175 the same as in-state pharmacies.

NEW SECTION

WAC 388-530-7250 Reimbursement—Miscellaneous. The department reimburses for covered drugs, devices, and pharmaceutical supplies provided or administered by nonpharmacy providers under specified conditions, as follows:

(1) The department reimburses for drugs administered or prepared and delivered for individual use by an authorized prescriber during an office visit according to specific program rules found in:

- (a) Chapter 388-531 WAC, Physician-related services;
- (b) Chapter 388-532 WAC, Reproductive Health/Family Planning Only/TAKE CHARGE; and
- (c) Chapter 388-540 WAC, Kidney services.

(2) Providers who are purchasers of Public Health Services (PHS) discounted drugs must comply with PHS 340b program requirements. (See WAC 388-530-7900).

(3) The department may request providers to submit a current invoice for the actual cost of the drug, device, or pharmaceutical supply billed. If an invoice is requested, the invoice must show the:

- (a) Name of the drug, device, or pharmaceutical supply;
- (b) Drug or product manufacturer;
- (c) NDC of the product(s);
- (d) Drug strength;
- (e) Product description;
- (f) Quantity; and
- (g) Cost, including any free goods associated with the invoice.

(4) The department does not reimburse providers for the cost of vaccines obtained through the state department of health (DOH). The department does pay physicians, advanced registered nurse practitioners (ARNP), and pharmacists a fee for administering the vaccine.

NEW SECTION

WAC 388-530-7300 Reimbursement—Requesting a change. Upon request from a pharmacy provider, the department may reimburse at actual acquisition cost (AAC) for a drug that would otherwise be reimbursed at maximum allowable cost (MAC) when:

(1) The availability of lower cost equivalents in the marketplace is severely curtailed and the price disparity between AAC for the drug and the MAC reimbursement affects clients' access; and

(2) An invoice documenting actual acquisition cost relevant to the date the drug was dispensed is provided to the department.

NEW SECTION

WAC 388-530-7350 Reimbursement—Unit dose drug delivery systems. (1) The department pays for unit dose drug delivery systems only for clients residing in nurs-

ing facilities, except as provided in subsections (7) and (8) of this section.

(2) Unit dose delivery systems may be either true or modified unit dose.

(3) The department pays pharmacies that provide unit dose delivery services the department's highest allowable dispensing fee for each unit dose prescription dispensed to clients in nursing facilities. The department reimburses ingredient costs for drugs under unit dose systems as described in WAC 388-530-7000.

(4) The department pays a pharmacy that dispenses drugs in bulk containers or multidose forms to clients in nursing facilities the regular dispensing fee applicable to the pharmacy's total annual prescription volume tier. Drugs the department considers not deliverable in unit dose form include, but are not limited to, liquids, creams, ointments, ophthalmic and otic solutions. The department reimburses ingredient costs as described in WAC 388-530-7000.

(5) The department pays a pharmacy that dispenses drugs prepackaged by the manufacturer in unit dose form to clients in nursing facilities the regular dispensing fee applicable under WAC 388-530-7050. The department reimburses ingredient costs for drugs prepackaged by the manufacturer in unit dose form as described in WAC 388-530-7000.

(6) The department limits its coverage and payment for manufacturer-designated unit dose packaging to the following conditions:

(a) The drug is a single source drug and a multidose package for the drug is not available;

(b) The drug is a multiple source drug but there is no other multidose package available among the drug's generic equivalents; or

(c) The manufacturer-designated unit dose package is the most cost-effective package available or it is the least costly alternative form of the drug.

(7) The department reimburses a pharmacy provider for manufacturer-designated unit dose drugs dispensed to clients not residing in nursing facilities only when such drugs:

(a) Are available in the marketplace only in manufacturer-designated unit dose packaging; and

(b) Would otherwise be covered as an outpatient drug. The unit dose dispensing fee does not apply in such cases. The department pays the pharmacy the dispensing fee applicable to the pharmacy's total annual prescription volume tier.

