WSR 12-09-029
PROPOSED RULES
SECRETARY OF STATE
[Filed April 10, 2012, 10:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-05-015.

Title of Rule and Other Identifying Information: Electronic authentication.

Hearing Location(s): 801 Capitol Way South, 2nd Floor Conference Room, Olympia, WA 98504, on May 28, 2012, at 9:00 a.m.

Date of Intended Adoption: May 23, 2012.

Submit Written Comments to: Pamela Floyd, P.O. Box 40234, Olympia, WA 98504-0234, e-mail Pam.Floyd@sos.wa.gov, fax (360) 586-4989, by May 22, 2012.

Assistance for Persons with Disabilities: Contact Sharon Baker by May 22, 2012, TTY (800) 422-8683 or (360) 725-0312.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updating references and creating consistency between state and federal standards.

Reasons Supporting Proposal: Current rules reference NIST (National Institute of Standards and Technology) standards that are no longer applicable. Language is changed to reflect new standards.

Statutory Authority for Adoption: RCW 19.34.030.

Statute Being Implemented: RCW 19.34.030 (2)(c).

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

Name of Proponent: Division of corporations, office of the secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Pamela Floyd, 801 Capitol Way South, Olympia, WA 98504, (360) 725-0310.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No additional costs are imposed on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are adopting by reference without material change, Washington state statutes and are not required to do a cost-benefit analysis per RCW 34.05.328 (5)[(b)](iii).

April 6, 2012
Steve Excell
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 99-02-047, filed 1/4/99, effective 2/4/99)

WAC 434-180-360 Trustworthy system. A system shall be regarded as trustworthy if it materially satisfies ((~~the Common Criteria (CC) Protection Profile (PP) for Commercial Security 2 (CS2), (CCPPCS),~~)) current information security standards and guidelines, including minimum requirements for federal information systems, developed by the National Institute of Standards and Technology (NIST). ((~~The determination whether a departure from CCPPCS is material shall be governed by WAC 434-180-240(2).~~)) For purposes of this chapter, ((~~CCPPCS~~)) compliance shall be interpreted in a manner that is reasonable in the context in which a system is used and is consistent with other state and federal laws. ((~~Until such time as the referenced standard is adopted by NIST, the standard applicable for purposes of this chapter shall be the draft of CCPPCS dated July 13, 1998.~~))

WSR 12-09-034
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed April 11, 2012, 11:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-15-080.

Title of Rule and Other Identifying Information: The department is proposing to establish new chapter 16-149 WAC, Cottage food operations.

The purpose of this chapter is to establish requirements for cottage food operations.

Hearing Location(s): Washington State Department of Agriculture, 1111 Washington Street S.E., Natural Resources Building, Room 172, Olympia, WA 98504-2560, on May 22, 2012, at 1:00 p.m.

Date of Intended Adoption: May 24, 2012.

Submit Written Comments to: Julie Carlson, P.O. Box 42560, Olympia, WA 98504-2560, e-mail jcarlson@agr.wa.gov, fax (360) 902-2087, by May 22, 2012.

Assistance for Persons with Disabilities: Contact Julie Carlson by May 14, 2012, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New chapter 16-149 WAC, Cottage food operations, this proposed chapter includes: The application and renewal of permits; identification of types of nonpotentially hazardous foods; sanitary procedures; facility equipment, and utensil requirements; labeling specificity; requirements for clean water sources and waste and wastewater disposal, and requirements for washing and other hygienic practices.

Reasons Supporting Proposal: On May 5, 2011, the governor signed ESSB 5748, an act relating to cottage food operations. The act requires the department to adopt, by rule, requirements for cottage food operations. Therefore, these rules are necessary to implement the new legislation and establish the program.

Statutory Authority for Adoption: RCW 69.22.020.

Statute Being Implemented: Chapters 69.22 and 34.05 RCW.

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Claudia Coles, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1905.

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

Small Business Economic Impact Statement

Overview: The division of food safety and consumer services within Washington state department of agriculture is proposing a new rule under the authorization of chapter 69.22 RCW. This proposal will provide regulatory clarity for the implementation of the Cottage Food Act passed by the 2011 legislature. RCW 69.22.020 authorizes the director of agriculture to adopt by rule, requirements for cottage food operations. These requirements include:

- Application and renewal of permits.
- Procedures for inspections.
- Sanitary procedures.
- Facility and equipment requirements.
- Labeling requirements.
- Requirements for clean water sources.
- Requirements for washing and other hygienic practices.

The provisions of this proposed rule would apply to all cottage food operations defined under chapter 69.22 RCW. The rule provides clear guidelines for inspections, sanitary procedures, water sources labeling and hygienic practices to be implemented by cottage food operations.

The following small business economic impact statement was prepared in compliance with the Regulatory Fairness Act, RCW 19.85.040, and provides an analysis of the proposed rule impact on small businesses. Fees associated with cottage food operations are defined in chapter 69.22 RCW. The intent of the proposed rule is to only provide clarity from a regulatory perspective.

Citizens affected by this proposal: Legislation passed in 2011 provided a new category for food processing to be defined as cottage food operations. These would be operated out of home kitchens located in domestic residences. Products produced in these home kitchens would be nonpotentially hazardous food products as defined in chapter 69.22 RCW, including jellies and jams as defined in 21 C.F.R. 150 and by rule. Operators of cottage kitchens could produce up to $15,000 in gross sales annually (or as adjusted per the statutory procedure). Citizens permitted under this proposed rule are small businesses (employing fifty or fewer employees) operating in their home residences. Due to the restriction in gross sales and limiting cottage food operations to domestic residences this proposal would not affect large businesses (over fifty employees).

Cost survey examination: As it is unknown just how many citizens will be interested in being permitted as cottage food operations, the agency utilized information from other states to estimate the number of potential permittees. Using the state of Oregon, which has similar legislation in place, it is estimated up to one thousand citizens may be interested in becoming permitted as a cottage food operations. As the rule proposal was being drafted the agency held three stakeholder meetings between September and December 2011 to gather information and input in development of the proposed rule. Participants in these stakeholder meetings included citizens interested in becoming cottage food operations, local health officials, state health officials and agency staff. From these meetings the final proposed rule was developed. Costs, concerns and impacts to these new small businesses as related to implementation of this proposal were discussed during the stakeholder meetings. With it being unknown at this time just which citizens would become permitted, the assumptions on impacts to these potential small businesses are based on discussions during the three stakeholder meetings.

Costs of complying with this proposed rule: Under this rule proposal cottage kitchen operations will be home based and in most situations will be able to utilize existing kitchen facilities and utensils within the domestic home residence. Costs other than licensing related fees established in chapter 69.22 RCW and associated with an application to become a permitted cottage food operations include:

- Complying with applicable county and municipal laws and regulations.
  - Costs if any will vary depending on the location of the operation.
- Obtaining a Washington state master business license.
  - Basic cost is $15.00 per year.
- If the operation is on a private water system a water test will be required annually.
  - Average basic cost for a water sample is $60.00.
- Each operator and employee of the cottage food operation will be required to hold a valid food worker card.
  - Estimated cost per year is $10.00 per worker card.
- Preventing small children and pet access to the cottage food processing area during operating hours.
- Labeling of products produced and sold from cottage food operations
- Recordkeeping.

The requirements under this proposal should not require cottage food operations to need the assistance of professional services in order to comply with the proposal. Other than the fees designated in statute, it is anticipated costs associated with compliance of the proposed rules will be $120.00 annually, depending on location and products produced. The proposed rule is designed to provide regulatory clarity and not create a reduction or loss of sales, and will not require the addition or loss of jobs in order to be in compliance. Currently, this class of citizens cannot produce food and the statute opens this business opportunity to them. The rule will result in the issuance of permits, thus creating sales income and jobs not previously allowed.

Considerations to reduce impact to small business: The agency reviewed the following potential impacts to small businesses and identified where possible reductions in impacts could be found.

- Reducing, modifying, or eliminating regulatory requirements.
  - The proposed rule provides for very minimal requirements for the production of nonhazardous food products in a domestic home kitchen. Although these requirements are much less stringent than current regulatory requirements required of larger food processing operations currently licensed by the agency, they are needed for public protection and to ensure a safe food supply.
- Simplifying, reducing or eliminating recordkeeping and reporting requirements.

- The proposed rule clearly defines a minimal amount of records to be retained by the cottage food operation.
  - Copies of food handler worker card. A food handler worker card is required by chapter 69.22 RCW.
  - Master business license, as required by state regulations to be displayed at the business.
  - Water testing records. Annual water testing of domestic water sources is required under chapter 69.22 RCW.
  - Ingredients and recipes of the cottage food products being produced by the cottage food operation. One of the licensing requirements under statute is for the submission of recipes to be reviewed by the agency prior to issuance of a permit. This requirement is vital to ensuring only nonhazardous foods are being produced and products are labeled correctly for allergens. These labeling requirements are also specified by federal requirements.
  - Documentation of gross product sales. These would be documents kept by the business in the normal course of conducting business.
- Reducing the frequency of inspections.
  - Food produced by cottage kitchens will be considered nonhazardous foods with most operations being inspected annually unless the operation is in violation of regulations within chapter 69.22 RCW or chapter 16-149 WAC. Inspections will be conducted only during reasonable times and during normal business hours of the operation where possible.
- Delaying compliance timelines. The rule is necessary for cottage food operations to apply for a permit to open a business, thus delay of timelines is not applicable to this rule.
- Reducing or modifying fine schedules for compliance. There are no fines or penalties associated with implementation of chapter 69.22 RCW or related rules.