(8) The department may pay for unit dose delivery systems for clients of the division of developmental disabilities (DDD) residing in approved community living arrangements.

NEW SECTION

WAC 388-530-7400 Reimbursement—Compliance packaging services. (1) The department reimburses pharmacies for compliance packaging services provided to clients considered at risk for adverse drug therapy outcomes. Clients who are eligible for compliance packaging services must not reside in a nursing home or other inpatient facility, and must meet (a) and either (b) or (c) of this subsection. The client must:

(a) Have one or more of the following representative disease conditions:

- (i) Alzheimer's disease;
- (ii) Blood clotting disorders;
- (iii) Cardiac arrhythmia;
- (iv) Congestive heart failure;
- (v) Depression;
- (vi) Diabetes;
- (vii) Epilepsy;
- (viii) HIV/AIDS;
- (ix) Hypertension;
- (x) Schizophrenia; or
- (xi) Tuberculosis.

(b) Concurrently consume two or more prescribed medications for chronic medical conditions, that are dosed at three or more intervals per day; or

(c) Have demonstrated a pattern of noncompliance that is potentially harmful to the client's health. The client's pattern of noncompliance with the prescribed drug regimen must be fully documented in the provider's file.

(2) Compliance packaging services include:

(a) Reusable hard plastic containers of any type (e.g., medisets); and

(b) Nonreusable compliance packaging devices (e.g., blister packs).

(3) The department pays a filling fee and reimburses pharmacies for the compliance packaging device and/or container. The frequency of fills and number of payable compliance packaging devices per client is subject to limits specified by the department. The department does not pay filling or preparation fees for blister packs.

(4) Pharmacies must use the CMS-1500 claim form to bill the department for compliance packaging services.

NEW SECTION

WAC 388-530-7500 Drug rebate requirement. (1)

The department reimburses for outpatient prescription drugs only when they are supplied by manufacturers who have a signed drug rebate agreement with the federal department of health and human services (DHHS), according to 42 U.S.C. 1396r-8. The manufacturer must be listed on the list of participating manufacturers as published by CMS.

(2) The fill date must be within the manufacturer's beginning and ending eligibility dates to be reimbursed by the department.

(3) The department may extend this rebate requirement to any outpatient drug reimbursements as allowed or required by federal law.

(4) The department may exempt drugs from the rebate requirement, on a case-by-case basis, when:

(a) It determines that the availability of a single source drug or innovator multiple source drug is essential to the health of beneficiaries; and

(b) All other rebate exemption requirements of SSA Sec 1927 (42 U.S.C. 1396r-8) (3) are also satisfied.

NEW SECTION

WAC 388-530-7600 Reimbursement—Clients enrolled in managed care. Except as specified under the department's managed care contracts, the department does not reimburse providers for any drugs or pharmaceutical sup-

plies provided to clients who have pharmacy benefits under department-contracted managed care plans. The managed care plan is responsible for payment.

NEW SECTION

WAC 388-530-7700 Reimbursement—Dual eligible clients/medicare. For clients who are dually-eligible for medical assistance and medicare benefits, the following applies:

- (1) Medicare Part B, the department pays providers for:
 - (a) An amount up to the department's maximum allowable fee for drugs medicare does not cover, but the department covers; or
 - (b) Deductible and/or coinsurance amounts up to medicare's or the department's maximum allowable fee, whichever is less, for drugs medicare and the department cover; or
 - (c) Deductible and/or coinsurance amounts for clients under the qualified medicare beneficiary (QMB) program for drugs medicare covers but the department does not cover.
- (2) Medicare Part D:
 - (a) For payment of medicare Part D drugs:
 - (i) Medicare is the primary payer for covered Part D drugs;
 - (ii) The department pays only the copayment up to a maximum amount set by the centers for medicare and medicaid services (CMS); and
 - (iii) The client is responsible for copayments above the maximum amount.
 - (b) For drugs excluded from the basic medicare Part D benefits:
 - (i) The department offers the same drug benefit as a non-dual eligible client has within those same classes;
 - (ii) If the client has another third party insurer, that insurer is the primary payer; and
 - (iii) The department is the payer of last resort.

NEW SECTION

WAC 388-530-7800 Reimbursement—Clients with third-party liability. (1) The department requires providers to meet the third party requirements of WAC 388-501-0200.

- (2) The following definitions apply to this section:
 - (a) "Closed pharmacy network" means an arrangement made by an insurer which restricts prescription coverage to an exclusive list of pharmacies. This arrangement prohibits the coverage and/or payment of prescriptions provided by a pharmacy that is not included on the exclusive list.
 - (b) "Private point-of-sale (POS) authorization system" means an insurer's system, other than the department's POS system, which requires that coverage be verified by or submitted to the insurer for authorization at the time of service and at the time the prescription is filled.

(3) This subsection applies to clients who have a third-party resource that is a managed care entity other than a department-contracted plan, or have other insurance that requires the use of "closed pharmacy networks" or "private point-of-sale authorization system." The department will not pay pharmacies for prescription drug claims until the pharmacy provider submits an explanation of benefits from the

private insurance demonstrating that the pharmacy provider has complied with the terms of the third-party's coverage.

(a) If the private insurer pays a fee based on the incident of care, the pharmacy provider must file a claim with the department consistent with the department's billing requirements.

(b) If the private insurer pays the pharmacy provider a monthly capitation fee for all prescription costs related to the client, the pharmacy provider must submit a claim to the department for the amount of the client copayment, coinsurance, and/or deductible. The department pays the provider the lesser of:

- (i) The billed amount; or
- (ii) The department's maximum allowable fee for the prescription.

NEW SECTION

WAC 388-530-7900 Drugs purchased under the Public Health Service (PHS) Act. (1) Drugs purchased under section 340B of the public health service (PHS) act can be dispensed to medical assistance clients only by PHS-qualified health facilities and must be billed to the department at actual acquisition cost (AAC) as required by laws governing the PHS 340B program.

(2) Providers dispensing drugs under this section are required to submit their valid medical assistance provider number(s) to the PHS health resources and services administration, office of pharmacy affairs. This requirement is to ensure that claims for drugs dispensed under this section and paid by the department are excluded from the drug rebate claims that are submitted to the manufacturers of the drugs. See WAC 388-530-7500 for information on the drug rebate program.

REIMBURSEMENT METHODOLOGY

NEW SECTION

WAC 388-530-8000 Reimbursement method—Estimated acquisition cost (EAC). (1) The department determines estimated acquisition cost (EAC) using:

- (a) Acquisition cost data made available to the department; or
- (b) Information provided by any of the following:
 - (i) Audit agencies, federal or state;
 - (ii) Other state health care purchasing agencies;
 - (iii) Pharmacy benefit managers;
 - (iv) Individual pharmacy providers participating in the department's programs;
 - (v) Centers for medicare and medicaid services (CMS);
 - (vi) Other third party payers;
 - (vii) Drug file databases; and/or
 - (viii) Actuaries or other consultants.

(2) The department implements EAC by applying a percentage adjustment to available reference pricing from national sources such as wholesale acquisition cost (WAC), average wholesale price (AWP), average sale price (ASP), and average manufacturer price (AMP).

(3) The department may set EAC for specified drugs or drug categories at a percentage other than that determined in

subsection (1)(a) of this section when the department considers it necessary. The factors the department considers in setting a rate for a class of drugs under this subsection include, but are not limited to:

- (a) Product acquisition cost;
- (b) The department's documented clinical concerns; and
- (c) The department's budget limits.
- (4) The department bases EAC drug reimbursement on the actual package size dispensed.
- (5) The department uses the EAC as the department's reimbursement for a drug when the EAC is the lowest of the rates calculated under the methods listed in WAC 388-530-7000, or when the conditions of WAC 388-530-7300 are met.