From stakeholder input the agency has provided in the proposed rule very minimal regulatory requirements for cottage food operations with the objective to limit costs to the business associated with regulatory compliance.

Conclusion: The intent of legislation passed in 2011 was to create a process for people to produce and market within our state nonhazardous food products produced in their home kitchens. The legislation and this rule create business opportunities not previously available, and provide small businesses with an avenue to safely market nonhazardous food products from their home based kitchens. The proposed rule imposes modest but necessary requirements on small businesses wanting to produce cottage food that balances compliance requirements with the protection of public health. The proposed rule was drafted with input from stakeholders to provide regulatory clarity and guidelines for the implementation of chapter 69.22 RCW, Cottage food operations.

A copy of the statement may be obtained by contacting Julie Carlson, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1880, fax (360)902-2087, e-mail jcarlson@agr.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

April 11, 2012
Kirk Robinson
Assistant Director

Chapter 16-149 WAC

COTTAGE FOODS

NEW SECTION

WAC 16-149-010 Purpose of this chapter. The purpose of this chapter is to implement chapter 69.22 RCW by establishing rules relating to the:

(1) Issuance of permits regulating the production of cottage food products in a calendar year to be sold directly to the ultimate consumer.

(2) Conditions under which cottage food products identified in this chapter are prepared, stored and sold. These rules are generally patterned after those established by the state under chapters 16-165 and 16-167 WAC but are tailored specifically to home kitchens.

NEW SECTION

WAC 16-149-020 Definitions. (1) In addition to the definitions contained in this section and chapter 69.22 RCW, the definitions found in chapters 69.04, 69.06, and 69.07 RCW, chapters 16-165, 16-167, and 246-215 WAC, and Title 21 CFR may apply.

(2) For the purposes of this chapter, the following definitions apply:

"Adequate" means that which is needed to accomplish the intended purpose in keeping with good public health practices.

"Approved source" means a food source that is routinely and regularly inspected by a regulatory authority.

"Authorized person" means a person or persons who work with the cottage food operator in the preparation of cottage food products under this chapter.

"Baked goods" means foods that are cooked in an oven.

"CFR" means the Code of Federal Regulations.

"Cottage food operation" means a person who produces cottage food products only in the home kitchen of that person's primary domestic residence in Washington and only for sale directly to the consumer.

"Cottage food operation permit" means a permit to produce and sell cottage food products under chapter 69.22 RCW.

"Cottage food products" means nonpotentially hazardous baked goods, jams, jellies, preserves, and fruit butters as defined in 21 CFR 150 as it existed on July 22, 2011; and other nonpotentially hazardous foods identified in WAC 16-149-120.

"Department" means the department of agriculture.

"Director" means the director of the department of agriculture.

"Domestic residence" means a single-family dwelling or an area within a rental unit where a single person or family actually resides. A domestic residence does not include:

(a) A group or communal residential setting within any type of structure; or

(b) An outbuilding, shed, barn, or other similar structure.

"Food worker card" means a food and beverage service worker's permit as required under chapter 69.06 RCW.

"Home kitchen" means a kitchen primarily intended for use by the residents of a home. It may contain one or more stoves or ovens, which may be a double oven, designed for residential use.

"Permitted area" means the portion of a domestic residence housing a home kitchen where the preparation, packaging, storage, or handling of cottage food products occurs.

"Potable water" means water that is in compliance with the Washington state department of health's drinking water quality standards in chapters 246-290 and 246-291 WAC.

"Potentially hazardous food" means foods requiring temperature control for safety because they are capable of supporting the rapid growth of pathogenic or toxigenic microorganisms, or the growth and toxin production of *Clostridium botulinum*.

NEW SECTION

WAC 16-149-030 Prerequisites. (1) All cottage food operations must be permitted annually by the department. The permit will identify a specific listing of the food products allowed to be produced by the cottage food operation.

(2) Prior to permitting, the department will examine the recipes and the premises of the cottage food operation to determine it to be in substantial compliance with the requirements of chapter 69.22 RCW and this rule.

(3) All cottage food operations permitted under this section must include with their application for permit a signed document attesting, by opting to become permitted, that the permitted cottage food operation expressly grants to the regulatory authority the right to enter the domestic residence housing the cottage food operation during normal business hours, or at other reasonable times, for the purposes of inspection including the collection of food samples.

(4) A cottage food operation must comply with all applicable county and municipal laws and zoning ordinances that apply to conducting a business from one's home residence prior to permitting as a cottage food operation, including obtaining a master business license.

(5) Any cottage food operation which has a private water supply must have the supply tested at least sixty days prior to permitting and at least annually thereafter and demonstrate through a written record of testing that the water supply is potable.

(6) Prior to permitting, the cottage food operator shall successfully complete a food safety training program and hold a valid food worker card.

NEW SECTION

WAC 16-149-040 Limitations. (1) If gross sales exceed the maximum annual gross sales allowance of fifteen thousand dollars, the cottage food operation must either obtain a food processing plant license or cease operations for that calendar year. The department may request, in writing, documentation to verify the annual gross sales figure.

(2) Products produced by a cottage food operation must be sold directly by the cottage food operator to the consumer. Direct sales such as farmers markets, craft fairs, and charitable organization functions are permitted. Sales by internet or mail, consignment, at wholesale, or retail sale outside of the state are prohibited.

(3) A cottage food operation may only produce those specific food products listed on its permit. A copy of this permit shall be displayed at farmers markets, craft fairs, charitable organization functions and any other direct sale locations where cottage foods are sold.

NEW SECTION

WAC 16-149-050 Applications. (1) To qualify for a new cottage food operator permit issued under chapter 69.22 RCW, the Washington Cottage Food Operator Act, a cottage food operator must first make application to the department.

(2) By applying for a cottage food operation permit, the applicant acknowledges the jurisdiction of the department and state of Washington in all matters related to the cottage food operation.

(3) By applying for a cottage food operation permit, the applicant recognizes the authority of the department under RCW 69.22.060 and expressly grants the department or other inspection agent approved by the department the right to enter the applicant's premises during normal business hours or at other reasonable times to:

(a) Inspect the portion of the premises where the cottage food operation products, ingredients, or packaging materials are stored, produced, packaged, or labeled;

(b) Inspect records related to the sales, storage, production, packaging, or labeling of the cottage food operation products, ingredients, or packaging materials; and

(c) Obtain samples of cottage food operation products, ingredients, or packaging materials.

(4) Inspections may be conducted as a condition of ongoing permitting, after receiving an initial or a renewal application, upon notification of a change to an application, upon receipt of a complaint, or as required to enforce or administer chapter 69.22 RCW and this chapter. Inspections may be announced or unannounced.

(5) The department shall deny applications for permit where the applicant refuses to allow the inspection of the premises or records, fails to provide samples as provided in this section, or fails to provide the department with the consent described in subsection (3) of this section, or fails to provide the department with all required application information.

NEW SECTION

WAC 16-149-060 Application requirements. (1) Applications must be submitted on the form provided by the department, and must include:

(a) A completed application form.

(b) A diagram of the cottage food operation premises identifying what areas of the residence will be used for the cottage food activities.

(i) The diagram must clearly identify and show the location of all cottage food operation preparation equipment, contact work surfaces, equipment washing and sanitizing sinks or tubs, primary toilet room, handwashing areas, and storage areas.

(ii) Everything illustrated on the diagram must be clearly labeled.

(c) A copy of all recipes and a description of the processing steps and packaging step.

(d) Examples of all product labels.

(e) The proposed cottage food operational dates of processing for the current year.

(f) A description of the types of sales or a list of the proposed sale locations for the current year.

(g) Documentation verifying that the water used at the cottage food operation site complies with the requirements of this chapter. For a well, spring or other private water supply, the water must have a passing bacterial test conducted within sixty days of submitting an application to the department. A copy of the test results must be attached to the permit application.

(h) A copy of the applicant's food worker card and that of any other persons who will be conducting cottage food operation food processing.

(i) If pets are present at the location, a pet control plan that precludes pet entry/access to all areas of the cottage food operation during operating hours and exclusion from storage areas must be submitted.

(j) If infants or children under six years of age are present at the location, a child control plan that precludes child entry/access to all areas of the cottage food operation during operating hours must be submitted.

(2) The department must receive the completed cottage food operation application packet along with check or money order for the permit fee at least six weeks before processing. In accordance with RCW 69.22.030(1) and 69.22.040(3), the fees for the permit are seventy-five dollars for the public health review, one hundred twenty-five dollars for inspection and thirty dollars for processing the application and permit for one year.

(3) Once the department receives the cottage food operation application, a public health review of all recipes and proposed labels will occur. Then the applicant will be contacted for an on-site inspection before a cottage food operation permit can be further processed or issued.

(4) If the result of the on-site permitting inspection is unsatisfactory, the applicant will need to submit documentation to the department as to how they corrected the issue(s) and submit one hundred twenty-five dollars for the additional inspection before the department will return to again inspect for permit approval.

(5) Once received, the cottage food operation permit must be prominently and conspicuously posted at all points of sale location where customers can see it.

(6) Applicants are prohibited from preparing and selling cottage food products regulated by this chapter until they receive their cottage food operation permit.

(7) Cottage food operation permits must be obtained annually and expire on January 31st following issuance. Cottage food operation permits obtained during 2012 will not expire until January 31, 2014.