NEW SECTION

WAC 388-530-8050 Reimbursement—Federal upper limit (FUL). (1) The department adopts the federal upper limit (FUL) set by the centers for medicare and medicaid services (CMS).

(2) The department's maximum payment for multiple-source drugs for which CMS has set FULs will not exceed, in the aggregate, the prescribed upper limits plus the dispensing fees set by the department.

(3) Except as provided in WAC 388-530-7300, the department uses the FUL as the department's reimbursement rate for the drug when the FUL price is the lowest of the rates calculated under the methods listed in WAC 388-530-7000.

NEW SECTION

WAC 388-530-8100 Reimbursement—Maximum allowable cost (MAC). (1) The department establishes a maximum allowable cost (MAC) for a multiple-source drug which is available from at least two manufacturers/labelers.

(2) The department determines the MAC for a multiple-source drug:

(a) When drug acquisition cost data is available, the department:

- (i) Identifies what products are available from wholesalers for each drug being considered for MAC pricing;
- (ii) Determines pharmacy providers' approximate acquisition costs for these products; and
- (iii) Establishes the MAC at a level which gives pharmacists access to at least one product from a manufacturer with a qualified rebate agreement (see WAC 388-530-7500(4)).

(b) When drug acquisition cost data is not available, the department may estimate acquisition cost.

(3) The MAC established for a multiple-source drug does not apply if the written prescription identifies that a specific brand is medically necessary for a particular client. In such cases, the estimated acquisition cost (EAC) for the particular brand applies, provided authorization is obtained from the department as specified under WAC 388-530-3000.

(4) Except as provided in subsection (3) of this section, the department reimburses providers for a multiple-source drug at the lowest of the rates calculated under the methods listed in WAC 388-530-7000.

(5) The MAC established for a multiple-source drug may vary by package size, including those identified as unit dose

national drug codes (NDCs) by the manufacturer(s) of the drug.

NEW SECTION

WAC 388-530-8150 Reimbursement—Automated maximum allowable cost (AMAC). (1) The department uses the automated maximum allowable cost (AMAC) pricing methodology for multiple-source drugs that are:

(a) Not on the published maximum allowable cost (MAC); and

(b) Produced by two or more manufacturers/labelers, at least one of which must have a current, signed federal drug rebate agreement.

(2) The department establishes AMAC as a specified percentage of the published average wholesale price (AWP). The department may use different percentage discounts from AWP for the estimated acquisition cost (EAC) and AMAC.

(3) The department sets the percentage discount from AWP for AMAC reimbursement using any of the information sources identified in WAC 388-530-8000.

(4) The department may set AMAC reimbursement at different percentage discounts from AWP for different multiple source drugs. The department considers the same factors as those in WAC 388-530-8000.

(5) AMAC reimbursement for all products with the same ingredient, form and strength is at the AMAC determined for the second lowest priced product, or the AMAC of the lowest priced drug from a manufacturer with a current, signed federal rebate agreement.

(6) The department recalculates AMAC each time the drug file contractor provides a pricing update.

(7) Except as provided in WAC 388-530-7300, the department reimburses at the lowest of the rates calculated under the methods listed in WAC 388-530-7000.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-530-1100	Covered drugs, devices, and pharmaceutical supplies.
WAC 388-530-1125	Drug rebate program.
WAC 388-530-1150	Noncovered drugs and pharmaceutical supplies and reimbursement limitations.
WAC 388-530-1200	Prior authorization program.
WAC 388-530-1250	Prior authorization process.
WAC 388-530-1260	Therapeutic consultation service.
WAC 388-530-1270	Mail-order services.
WAC 388-530-1280	Preferred drug list(s).
WAC 388-530-1290	Therapeutic interchange program (TIP).