(8) The department will not refund application fees after receipt of a cottage food operation application.

(9) To obtain an application for a cottage food operation permit, contact the department at:

Washington State Department of Agriculture
Food Safety Consumer Services Division
P.O. Box 42560
Olympia, WA 98504-2560
Phone: 360-902-1876
Fax: 360-902-2087
Web site http://agr.wa.gov.

NEW SECTION

WAC 16-149-070 Amendment requirements to permit. (1) Amendments to an existing cottage food permit after issuance within a calendar year require a new application and application fee. Amendments requiring a new application include the addition of new products, when recipes changes occur, or when the premises areas change.

(2) At a minimum, the department must conduct the public health review of all new food products, process a new permit and conduct an inspection of the cottage food premises before any new additional cottage food products can be allowed.

(3) If a cottage food operator wishes to add new products to his or her permit, an application amendment must be submitted to the department.

(4) An application amendment will contain the same information as outlined in WAC 16-149-060 and on a form provided by the department.

(5) If there are no significant changes to the premises, the department will require the public health review of all new recipes submitted for review, and after approval, process an amended cottage food operation permit to the applicant. This application amendment will require the submission of seventy-five dollars for the public health review and thirty dollars for processing for the permit.

(6) If there are significant changes to the premises, the department will require the public health review of all new recipes submitted for review, and after approval, process an amended cottage food operation permit to the applicant. This application amendment will require the submission of seventy-five dollars for the public health review, one hundred twenty-five dollars for inspection and thirty dollars for processing for the permit.

(7) Significant change under this section means any change in the premises previously submitted to and inspected by the department under this chapter which is substantial

enough in the department's judgment to require reinspection and approval. This includes, but is not limited to:

(a) Structural changes within the cottage food operation's premises such as a remodel or addition to the home that affects the cottage food operation areas previously inspected.

(b) Additional locations within the premises that are now intended to be used for portions of the cottage food operations that were not previously inspected. For example: A basement storage area is now planned to be utilized for storage of finished products. This basement area was not originally part of the permitted area and not previously inspected by the department.

NEW SECTION

WAC 16-149-080 Production requirements. (1) A cottage food production operation shall:

(a) Ensure that each operator holds a valid food handler's permit.

(b) Provide for food contact surfaces that are smooth and easily cleanable.

(c) Maintain acceptable sanitary standards and practices.

(i) Carpeting and rugs are not approved flooring material in the cottage food operation home kitchen preparation area. Cleanable impermeable floor mats are allowed in the cottage food operation home kitchen area.

(ii) A three-compartment sink is not required for washing, rinsing, and sanitizing.

(iii) A domestic dishwasher may be used in lieu of a three-compartment sink.

(iv) Kitchen utensils that will not fit into a dish machine must be washed, rinsed, and sanitized using a three-compartment sink method. The third compartment may include a large tub placed next to a two-compartment domestic kitchen sink.

(v) Pump hand soap and disposable paper towels must be available and used in the identified primary toilet room and home kitchen area by all persons working in the home kitchen.

(vi) When food must be left out uncovered on kitchen counters or table due to processing steps such as cooling, active controls must be in place to prevent inadvertent contamination by children or pets. Active controls can include presence of the permittee or an employee or use of child/pet barriers, etc.

(vii) If the cottage food operator owns pets, a pet control plan that precludes pet entry/access to all areas of the cottage food operation during operating hours must be in place.

(viii) No infants or children under six years of age can be present in the cottage food operation home kitchen during processing. A child barrier may be used to prevent access to the cottage food processing area during operating hours.

(d) Provide separate storage from domestic storage, including separate refrigerated storage.

(e) Provide for annual bacterial test of water supplies if not connected to a public water system.

(2) A cottage food production operation is not required to:

(a) Have commercial surfaces such as stainless steel counters or cabinets;

(b) Have a commercial grade sink, dishwasher or oven; or

(c) Have a separate kitchen.

(3) A cottage food production operation is prohibited from all of the following:

(a) Conducting domestic activities in the kitchen when producing food.

(b) Allowing pets (including dogs, cats, birds, reptiles, etc.) in the kitchen production and packaging areas.

(c) Washing out or cleaning pet cages, pans and similar items in the kitchen, even when the kitchen is not in use for cottage food production.

(d) Pet litter boxes cannot be stored or used in any area of the cottage food operation. This includes food storage areas.

(e) Allowing entry of any person other than persons processing, preparing, packaging, or handling cottage food under the direct supervision of the permittee into the home kitchen area while producing food.

(4) A cottage food product must be prepared by following the recipe that was submitted for department approval. The recipe must be available on the premises for review by the department.

NEW SECTION

WAC 16-149-090 Inspections. (1) In addition to inspections required for permit applications or amendments, the department may inspect the permitted area of a cottage food operation whenever the department has reason to believe the cottage food operation is in violation of the requirements of chapter 69.22 RCW or this chapter. Inspections will be made at reasonable times and, when possible, during regular business hours.

(2) The department may also inspect the permitted area of a cottage food operation in response to a foodborne illness outbreak, consumer complaint, or other public health emergency.

(3) When conducting an inspection, the department shall, at a minimum, inspect for the following:

(a) That the permitted cottage food operator understands that only those specific foods identified on the permit for the cottage food operation may be produced;

(b) That the permitted cottage food operator understands that no person other than the permittee, or a person under the direct supervision of the permittee, may be engaged in the processing, preparation, packaging, or handling of any cottage food products or be in the home kitchen during the processing, preparation, packaging, or handling of any cottage food products;

(c) That no cottage food processing, preparation, packaging, or handling is occurring in the home kitchen concurrent with any other domestic activities such as family meal preparation, dishwashing, clothes washing or ironing, kitchen cleaning, or guest entertainment;

(d) That no infants or children under the age of six are in the home kitchen during the processing, preparation, packaging, or handling of any cottage food products;

(e) That no pets are in the home kitchen during the processing, preparation, packaging, or handling of any cottage food products;

(f) That only typical residential style of kitchen equipment and utensils are used to produce cottage foods;

(g) That all food contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any cottage food products are washed, rinsed, and sanitized before each use:

(i) A three-compartment sink is not required for washing, rinsing, and sanitizing.

(ii) A domestic dishwasher may be used in lieu of a three-compartment sink.

(iii) Kitchen utensils that will not fit into a dish machine must be washed, rinsed, and sanitized using a three-compartment sink method. The third compartment may include a large tub placed next to a two-compartment domestic kitchen sink.

(h) That all food preparation and food and equipment storage areas are maintained free of rodents and insects; and

(i) That all persons involved in the preparation and packaging of cottage food products:

(i) Have a valid food handler worker card;

(ii) Do not work in the home kitchen area when ill;

(iii) Wash their hands before any food preparation and food packaging activities;

(iv) Avoid bare hand contact with ready-to-eat foods through the use of single-service gloves, bakery papers, tongs, or other utensils; and

(v) Are under the direct supervision of the permittee.

NEW SECTION

WAC 16-149-100 Recordkeeping requirements. (1) At a minimum, the following records must be kept at the cottage food operation:

(a) Copies of all food handler worker cards;

(b) Copy of the master business license;

(c) All cottage food product recipes that are allowed by the department and listed on the current cottage food operation permit;

(d) The water testing records if required by this chapter;

(e) Documentation that ingredients were obtained from approved sources; and

(f) Documentation of gross sales and any off-site sale locations.

(2) All records required under subsection (1) of this section must be:

(a) Maintained so that the information they intend to convey is clear and understandable;

(b) Available at the operation and available to the department inspectors upon request; and

(c) Retained at the operation for six months after the expiration of the permit.

NEW SECTION

WAC 16-149-110 Labeling. (1) A cottage food operation may only sell cottage food products which are prepackaged (except for certain products as outlined in subsection (2) of this section) with a label affixed that contains the following information (printed in English):

(a) The name and address of the business of the cottage food operation;

(b) The name of the cottage food product;

(c) The ingredients of the cottage food product, in descending order of predominance by weight;

(d) The net weight or net volume of the cottage food product, metric weight is not required;

(e) Allergen information as specified by federal labeling requirements;

(f) If any nutritional claim is made, appropriate nutritional information as specified by federal labeling requirements; and

(g) The following statement printed in at least the equivalent 11-point type in a color that provides a clear contrast to the background label: "Made in a Home Kitchen that has not been subject to standard inspection criteria." A label sample is shown below.

MADE IN A HOME KITCHEN THAT HAS NOT BEEN SUBJECT TO STANDARD INSPECTION CRITERIA

Chocolate Chip Cookies
Ashley Bryant
2550 Kingston Lane
Seattle, WA 98102

Ingredients: Enriched flour (Wheat flour, niacin, reduced iron, thiamine, mononitrate, riboflavin and folic acid), butter (milk, salt), chocolate chips (sugar, chocolate liquor, cocoa butter, butterfat (milk), soy lecithin as an emulsifier), walnuts, sugar, eggs, salt, artificial vanilla extract, baking soda. **Contains: Wheat, eggs, milk, soy, walnuts.**

(2) The department may allow large cakes or a container of bulk products to be handled and labeled in the following manner:

(a) Be protected from contamination during transportation to the consumer.

(b) Have a product label sheet with all the required information as listed in subsection (1) of this section provided to the consumer.