WAC 388-530-1300	General reimbursement methodology.
WAC 388-530-1350	Estimated acquisition cost (EAC) methodology.
WAC 388-530-1360	Certified average wholesale price (CAWP).
WAC 388-530-1400	Maximum allowable cost (MAC) methodology.
WAC 388-530-1405	Automated maximum allowable cost (AMAC).
WAC 388-530-1410	Federal upper limit (FUL) methodology.
WAC 388-530-1425	Payment methodology for drugs purchased under the Public Health Service (PHS) Act.
WAC 388-530-1450	Dispensing fee determination.
WAC 388-530-1500	Reimbursement for compounded prescriptions.
WAC 388-530-1550	Unit dose drug delivery systems.
WAC 388-530-1600	Unit dose pharmacy billing requirements.
WAC 388-530-1625	Compliance packaging services.
WAC 388-530-1650	Reimbursement for pharmaceutical supplies.
WAC 388-530-1700	Drugs and drug-related supplies from nonpharmacy providers.
WAC 388-530-1750	Drugs and pharmaceutical supplies for clients with any third-party coverage.
WAC 388-530-1800	Requirements for pharmacy claim payment.
WAC 388-530-1850	Drug use review (DUR) board.
WAC 388-530-1900	Drug use and claims review.
WAC 388-530-1950	Point-of-sale (POS) system/prospective drug use review (Pro-DUR).
WAC 388-530-2050	Reimbursement for out-of-state prescriptions.

WSR 07-11-152
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed May 22, 2007, 3:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-20-092.

Title of Rule and Other Identifying Information: Funeral directors and embalmers, establishes new sections for intern and internship guidelines; and amends WAC 308-48-010 and 308-48-800.

Hearing Location(s): Department of Licensing, 405 Black Lake Boulevard S.W., Conference Room 209, Olympia, WA 98507, on July 18, 2007, at 1:30 p.m.

Date of Intended Adoption: August 20, 2007.

Submit Written Comments to: Dennis McPhee, P.O. Box 9012, Olympia, WA 98507, e-mail dmcphree@dol.wa.gov, fax (360) 664-1495, by June 20, 2007.

Assistance for Persons with Disabilities: Contact Joe Vincent Jr. by June 20, 2007, TTY (360) 586-2788 or (360) 664-1555.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule proposal establishes guidelines for funeral director and embalmer interns, internships and intern sponsors; amends WAC 308-48-010 Definitions and 308-48-800 Examination fees and provides clarification for the transporting of human remains.

Reasons Supporting Proposal: No internship guidelines have been developed since the implementation of the internship program under RCW 18.39.120, other than course of training requirements.

Statutory Authority for Adoption: RCW 18.39.175, chapter 34.05 RCW.

Statute Being Implemented: Chapter 18.39 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: This rule proposal has little fiscal impact to the regulatory program. Initial implementation may require additional examinations.

Guidelines are necessary to establish definitions for interns and internships; term limits for intern training; minimum age requirements; guidelines for sponsors of interns; examinations; and leave of absence from the internship program. The proposal also provides clarification for the transporting of human remains.

Name of Proponent: Department of licensing, board of funeral directors and embalmers, governmental.

Name of Agency Personnel Responsible for Drafting: Dennis McPhee, 405 Black Lake Boulevard, Olympia, WA 98507, (360) 664-1555; Implementation and Enforcement: Joe Vincent Jr., 405 Black Lake Boulevard, Olympia, WA 98507, (360) 664-1555.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No additional costs are imposed on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Proposal has no economic impact.

May 22, 2007
 Joe Vincent Jr.
 Administrator

AMENDATORY SECTION (Amending WSR 07-03-027, filed 1/5/07, effective 2/5/07)

WAC 308-48-010 Definitions. For the purpose of these rules, the following term will be construed as follows:

"Embalmer intern" is a person engaged in the study and supervised practical training of embalming under the instruction of a qualified sponsor.

"Funeral director intern" is a person engaged in the study and supervised practical training of funeral directing under the instruction of a qualified sponsor.

"In its employ" as used in RCW 18.39.148 will include personnel who are employed on a part-time basis as well as personnel who are employed on a full-time basis.