NEW SECTION

WAC 16-149-120 Allowable cottage food products. A cottage food operation is allowed to produce food items that are nonpotentially hazardous. Subsection (1) of this section lists acceptable cottage food products. Although this list is not all inclusive, it provides for most types of approved cottage food products. Only those products approved by the department and listed in the permit may be produced:

(1) Baked good products that are cooked in an oven including:

(a) Loaf breads, rolls, biscuits, quick breads, and muffins;

(b) Cakes including celebration cakes such as birthday, anniversary, and wedding cakes;

(c) Pastries and scones;

(d) Cookies and bars;

(e) Crackers;

(f) Cereals, trail mixes and granola;

(g) Candies and confections that are cooked in an oven;

(h) Pies, except that custard style pies, pies with fresh fruit that is unbaked or pies that require refrigeration after baking are not approved;

(i) Nuts and nut mixes; and

(j) Snack mixes.

(2) Standardized jams, jellies, preserves and fruit butters as identified under 21 CFR 150.

(a) Fresh picked or harvested fruits from noncommercial sources are allowed to be used.

(b) Fresh fruits can be frozen in a home style freezer and used at a later time by the cottage food operation.

(c) All recipes must have a cook step included such as a hot fill or hot water bath. No freezer or refrigerator style products are allowed.

(d) All jams, jellies, preserves and fruit butters must be sealed in containers that are sterilized prior to filling.

(e) Wax paraffin is not allowed to be used for sealing.

(3) Recombining and packaging of dry herbs, seasoning and mixtures that are obtained from approved sources (e.g., dry bean soup mixes, dry teas and coffees, spice seasonings, etc.).

(4) Vinegar and flavored vinegars.

(5) The recipe for each product must be submitted with the application, kept on file at the cottage food operation location and recipes are subject to public disclosure.

(6) Fresh picked or harvested fruits from noncommercial sources are allowed to be used. Fresh fruits can be frozen in a home style freezer and used at a later time by the cottage food operation as long as there is a cook step in the recipe.

(7) All frostings or glazes must have a cook step or be made with ingredients (such as a large amount of sugar) that when combined are stable at room temperature.

NEW SECTION

WAC 16-149-130 Prohibited products. This section lists unacceptable cottage food products. Although not inclusive, it lists most types of unapproved cottage food products:

- Fresh or dried meat or meat products including jerky;
- Fresh or dried poultry or poultry products;
- Canned fruits, vegetables, vegetable butters, salsas, etc.;
- Fish or shellfish products;
- Canned pickled products such as corn relish, pickles, sauerkraut;
- Raw seed sprouts;
- Bakery goods which require any type of refrigeration such as cream, custard or meringue pies and cakes or pastries with cream or cream cheese fillings, fresh fruit fillings or garnishes, glazes or frostings with low sugar content, cream, or uncooked eggs;
- Tempered or molded chocolate or chocolate type products;
- Milk and dairy products including hard, soft and cottage cheeses and yogurt;
- Cut fresh fruits or vegetables;
- Food products made from cut fresh fruits or vegetables;
- Food products made with cooked vegetable products;
- Garlic in oil mixtures;
- Juices made from fresh fruits or vegetables;
- Ice or ice products;
- Barbeque sauces, ketchups, or mustards;
- Focaccia-style breads with vegetables or cheeses.

NEW SECTION

WAC 16-149-140 Suspension, revocation, and denial of registrations. (1) A cottage food operation permit and applications for cottage food operation permits are governed by chapter 34.05 RCW.

(2) After conducting a hearing, the director may deny, suspend, or revoke a cottage food operation application or permit if it is determined that an applicant or permittee has committed any of the following acts:

(a) Failed to meet the permitting requirements established under chapter 69.22 RCW or this chapter;

(b) Refused, neglected, or failed to comply with the provisions of this chapter, any rules adopted to administer this chapter, or any lawful order of the director;

(c) Refused, neglected, or failed to keep and maintain records required by this chapter, or to make the records available when requested pursuant to the provisions of this chapter;

(d) Consistent with RCW 69.22.060, refused the director access to the permitted area of a domestic residence housing a cottage food operation for the purpose of carrying out the provisions of this chapter;

(e) Consistent with RCW 69.22.060, refused the department access to any records required to be kept under the provisions of this chapter; or

(f) Exceeded the annual income limits provided in WAC 16-149-040.

(3) The director may summarily suspend a permit issued under this chapter if the director finds that a cottage food operation is operating under conditions that constitute an immediate danger to public health or if the director is denied access to the permitted area of a domestic residence housing a cottage food operation and records where the access was sought for the purposes of enforcing or administering this chapter.

WSR 12-09-044
PROPOSED RULES
GAMBLING COMMISSION
[Filed April 13, 2012, 11:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-04-040.

Title of Rule and Other Identifying Information: WAC 230-15-040 Requirements for authorized card games.

Hearing Location(s): DoubleTree Guest Suites - SouthCenter, 16500 Southcenter Parkway, Seattle, WA 98662, (206) 575-8220, on July 12 or 13, 2012, at 9:00 a.m. or 1:00 p.m. NOTE: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/locations/start time.

Date of Intended Adoption: July 12 or 13, 2012. NOTE: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/locations/start time.

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, 2012.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by July 1, 2012, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The petitioner's proposed amendment would authorize a carryover pot in house-banked card games. Under current rules, a player's win or loss must be determined during the course of play of a single card game. The petitioner's amendment would provide an exception for carryover pots. A carryover pot is an optional pot that accumulates as a dealer and participating players contribute to the pot. The pot is not necessarily determined after one game and can be carried over to more than one game. Carryover pots will not carryover more than ten games. Participants will include at least one player and the dealer competing for the highest winning hand. Game rules will determine how the pot is distributed.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.0282.

Statute Being Implemented: Not applicable.

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

Name of Proponent: ShuffleMaster, a licensed manufacturer, private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the rule change would not impose additional costs on any licensees. Licensees are not required to offer carryover pots in card games.

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.

April 13, 2012
Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Orders 656 and 656-A, filed 8/14/09 and 8/18/09, effective 9/14/09 and 9/18/09)

WAC 230-15-040 Requirements for authorized card games. (1) In order for a card game to be authorized, ((~~the card game~~)) it must be approved by the director or the director's designee and must:

(a) Be played with standard playing cards or with electronic card facsimiles approved by the director or the director's designee; and

(b) Offer no more than four separate games with a single hand of cards. However, no more than three of the games may offer a wager that exceeds five dollars each. We consider bonus features and progressive jackpots separate games. If a player does not have to place a separate wager to participate, we do not consider it a separate game. An example of this is an "envy" or "share the wealth" pay out when another player achieves a specific hand; and

(c) Not allow side bets between players.

(2) Card game licensees may use more than one deck of cards for a specific game. They also may remove cards to comply with rules of a specific game, such as Pinochle or Spanish 21.

(3) Players must:

(a) Compete against all other players on an equal basis for nonhouse-banked games or against the house for house-banked games. All players must compete solely as a player in the card game; and

(b) 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; and

(c) Not place wagers on any other player's or the house's hand or make side wagers with other players, except for:

(i) An insurance wager placed in the game of Blackjack; or

(ii) An "envy" or "share the wealth" wager which allows a player to receive a prize if another player wins a jackpot or odds-based wager; or

(iii) A tip wager made on behalf of a dealer.

(4) Mini-Baccarat is authorized when operated in the manner explained for Baccarat in the most current version of *The New Complete Hoyle, Revised* or *Hoyle's Encyclopedia of Card Games*, or similar authoritative book on card games we have approved. However:

(a) Card game licensees may make immaterial modifications to the game; and

(b) Subsection (3) of this section does not apply; and

(c) The number of players is limited under WAC 230-15-055.

(5) A player's win or loss must be determined during the course of play of a single card game, except for a carryover pot game. A carryover pot is an optional pot that accumulates as dealer and participating players contribute to the pot. The winner of the pot is not necessarily determined after one game and the pot can be carried over to more than one game. Carryover pots must not carryover more than ten games. Participants must include at least one player and the dealer competing for the highest qualifying winning hand. Game rules must state how the pot is distributed.

WSR 12-09-045
PROPOSED RULES
GAMBLING COMMISSION
[Filed April 13, 2012, 11:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-05-065.

Title of Rule and Other Identifying Information: WAC 230-15-040 Requirements for authorized card games and 230-15-685 Restrictions on progressive jackpots.

Hearing Location(s): DoubleTree Guest Suites - SouthCenter, 16500 Southcenter Parkway, Seattle, WA 98662, (206) 575-8220, on July 12 or 13, 2012, at 9:00 a.m. or 1:00 p.m. NOTE: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: July 12 or 13, 2012. NOTE: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

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, 2012.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by July 1, 2012, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The petitioners want to connect "envy" and "share the wealth" "bonus features" between different card games and different tables within a single house-banked card room. At their February 2012 meeting, the commissioners denied a similar request by the petitioners based on regulatory and policy concerns. The petitioners submitted this new petition addressing areas they believe led to the denial of their first petition. The petitioners' new proposal uses staff's alternative from the February 2012 commission meeting as a starting point. The petitioners resubmitted proposed amendment limits shared prizes to fixed payouts (no odds based payouts) and requires certain electronic features to be used on tables offering "envy" and "share the wealth" "bonus features." The amendment would require the electronic features, when offered on more than one table, to:

- Detect and record the player's bonus wager,
- Provide an alert notification system of a winning triggering event, and
- Include a system for displaying all winning bonus hands.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.0282.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Rockland Ridge Corporation, a licensed gambling service supplier, and Galaxy Gaming, Inc., a licensed manufacturer, private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the rule change would not impose additional costs on any licensees. Licensees are not required to expand the bonus envy wager feature.

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.

April 13, 2012
Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Orders 656 and 656-A, filed 8/14/09 and 8/18/09, effective 9/14/09 and 9/18/09)

WAC 230-15-040 Requirements for authorized card games. (1) In order for a card game or "bonus feature" to be authorized((~~, the card game~~)) it must be approved by the director or the director's designee and must:

(a) Be played with standard playing cards or with electronic card facsimiles approved by the director or the director's designee; and

(b) Offer no more than four "separate games" with a single hand of cards((~~. However,~~)) and no more than three of the "separate games" may offer a wager that exceeds five dollars each. ((~~We consider bonus features and progressive jackpots separate games. If a player does not have to place a separate wager to participate, we do not consider it a separate game. An example of this is an "envy" or "share the wealth" pay out when another player achieves a specific hand~~)) Additionally, the following definitions and limitations apply to this section:

(i) "Separate game" - Each individual objective to be achieved within a card game that requires a separate wager and results in a distinct and separate payout based upon the outcome. We consider "bonus features" and progressive jackpots separate games unless a separate wager is not required. "Bonus features" and progressive jackpots may be combined with other "bonus features," progressive jackpots and prizes, provided that, the total amount of the wager does not exceed the limits established in this subsection and in WAC 230-15-140.

(ii) "Bonus feature" - An added prize and/or variation based on achieving the predetermined specific hand required to win the prize. Examples include, but are not limited to, "envy" and "share the wealth" "bonus features"; and

(c) Not allow side bets between players.

(2) Card game licensees may use more than one deck of cards for a specific game. They also may remove cards to comply with rules of a specific game, such as Pinochle or Spanish 21.

(3) Players must:

(a) Compete against all other players on an equal basis for nonhouse-banked games or against the house for house-banked games. All players must compete solely as a player in the card game; and

(b) 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; and

(c) Not place wagers on any other player's or the house's hand or make side wagers with other players, except for:

(i) An insurance wager placed in the game of Blackjack; or

(ii) ((~~An~~)) "Envy" ((~~or~~)) and "share the wealth" ((~~wager which allows a player to receive a prize if another player wins a jackpot or odds-based wager~~)) "bonus features"; or

(iii) A tip wager made on behalf of a dealer.

(4) Mini-Baccarat is authorized when operated in the manner explained for Baccarat in the most current version of *The New Complete Hoyle, Revised* or *Hoyle's Encyclopedia of Card Games*, or similar authoritative book on card games we have approved, and as further described in the commission-approved game rules posted on the gambling commission's web site. However:

(a) Card game licensees may make immaterial modifications to the game; and

(b) Subsection (3) of this section does not apply; and

(c) The number of players is limited under WAC 230-15-055 and only one player may place a wager per wager area.

(5) A player's win or loss must be determined during the course of play of a single card game.

(6) "Envy" and "share the wealth" bonus features shall be operated as follows:

(a) If a player makes a wager that qualifies for an envy payout, they are entitled to receive a prize if another player's hand achieves the predetermined specific hand. If a player is playing more than one wagering area or if a hand they are playing is split into two or more hands and any one of their hands achieves the predetermined specific hand, their other hand(s) with a qualifying wager is (are) entitled to receive a prize.

(b) If a player makes a wager that qualifies for a "share the wealth" payout, they are entitled to receive a prize if either their hand(s) or another player's hand achieves the predetermined specific hand.

(c) "Envy" and "share the wealth" specific hand(s) may occur on different authorized card games and/or on multiple tables in a card room and all qualifying players are entitled to a prize. Prior to offering an "envy" or "share the wealth" prize on multiple games and/or tables, card game licensees must first submit to us for approval their internal controls detailing the methods and controls they will use to assure the integrity of these "bonus features" including, but not limited to:

(i) Identifying who has the winning hand;

(ii) How other tables offering "envy" or "share the wealth" "bonus feature" are notified that the prize has been won;

(iii) Identifying which payout table would be used to pay out prizes on different games; and

(iv) Verifying winners of the "envy" or "share the wealth" prize throughout the card room.

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

WAC 230-15-685 Restrictions on progressive jackpots. House-banked card game licensees operating progressive jackpots must follow these restrictions and procedures:

(1) Progressive jackpot funds must accrue according to the rules of the game; and

(2) At each gambling table, licensees must prominently post the amount of the progressive jackpot that players can win; and

(3) Licensees must record the beginning amount of each progressive jackpot offered, including explanations for any increases or decreases in the prize amount offered. Licensees must keep this documentation with the progressive jackpot records; and

(4) Licensees may establish a maximum limit on a progressive jackpot prize. If licensees establish a limit, they must make the amount equal to, or greater than, the amount of the jackpot when they imposed the limit. They must prominently post a notice of the limit at or near the game; and

(5) Licensees may connect progressive jackpots offered on the same card game on multiple tables within the same licensed location.

WSR 12-09-047
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Community Services Division)
[Filed April 16, 2012, 9:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-05-092.

Title of Rule and Other Identifying Information: WAC 388-446-0020 What penalties will I receive if I break a food assistance rule on purpose?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html or by calling (360) 664-6094), on May 22, 2012, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 23, 2012.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 22, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by May 8, 2012, TTY

(360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments will adopt penalties for Washington food assistance programs consistent with federal penalties for intentional program violations for the supplemental nutrition assistance program (SNAP).

Reasons Supporting Proposal: Amendments proposed under this filing are needed to incorporate federal regulations regarding the allowable use of SNAP benefits. The amendments will provide penalty information to comply with C.F.R. 273.16 for 1st, 2nd and 3rd convictions of crimes that are an intentional program violation for food assistance benefits.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 74.04.770, 74.12.260, 74.08.580, 9.91.142, 7 C.F.R. 273.16.

Statute Being Implemented: 7 C.F.R. 273.16.

Rule is necessary because of federal law, 7 C.F.R. 273.16.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Holly St. John, P.O. Box 45470, Olympia, WA, (360) 725-4895.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this 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."

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, "this 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.["]

March 21, 2012
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-19-047, filed 9/13/11, effective 10/14/11)

WAC 388-446-0020 What penalties will I receive if I break a food assistance rule on purpose? (1) Breaking a rule on purpose for food assistance is known as an intentional program violation (IPV) under WAC 388-446-0015. These rules apply to all DSHS food assistance programs including:

(a) Washington Basic Food program or Basic Food;

(b) The Washington combined application project (WASHCAP) under chapter 388-492 WAC;

(c) Transitional food assistance (TFA) under chapter 388-489 WAC; and

(d) The state-funded food assistance program (FAP) for legal immigrants.

(2) You will have an IPV if we have shown that you have committed an IPV in any of the following three ways:

(a) We establish that you committed an IPV through an administrative disqualification hearing (ADH) under WAC 388-446-0015;

(b) You signed a disqualification consent agreement that waives your right to an administrative disqualification hearing and ((~~accepts~~)) states you accept the IPV penalty; or

(c) A federal, state or local court found that you committed an IPV or found you guilty of a crime that breaks food assistance rules.

(3) We only apply a disqualification penalty to the person or persons who have committed an IPV. People who commit an IPV are disqualified from all food assistance benefits listed in subsection (1) of this section. If you commit an IPV you will not be eligible for food assistance:

(a) For a period of twelve months for the first violation;

(b) For a period of twenty-four months for the second violation;

(c) Permanently for the third violation.

(4) **Special penalties for certain crimes -** If you are convicted in a court of law for crimes that are an intentional program violation, we disqualify you for the period of time set in the court order. If the court order does not state a disqualification period, we set a disqualification period based on the crime you were convicted of committing:

(a) **Drugs -** If you are convicted in a federal, state, or local court of trading or receiving food benefits for a controlled substance, we disqualify you:

(i) For a period of twenty-four months for a first conviction; and

(ii) Permanently for a second violation.

(b) **Weapons -** If you are convicted in a federal, state or local court of trading your food assistance benefits for firearms, ammunition, or explosives, we permanently disqualify you from receiving food assistance on the first offense.

(c) **Trafficking -** If you are convicted in a federal, state, or local court of knowingly buying, selling, trading, or presenting for redemption food assistance benefits totaling five hundred dollars or more, we permanently disqualify you from receiving food assistance on the first offense.

(d) **False identification -** If you are convicted in a federal, state, or local court of providing false identification to receive benefits in more than one assistance unit, we disqualify you from receiving food assistance:

(i) For ten years on the first or second offense; and

(ii) Permanently for the third offense.

(e) **Receiving benefits in more than one state -** If you are convicted in a federal, state, or local court of providing false residency information to receive benefits in more than one household or state, we disqualify you from receiving food assistance:

(i) For ten years on the first or second offense; and

(ii) Permanently for the third offense.

(5) When we start a disqualification. The date of a disqualification depends on how a person was disqualified. We will send you a letter telling you when your disqualification period will start:

(a) **ADH or consent agreement -** If you were found to have committed an IPV in an administrative disqualification

hearing or you signed a consent agreement waiving this hearing and accepting the disqualification, we start the disqualification period by the second month after we sent you a letter informing you of the disqualification.

(b) **Conviction in court -** If you are convicted in court of a crime that is an intentional program violation, your disqualification period in subsection (4) is in addition to any civil or criminal penalties. We disqualify you from food assistance within forty-five days of the court order unless this timing conflicts with the court order.