"Internship" means a course of required practical training, for a specified period of time, as a prerequisite for obtaining a license to practice the profession of funeral directing or embalming.

AMENDATORY SECTION (Amending WSR 07-03-027, filed 1/5/07, effective 2/5/07)

WAC 308-48-150 Course of training—Funeral director intern. (1) For the purposes of RCW 18.39.035, the term "one year course of training" shall include assisting a licensed funeral director in coordinating all aspects of at least twenty-five arrangements for funeral, memorial and/or final disposition services for human remains.

(2) The term "one year" shall consist of at least eighteen hundred hours of employment and cannot be completed in a period of time less than one calendar year.

(3) Registered funeral director interns shall provide a quarterly report to the board on a form supplied by the board containing information relating to the arrangements, services, final dispositions, and other duties of a funeral director the intern has assisted with or performed during the required term of internship.

(4) Licensed sponsors shall provide a quarterly report to the board on a form supplied by the board showing the progress of the intern toward the skill level required to work independently.

~~((5) Registered apprentice funeral director interns may receive training from their sponsor and other licensed funeral directors as approved by the sponsor.))~~

AMENDATORY SECTION (Amending WSR 07-03-027, filed 1/5/07, effective 2/5/07)

WAC 308-48-160 Course of training—Embalmer interns. (1) For the purposes of RCW 18.39.035, the term "two year course of training" shall include the embalming of at least fifty human remains under the supervision of a licensed embalmer.

(2) The term "two year" shall consist of at least thirty-six hundred hours of employment and cannot be completed in a period of time less than two calendar years.

(3) Registered embalmer interns shall provide a quarterly report to the board on a form supplied by the board containing information relating to the embalmings the intern has assisted with or performed during the required term of internship.

(4) Licensed sponsors shall provide a quarterly report to the board on a form supplied by the board showing the progress of the intern toward the skill level required to work independently.

~~((5) Registered apprentice embalmer interns may receive training from their sponsor and other licensed embalmers as approved by the sponsor.))~~

AMENDATORY SECTION (Amending WSR 07-03-027, filed 1/5/07, effective 2/5/07)

WAC 308-48-800 Funeral director/embalmer fees. The following fees shall be charged by the professional licensing division of the department of licensing:

Title of Fee	Fee
Embalmer:	
State examination or reexamination	\$100.00
Renewal	70.00
Late renewal penalty	35.00
Duplicate	15.00
Embalmer intern:	
Intern application	75.00
<u>Application for examination</u>	<u>100.00</u>
Intern renewal	45.00
Duplicate	15.00
Funeral director:	
State examination or reexamination	100.00
Renewal	70.00
Late renewal penalty	35.00
Duplicate	15.00
Funeral director intern:	
Intern application	75.00
<u>Application for examination</u>	<u>100.00</u>
Intern renewal	45.00
Duplicate	15.00
Funeral establishment:	
Original application	300.00
Renewal	150.00
Branch registration	250.00
Branch renewal	150.00
Preneed application	140.00
Preneed renewal:	
0-25 sales	25.00
26-99 sales	75.00

Title of Fee	Fee
100 or more sales	125.00
Crematory endorsement registration	140.00
Crematory endorsement renewal 3.20 per cremation performed during previous calendar year.	
Academic intern	No fee
Certificate of removal registration:	
Application	30.00
Renewal	15.00

NEW SECTION

WAC 308-48-840 Funeral director and embalmer interns. (1) Registration as a funeral director intern or embalmer intern shall not exceed a time period of five years from the date of initial registration. Following completion of the internship program:

- The registration for internship will not be renewed.
- The intern must qualify for licensure as a funeral director, embalmer or funeral director and embalmer.

(2) Interns must be eighteen years of age and registered under the sponsorship and supervision of a licensed funeral director, embalmer or funeral director and embalmer.