(6) **Disqualifications apply in all states -** If you have an IPV disqualification this stays with you until the penalty period is over, even if you move to another state:

(a) If we disqualify you from food assistance, you are also disqualified from receiving supplemental nutrition assistance program (SNAP) benefits in another state during the disqualification period.

(b) If you are disqualified from receiving SNAP benefits for an IPV from another state, you can't receive food assistance in Washington during the disqualification period.

(7) Even though we only disqualify the persons who have committed an IPV from receiving food assistance benefits, all adults in the assistance unit are responsible to repay any benefits you were overpaid as described under WAC 388-410-0020 and 388-410-0025.

WSR 12-09-048
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed April 16, 2012, 9:58 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 308-13-150 What are the landscape architect fees and charges?

Hearing Location(s): Department of Licensing (DOL), 405 Black Lake Boulevard, Conference Room 2209, Olympia, WA 98502, on May 25, 2012, at 9:00 a.m.

Date of Intended Adoption: May 29, 2012.

Submit Written Comments to: Kezia Prater, P.O. Box 9045, Olympia, WA 98507, e-mail kprater@dol.wa.gov, fax (360) 570-7098, by May 25, 2012.

Assistance for Persons with Disabilities: Contact Autumn Dryden by May 24, 2012, TTY (360) 664-0116 or (360) 664-1567.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule change will temporarily suspend partial licensing fees in an effort to maintain a balanced budget for the landscape architect licensing program.

Reasons Supporting Proposal: The proposed rule change will allow the program to collect fees that are appropriate to the program's budget needs. Collecting full fees would result in over collection of revenue and cause the fund balance to increase at an unreasonable rate.

Statutory Authority for Adoption: Chapter 18.96 RCW.

Statute Being Implemented: RCW 43.24.086.

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

Name of Proponent: DOL, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Kezia Prater, Olympia, (360) 664-6652; and Enforcement: Joe Vincent, Jr., Olympia, (360) 664-6597.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DOL is exempt from this requirement.

A cost-benefit analysis is not required under RCW 34.05.328. DOL is not one of the named agencies to which this rule applies. Agencies that are not named can apply this rule to themselves voluntarily. DOL has chosen not to do this.

April 16, 2012
Damon G. Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-12-116, filed 6/2/10, effective 7/3/10)

WAC 308-13-150 What are the landscape architect fees and charges? (1) Suspension of fees. Effective July 1, 2012, the listed fees shown in subsection (2) of this section are suspended and replaced with the following:

Title of Fee	Fee
Application fee	$225.00
Renewal (2 years)	360.00
Late renewal penalty	120.00
Initial license (2 years)	360.00
Reciprocity application fee	325.00

The fees set forth in this section shall revert back to the fee amounts shown in subsection (2) of this section on July 1, 2016.

(2) The following fees will be collected:

Title of Fee	Fee
Application fee	$250.00
Renewal (2 years)	450.00
Late renewal penalty	150.00
Duplicate license	25.00
Initial license (2 years)	450.00
Reciprocity application fee	450.00
Replacement wall certificate	20.00

You will submit any examination fees directly to CLARB.

WSR 12-09-053
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE
[Filed April 16, 2012, 3:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-05-052.

Title of Rule and Other Identifying Information: WAC 220-95-100 Sea urchin license reduction program and 220-95-110 Sea cucumber license reduction program.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on June 1-2, 2012, at 8:30 a.m.

Date of Intended Adoption: June 15, 2012.

Submit Written Comments to: Richard Childers, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail rich.childers@dfw.wa.gov, fax (360) 902-2943, by May 20, 2012.

Assistance for Persons with Disabilities: Contact Tami Lininger by May 20, 2012, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department wants to reduce the number of commercial sea urchin permits to twenty and sea cucumber permits to twenty. To do this, it is implementing a permit buy-back program. The department solicited comment from industry stakeholders in a November 2011 letter. Stakeholders responded by recommending increases of the maximum bid price to $20,000 for sea urchin permits and $60,000 for sea cucumber permits.

Reasons Supporting Proposal: These amendments will promote sales of permits back to the department to meet license-reduction goals.

Statutory Authority for Adoption: RCW 77.12.047, 77.70.150, and 77.70.190.

Statute Being Implemented: RCW 77.12.047, 77.70.-150, and 77.70.190.

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: Richard Childers, 1000 Point Whitney Road, Brinnon, WA 98320, (360) 586-1498; Implementation: James Scott, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2736; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., Olympia, WA 98504, (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, Recordkeeping, and Other Compliance Requirements of the Proposed Rule: This proposal contains no requirements for small businesses other than establishing a sales price for any permits they want to sell. This is a license buy-back program that allows owners of commercial sea urchin and sea cucumber permits to make offers to sell their permits back to the Washington department of fish and wildlife (WDFW).

2. Kinds of Professional Services That a Small Business Is Likely to Need in Order to Comply with Such Requirements: There are no requirements to comply with. A small business may wish to hire a professional to help establish its bid price, but this is not required.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: No costs are required to comply with this proposal.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? Yes, if a small business decides to offer its sea urchin or sea cucumber permit for sale back to WDFW, and WDFW accepts the offer. Without a license, the small business cannot participate in the commercial sea urchin and sea cucumber fisheries, which means it will lose sales and revenue. However, if a small business is successful in selling its permit back to WDFW, it will gain revenue. The decision to make a sales offer to WDFW is wholly each permit owners.

5. Cost of Compliance for the Ten Percent 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 are no costs of compliance.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: There are no costs of compliance.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: WDFW had significant discussions with current license holders in the commercial sea cucumber and sea urchin fisheries regarding whether and how much to raise the maximum bid prices for these license buy-back programs. The industry reached a consensus for both fisheries, and WDFW incorporated the agreed-up maximum bid prices into its rules.

8. A List of Industries That Will Be Required to Comply with the Rule: License holders wishing to participate in the commercial sea urchin and sea cucumber license buy-back program.

A copy of the statement may be obtained by contacting Richard Childers, 1000 Point Whitney Road, Brinnon, WA 98320, phone (360) 586-1498, fax (360) 796-4997, e-mail rich.childers@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not involve hydraulics.

April 16, 2012
Lori Preuss
Rules Coordinator

AMENDATORY SECTION (Amending Order 07-88, filed 5/18/07, effective 6/18/07)

WAC 220-95-100 Sea urchin license reduction program. In order to provide for economic stability in the commercial sea urchin fishery, and in accordance with RCW

77.70.150, the department establishes the sea urchin license reduction program (program).

(1) Eligibility: All persons who currently hold a sea urchin commercial fishery license are eligible to offer their license(s) for purchase ((~~under the program~~)) by the department.

(2) ((~~Method of purchase: The department will rank offers to sell sea urchin licenses from the lowest offer to the highest offer. The department will purchase licenses each year from the funds made available under RCW 77.70.150, with a maximum purchase price of $11,000 per license.~~

~~(3)~~)) Offer process: The department will accept sales offers ((~~to sell~~)) beginning August 1st of each year and will purchase licenses based on the funds that are available on ((~~the following~~)) September 30th of that same year.

(((~~(4)~~))) (3) Selection process: The department will ((~~select licenses to be purchased beginning with the lowest offer to sell, and continuing~~)) rank sales offers from the lowest offer to the highest. It will purchase the lowest-cost licenses first, then the next lowest, and continue until there are insufficient funds to ((~~purchase a~~)) complete a purchase on an offer. If two or more licenses are offered at the same price, selection will be by random draw. To purchase licenses, the department will use the funds made available under RCW 77.70.150, with a maximum purchase price of twenty thousand dollars per license.

(((~~(5)~~))) (4) License reduction process: ((~~Upon selection,~~)) When the department purchases a license, it will issue a warrant (a check from the department) in the amount of the offer to the license holder ((~~in the amount of the offer~~)). On the date that the department mails the warrant ((~~is mailed~~)) to the license holder's mailing address ((~~of the license holder as shown in their~~)) on file with the department ((~~licensing file, the department~~)), it will void the license. ((~~Upon receipt of~~)) When the license holder receives the warrant, ((~~the license holder is to~~)) he or she must return ((~~the~~)) his or her commercial sea urchin license cards to the department.

(((~~(6)~~))) (5) No prohibition on reentry: License holders who sell a license under the program may reenter the sea urchin commercial fishery if they purchase a license.

(((~~(7)~~))) (6) Program termination: This program terminates when the number of sea urchin commercial fishery licensees is reduced to ((~~twenty-five~~)) twenty.

AMENDATORY SECTION (Amending Order 07-88, filed 5/18/07, effective 6/18/07)

WAC 220-95-110 Sea cucumber license reduction program. In order to provide for economic stability in the commercial sea cucumber fishery, and in accordance with RCW 77.70.190, the department establishes the sea cucumber license reduction program (program).

(1) Eligibility: All persons who currently hold a sea cucumber commercial fishery license are eligible to offer their license(s) for purchase ((~~under the program~~)) by the department.

(2) ((~~Method of purchase: The department will rank offers to sell sea cucumber licenses from the lowest offer to the highest offer. The department will purchase licenses each year from the funds made available under RCW 77.70.190, with a maximum purchase price of $15,000 per license.~~

~~(3)~~)) Offer process: The department will accept sales offers ((~~to sell~~)) beginning August 1st of each year and will purchase licenses based on the funds that are available on ((~~the following~~)) September 30th of that same year.

(((~~(4)~~))) (3) Selection process: The department will ((~~select licenses to be purchased beginning with the lowest offer to sell, and continuing~~)) rank sales offers from the lowest offer to the highest. It will purchase the lowest-cost licenses first, then the next lowest, and continue until there are insufficient funds to ((~~purchase a~~)) complete a purchase on an offer. If two or more licenses are offered at the same price, selection will be by random draw. To purchase licenses, the department will use the funds made available under RCW 77.70.190, with a maximum purchase price of sixty thousand dollars per license.

(((~~(5)~~))) (4) License reduction process: ((~~Upon selection,~~)) When the department purchases a license, it will issue a warrant (a check from the department) in the amount of the offer to the license holder ((~~in the amount of the offer~~)). On the date that the department mails the warrant ((~~is mailed~~)) to the license holder's mailing address ((~~of the license holder as shown in their~~)) on file with the department ((~~licensing file, the department~~)), it will void the license. ((~~Upon receipt of~~)) When the license holder receives the warrant, ((~~the license holder is to~~)) he or she must return ((~~the~~)) his or her commercial sea cucumber license cards to the department.

(((~~(6)~~))) (5) No prohibition on reentry: License holders who sell a license under the program may reenter the sea cucumber commercial fishery if they purchase a license.

(((~~(7)~~))) (6) Program termination: This program terminates when the number of sea cucumber commercial fishery licensees is reduced to ((~~twenty-five~~)) twenty.

WSR 12-09-055
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed April 17, 2012, 8:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-19-121.

Title of Rule and Other Identifying Information: Factory assembled structures, chapters 296-150C, 296-150F, 296-150P, 296-150R, 296-150T, and 296-150V WAC.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S117, Tumwater, WA 98501, on May 24, 2012, at 1:00 p.m.

Date of Intended Adoption: July 17, 2012.

Submit Written Comments to: Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, e-mail sally.elliott@lni.wa.gov, fax (360) 902-5292, by 5 p.m. on May 24, 2012.

Assistance for Persons with Disabilities: Contact Sally Elliott by May 15, 2012, at sally.elliott@lni.wa.gov or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department reviews the factory assembled structure rules on a regular basis to ensure the rules are consistent with industry practice and to provide clarity. The department needs to proceed with rule making in order to eliminate inconsistencies between agency rules and industry standards, which lead to confusion.

The following changes will be made:

- Amend language to reflect current code references. For example, references to the Uniform Building Code will be changed to the International Building Code.
- Amend the process to require manufacturers to maintain a contractor deposit (CD) account for the payment of inspection fees. This will ensure payment is received before the inspection is conducted and insignia is issued.
- Clarify when work on a manufactured structure must be performed by a certified plumber or by a certified electrician.
- Remove language that references CTED, since they are no longer responsible for the manufactured housing account. The program missed a few references to CTED from the last rule making.

Reasons Supporting Proposal: See Purpose statement above.

Statutory Authority for Adoption: Chapter 43.22 RCW.

Statute Being Implemented: Chapter 43.22 RCW.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Dean Simpson, Tumwater, Washington, (360) 902-5571; Implementation and Enforcement: Jose Rodriguez, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department determined the proposed rules do not require a small business economic impact statement because the majority of the changes are proposed either to integrate the new national consensus standards as adopted by the State Building Code or to clarify the rule without changing its effect (see RCW 19.85.025 referencing RCW 34.05.310 (4)(c) and (d)). In addition, none of the other changes under the proposed rule will impose more than minor costs on businesses in the affected industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Sally Elliott, Legislation and Rules Manager, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6411, fax (360) 902-5292, e-mail sally.elliott@lni.wa.gov.

April 17, 2012
Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 05-23-002, filed 11/3/05, effective 12/4/05)

WAC 296-150C-0320 What must I provide with my request for commercial coach design-plan approval by the department? All requests for design-plan approval must include:

(1) A completed design-plan approval request form;

(2) Two sets of design plans plus elevation drawings, specifications, engineering analysis, and test results and procedures necessary for a complete evaluation of the design; (see WAC 296-150C-0340 and 296-150C-0350.)

(3) At least one set of design plans must have an original wet stamp from a professional engineer or architect licensed in Washington state. All new, renewed, and resubmitted plans, specifications, reports and structural calculations prepared by or prepared under his or her direct supervision shall be signed, dated and stamped with their seal. Specifications, reports, and structural calculations may be stamped only on the first sheet, provided this first sheet identifies all of the sheets that follow are included and identified in the same manner. Plans that have not been prepared by or under the engineer's or architect's supervision shall be reviewed by them and they shall prepare a report concerning the plans reviewed. This report shall:

(a) Identify which drawings have been reviewed by drawing number and date;

(b) Include a statement that the plans are in compliance with current Washington state regulations; and

(c) The report shall be stamped and signed by the reviewer.

Any deficiencies shall be corrected on the drawings before submitting to the department or be included in the report and identify as to how they are to be corrected. This report shall be attached to the plan(s) that were reviewed. We will retain the set with the original wet stamp;

(4) Receipt of a one-time initial design plan filing fee and the initial design plan fee (see WAC 296-150C-3000);

(5) A "key drawing" to show the arrangement of modules if the plan covers three or more modules;

(6) The occupancy class of the commercial coach according to the occupancy classifications in the ((~~Uniform~~)) International Building Code;

(7) Electrical plan review for educational, institutional or health care facilities and other buildings. Plan review is a part of the electrical inspection process; its primary purpose is to determine:

(a) That loads and service/feeder conductors are calculated and sized according to the proper ((~~NCE~~)) NEC or WAC article or section;

(b) The classification of hazardous locations; and

(c) The proper design of emergency and standby systems.

(8) All electrical plans for new or altered electrical installations in educational, institutional, and health or personal care occupancies classified or defined in this chapter must be reviewed and approved before the electrical installation or alteration is started. Approved plans must be available for use during the electrical installation or alteration and for use by the electrical inspector.

(9) All electrical plans for educational facilities, hospitals and nursing homes must be prepared by, or under the direction of, a consulting engineer registered under chapter 18.43 RCW in compliance with chapters 246-320, 180-29,

and 388-97 WAC as applicable and stamped with the engineer's mark and signature.

(10) Plans to be reviewed by the department must be legible, identify the name and classification of the facility, clearly indicate the scope and nature of the installation and the person or firm responsible for the electrical plans. The plans must clearly show the electrical installation or alteration in floor plan view, include switchboard and/or panel board schedules and when a service or feeder is to be installed or altered, must include a riser diagram, load calculation, fault current calculation and interrupting rating of equipment. Where existing electrical systems are to supply additional loads, the plans must include documentation that proves adequate capacity and ratings. The plans must be submitted with a plan review submittal form available from the department.

NEW SECTION

WAC 296-150C-0495 Contractor deposit accounts. Manufacturers are required to open and maintain, for the purpose of inspection payments, a deposit account. Funds, for the purpose of inspections performed by the department, must be withdrawn from the account and all inspections paid in full prior to an insignia being placed on the manufactured unit.

AMENDATORY SECTION (Amending WSR 05-01-102, filed 12/14/04, effective 2/1/05)

WAC 296-150C-0800 What manufacturing codes apply to commercial coaches? (1) All design, construction, and installations of commercial coaches must conform with the following codes and the requirements of this chapter:

(a) The latest adopted version of the Washington State Ventilation and Indoor Air Quality Code, as adopted by chapter 51-13 WAC;

(b) The structural and other requirements of this chapter;

(c) Occupancy classification only from chapter 3 of the International Building Code, ((~~2003~~)) current edition, as adopted and amended by chapter 51-50 WAC, except commercial coaches must not be group H or R-3 occupancy;

(d) Accessibility requirements of chapter 11 of the International Building Code, ((~~2003~~)) current edition, as adopted and amended by chapter 51-50 WAC;

(e) Section 1607 Uniform and concentrated floor loads and footnotes of the International Building Code, ((~~2003~~)) current edition, as adopted and amended by chapter 51-50 WAC;

(f) The International Mechanical Code, ((~~2003~~)) current edition, as adopted and amended by chapter 51-52 WAC except when conflicting with the provisions of this chapter, this chapter controls;

(g) The National Electrical Code as referenced in chapter 19.28 RCW and chapter 296-46B WAC;

(h) The ((~~latest adopted version of the~~)) Washington State Energy Code, current edition, as adopted according to chapter 19.27A RCW;

(i) The Uniform Plumbing Code, current edition, as adopted and amended according to chapter 19.27 RCW;

(j) Where there is a conflict between codes, an earlier named code takes precedent over a later named code. Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive governs. Where there is a conflict between a general requirement and a special requirement, the specific requirement must be applicable.

(2) All construction methods and installations must use accepted engineering practices, provide minimum health and safety to the occupants of commercial coaches and the public, and demonstrate journeyman quality of work of the various trades.

(3) Requirements for any size, weight, or quality of material modified by the terms "minimum," "not less than," "at least," and similar expressions are minimum standards. The manufacturer may exceed these rules provided the deviation does not result in inferior installation or defeat the purpose and intent of this chapter.

Note: The codes, RCW's and WAC's referenced in this rule are available to view at the Washington State Library, the Washington State Law Library, and may also be available at your local library.

AMENDATORY SECTION (Amending WSR 99-13-010, filed 6/4/99, effective 7/5/99)

WAC 296-150C-0810 Construction definitions. The following definitions and the definitions in each of the state codes adopted in WAC 296-150C-0800 apply to commercial coach construction.

"Anchoring system" is the means used to secure a commercial coach to ground anchors or to other approved fastening devices. It may include straps, cables, turnbuckles, bolts, fasteners, or other components.