(3) Interns whose job duties require that they perform work at multiple funeral establishment locations may do so and receive training from their sponsor and other licensees as approved by the sponsor.

NEW SECTION

WAC 308-48-850 Intern sponsors—Qualifications, limitations and responsibilities. Licensees who supervise interns:

- Must be working and located in the same licensed establishment as the intern, provided: Sponsors may permit interns to perform work at multiple funeral establishment locations if required by their job duties.
- Each sponsor can supervise a maximum of three interns.
- Sponsors of funeral director interns must have a minimum of one year of practical experience as a licensed funeral director in the state of Washington.
- Sponsors of embalmer interns must have a minimum of one year of practical experience as a licensed embalmer in the state of Washington.
- Sponsors are responsible for work performed by interns registered under the supervision of the sponsor.

NEW SECTION

WAC 308-48-860 Registered intern examination. (1) Interns registered prior to January 1, 2004, can maintain registration as an intern and not be subject to the five-year limitation, provided:

- The registered intern passes an examination in funeral service law and public health within three years of the effective date of this rule.

- The intern maintains a current, valid and nonexpired intern registration with the board.

- Registered interns will not be eligible for examination under this section if the intern leaves the funeral service profession and reactivates the internship registration at a later date.

(2) Registered intern examinations shall be held by the director at least once each year for a period of three years from the effective date of this rule. The director will designate the time and place of the examination. An application for examination shall be filed with the director at least fifteen days prior to the examination date. The department will provide each applicant a written notice of the time and place of the next examination. The applicant will be deemed to have passed the examination if the applicant attains a grade of not less than seventy-five percent. Applicants qualified for examination shall:

- Have three opportunities to take and pass the examination;
- Pay a fee, determined by the director, for each examination.

NEW SECTION

WAC 308-48-870 Leave of absence—Interns. A leave of absence from internship requirements may be granted by the board with the following provisions:

- The intern submits an appeal to the board for a leave of absence.
- The intern is enlisted in military service of the United States or called to active duty in the United States armed forces and resumes internship within one year of release from military service.

- The intern is enrolled as a full-time student in a funeral service education program accredited by the American Board of Funeral Service Education (ABFSE).

- The board reserves the right to make a determination to waive internship requirements for extenuating circumstances.

NEW SECTION

WAC 308-48-880 Transporting of human remains. For the purpose of RCW 18.39.010(1), the board has determined that transportation of human remains may be performed by unregistered persons who are employed by licensed funeral establishments.

WSR 07-11-155

PROPOSED RULES

WHATCOM COMMUNITY COLLEGE

[Filed May 22, 2007, 5:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-06-087 and 07-08-111.

Title of Rule and Other Identifying Information: Student rights and responsibilities, chapter 132U-120 WAC; and

Complaints—Discrimination and/or harassment/intimidation, chapter 132U-300 WAC.

Hearing Location(s): Whatcom Community College, Laidlaw Center Boardroom, 237 West Kellogg Road, Bellingham, WA 98226, on Tuesday, July 10, 2007, at 10:00 a.m.

Date of Intended Adoption: September 12, 2007.

Submit Written Comments to: Keri Parriera, 237 West Kellogg Road, e-mail kparrier@whatcom.ctc.edu, fax (360) 676-2171, by July 3, 2007.

Assistance for Persons with Disabilities: Contact Bill Culwell, disabilities support director, by July 3, 2007, TTY (360) 647-3279 or (360) 676-2170 ext. 3320.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To add definition of dean of instruction; change term lengths and requirements of student rights and responsibilities committee; add dismissal from a selective admissions program as a result of academic evaluations; amend policies, procedures and definitions for discrimination and/or harassment/intimidation complaints.

Reasons Supporting Proposal: The structure of the student rights and responsibilities committee has changed and term lengths etc. need to be amended, and discrimination requirements have changed, requiring amendments to the WACs.

Statutory Authority for Adoption: RCW 28B.50.130 and [28B.50.]140 and chapter 49.60 RCW.

Rule is necessary because of state court decision, ESHB 2661.

Name of Proponent: Whatcom Community College, governmental.

Name of Agency Personnel Responsible for Drafting: Keri Parriera, 237 West Kellogg Road, Bellingham, WA 98226, (360) 676-2170 ext. 3202; Implementation and Enforcement: Patricia Onion, 237 West Kellogg Road, Bellingham, WA 98226, (360) 676-2170 ext. 3276.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No monetary implications are attached to this policy. No costs imposed on small business through adoption of these rule amendments.

A cost-benefit analysis is not required under RCW 34.05.328. No economic impact. Rules relate to internal college operations.

May 22, 2007

Patricia Onion

Vice-President for
Educational Services

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 07-12 issue of the Register.

WSR 07-11-170

PROPOSED RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed May 23, 2007, 11:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-07-015.

Title of Rule and Other Identifying Information: WAC 220-20-005 Oregon-Washington commercial license reciprocity.

Hearing Location(s): WDFW Region 5 Office, 2108 Grand Boulevard, Vancouver, WA 98661, (360) 696-6211, on Wednesday, June 27, 2007, at 7 p.m.

Date of Intended Adoption: On or after June 28, 2007.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail preuslmp@dfw.wa.gov, fax (360) 902-2155, by June 20, 2007.

Assistance for Persons with Disabilities: Contact Susan Yeager by TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: At present, Oregon and Washington have established reciprocity for salmon charter vessel licenses on the Columbia River downstream of the Longview Bridge. This new WAC will allow Washington and Oregon to establish reciprocity for Oregon outfitters and guides and Washington professional salmon and game fish guides on the Columbia River upstream of the bridge at Longview and downstream of the Oregon boundary in Lake Wallula, except that an Oregon vessel may not take on or discharge passengers for any purpose from any Washington port, the Washington shore, or a dock, landing, or other point in Washington.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Statute Being Implemented: RCW 77.12.047 and 77.04.020.

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 Oregon state marine board also regulates the subject of license-reciprocity between Oregon and Washington. We provided a briefing on the subject and took public comment, including testimony from a representative of the Oregon state marine board, on January 4, 2007. We are proposing this new WAC in response to that testimony and public comment.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Bill Tweit, 1111 Washington Street, Olympia, (360) 902-2723; Implementation: Phil Anderson, 1111 Washington Street, Olympia, (360) 902-2720; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not impose more than minor costs on guide and outfitter businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

May 23, 2007

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-03-142, filed 1/23/07, effective 2/23/07)

WAC 220-20-005 Oregon-Washington commercial license reciprocity. The following Oregon licenses are equivalent to Washington licenses and are valid in the concurrent waters of the Columbia River:

(1) An Oregon Columbia River gill net salmon vessel permit issued under ORS 508.775 - ORS 508.796 is equivalent to a Washington salmon gill net fishery license issued under RCW 77.65.160 (1)(a) or (c) in the concurrent waters of the Columbia River. A person who holds an Oregon Columbia River gill net salmon vessel permit may land salmon in Washington that were taken in the Columbia River salmon gill net salmon fishery.

(2) An Oregon ocean charter vessel license issued under ORS 830.435 is equivalent to a Washington charter license issued under RCW 77.65.150 in the concurrent waters of the Columbia River downstream of the bridge at Longview, except that an Oregon vessel may not take on or discharge passengers for any purpose from any Washington port, the Washington shore, or a dock, landing, or other point in Washington.

(3) An Oregon outfitter and guide registration issued under ORS 704.020 is equivalent to a Washington professional salmon guide license issued under RCW 77.65.370 or to a Washington professional game fish guide license issued under RCW 77.65.480(3), in the concurrent waters of the Columbia River upstream of the bridge at Longview and downstream of the Oregon boundary in Lake Wallula, except that an Oregon vessel may not take on or discharge passengers for any purpose from any Washington port, the Washington shore, or a dock, landing, or other point in Washington.