"Ceiling height" is the clear vertical distance from the finished floor to the finished ceiling.

"Chassis" means that portion of the transportation system comprised of the following: Drawbar coupling mechanism and frame.

EXCEPTION: The running gear assembly shall not be considered as part of the chassis.

"Dead load" is the vertical load resulting from the weight of all permanent structural and nonstructural parts of a commercial coach including walls, floors, roof, partitions, and fixed service equipment.

"Diagonal tie" is a tie intended primarily to resist horizontal or shear forces and secondarily may resist vertical, uplift, and overturning forces.

"Dormitory" is a room designed to be occupied by more than two persons.

"Exit" is a continuous and unobstructed means of egress to a public way.

"Frame" means the fabricated rigid substructure, which provides support to the affixed commercial coach structure both during transport and onsite. It is considered a part of the commercial coach.

"Glazed opening" is a glazed skylight or an exterior window or glazing of a door of a commercial coach.

"Gross floor area" is the net floor area within the enclosing walls of a room where the ceiling is at least five feet high.

"Habitable room" is a room or enclosed floor space arranged for living, eating, food preparation, or dormitory sleeping purposes. It does not include bathrooms, toilet compartments, foyers, hallways, or other accessory floor spaces. Any reference to "habitable dwelling" in this chapter means a temporary structure not used as a single family dwelling.

"Interior finish" is the surface material of walls, fixed or movable partitions, ceilings and other exposed interior surfaces affixed to the commercial coach structure, including paint and wallpaper. Decorations or furnishings attached to the commercial coach structure are considered part of the interior finish.

"Live load" is the weight superimposed by the use and occupancy of the commercial coach, including wind load and snow load, but not including dead load.

"Perimeter blocking" is support placed under exterior walls.

"Shear wall" is a wall designed and constructed to transfer lateral loads.

"Tiedown" is a device designed to anchor a commercial coach to ground anchors.

"Use" or "occupancy classification" is the designed purpose of a commercial coach according to the ((~~Uniform~~)) International Building Code.

"Wind load" is the lateral or vertical pressure or uplift created by wind blowing in any direction.

AMENDATORY SECTION (Amending WSR 05-01-102, filed 12/14/04, effective 2/1/05)

WAC 296-150C-1150 Hallways. (1) Hallways in structures required to meet accessibility standards must have a minimum horizontal dimension that conforms to accessibility standards set by the ((~~Washington state Uniform~~)) International Building Code, current edition, standards set in the accessibility standard in WAC 296-150C-0800 (1)(d).

(2) Hallways in nonaccessible construction site trailers must have a minimum horizontal dimension of 32 inches.

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150C-1330 Mechanical—General. This chapter applies to the installation of mechanical, ventilation, and indoor air quality equipment in any commercial coach bearing or required to bear a department insignia. Mechanical, ventilation, and indoor air quality equipment and installations in or on a commercial coach shall be installed according to the requirements of the ((~~Uniform~~)) International Mechanical Code((~~, the Washington State Ventilation and Indoor Air Quality Code, the rules of this chapter, and the conditions of the equipment approval or listing agency~~)), current edition.

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150C-1340 Mechanical definitions. Definitions contained in the ((~~current adopted edition of the Uniform~~)) International Mechanical Code, current edition, and the following definitions apply to the commercial coaches.

"Accessible" is having access to a fixture, connection, appliance, or equipment that requires the removal of an access panel, door, or similar obstruction.

"Appliance compartment" is a room having a floor area not in excess of twice the largest plan area of the room's appliance or appliances plus clearances required in this chapter.

"Automatic pilot device" is a device employed with gas-burning equipment that will either automatically shut off the gas supply to the burner being served or automatically activate, electrically or otherwise, a gas shutoff device when the pilot flame is extinguished.

"Btuh" is British thermal units per hour.

"Clearance" is the distance between the appliance, chimney, vent, or chimney or vent connector, or plenum and the nearest surface.

"Combustible material" is a material adjacent to or in contact with a heat-producing appliance, vent connector, chimney, or steam and hot water pipes, made of or surfaced with wood, compressed paper, plant fibers, or other products that will ignite and burn. Such material must be considered combustible even though flame-proofed, fire-retardant treated, or plastered.

"Connector-gas appliance" is a flexible or semi-rigid connector listed as conforming to ANSI Standard Z21.24, Metal Connectors for Gas Appliances, used to convey fuel gas, three feet or less in length (six feet or less for gas ranges), between a gas outlet and a gas appliance in the same room.

"Fuel gas piping system" is the arrangement of piping, tubing, fittings, connectors, valves, and devices designed and intended to supply or control the flow of fuel gas to an appliance.

"Gas" is fuel gas, such as natural gas, manufactured gas, undiluted liquefied petroleum gas (vapor phase only), liquefied petroleum air-gas mixtures, or mixtures of these gases that would ignite in the presence of oxygen.

"Gas-supply connection" is the terminal end or connection to which a gas-supply connector is attached.

"Input rating" is the maximum fuel-burning capacity of any warm-air furnace, recessed heater, or burner expressed in British thermal units per hour.

"Liquefied petroleum gases (LPG)" is any material that is composed predominantly of propane, propylene, butanes (normal butane or isobutane), and butylenes, or any mixture of them.

"Quick-disconnect device" is a hand-operated means of connecting and disconnecting a gas supply or connecting gas systems and is equipped with an automatic device to shut off the gas supply when disconnected.

"Readily accessible" is having direct access without the necessity of removing any panel, door, or similar obstruction.

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150C-1470 Ventilation and indoor air quality—General. Ventilation and indoor air quality equipment and installations in or on a commercial coach must be made according to the requirements of ((~~the Washington State Ventilation and Indoor Air Quality Code,~~)) the ((~~Uni-~~

~~form~~)) International Mechanical Code, current edition, the rules of this chapter, and the conditions of the equipment approval.

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150C-1480 Ventilation and indoor air quality definitions. ((~~Definitions contained in the current adopted edition of the Washington State Ventilation and Indoor Air Quality Code and~~)) The ((~~Uniform~~)) International Mechanical Code, current edition, and the following definitions apply to the commercial coach ventilation and indoor air quality rules in this chapter.

"Duct" is a conduit or passageway for conveying air to or from heating, cooling, air conditioning, or ventilation equipment, not including the plenum.

"Plenum" is an air compartment that is part of an air-distributing system to which one or more ducts are connected.

- **A furnace-supply plenum** is a plenum attached directly to, or an integral part of, the air-supply outlet of the furnace.
- **A furnace-return plenum** is a plenum attached directly to, or an integral part of, the return inlet of the furnace.

"Vent connector" is a pipe for conveying products of combustion from a fuel-burning appliance to a vent.

"Water heater" is an appliance for heating water for domestic purposes other than for space heating.

AMENDATORY SECTION (Amending WSR 07-05-063, filed 2/20/07, effective 4/1/07)

WAC 296-150F-0020 What definitions apply to this chapter? "Approved" is approved by the department of labor and industries.

"Building site" is a tract, parcel, or subdivision of land on which a factory-built house or commercial structure will be installed.

"Component" is a part or element of another system as defined by the International Building Code, section 202, and is:

- Designed to be installed in a structure;
- Manufactured as a unit; and
- Designed for a particular function or group of functions.

A component may be a service core or other assembly that is a factory assembled section of a building. It may include mechanical, electrical, plumbing, and related systems. It may be a complete kitchen, bathroom, or utility room. Service cores are referred to as "wet boxes," "mechanical cores," or "utility cores."

Note: A roof truss is not considered a component.

"Damaged in transit" is damage that effects the integrity of the structural design or damage to any other system referenced in the codes required by the State Building Code, or other applicable codes.

"Department" is the department of labor and industries. The department may also be referred to as "we" or "us" in this chapter. Note: You may contact us at: Department of Labor and Industries, Specialty Compliance, PO Box 44440, Olympia, WA 98504-4440.

"Design plan" is a plan for the construction of factory-built housing, commercial structures, or components that includes floor plans, elevation drawings, specifications, engineering data, or test results necessary for a complete evaluation of the design.

"Design option" is a design that a manufacturer may use as an option to its design plan.

"Educational facility" is a building or portion of a building used primarily for educational purposes by six or more persons at one time for twelve hours per week or four hours in any one day. Educational occupancy includes: Schools (preschool through grade twelve), colleges, academies, universities, and trade schools.

"Equipment" is all material, appliances, devices, fixtures, fittings, or accessories used in the manufacture, assembly, installation, or alteration of factory-built housing, commercial structures, and components.

"Factory assembled structure (FAS) advisory board" is a board authorized to advise the director of the department regarding the issues and adoption of rules relating to factory-built housing, commercial structures and components. (See RCW 43.22.420.)

"Health or personal care facilities" are buildings or parts of buildings that contain, but are not limited to, facilities that are required to be licensed by the department of social and health services or the department of health (e.g., hospitals, nursing homes, private alcoholism hospitals, private psychiatric hospitals, boarding homes, alcoholism treatment facilities, maternity homes, birth centers or childbirth centers, residential treatment facilities for psychiatrically impaired children and youths, and renal hemodialysis clinics) and medical, dental or chiropractic offices or clinics, outpatient or ambulatory surgical clinics, and such other health care occupancies where patients who may be unable to provide for their own needs and safety without the assistance of another person are treated. (Further defined in WAC ((~~296-46B-010~~)) 296-46B-900.)

"Insignia" is a label that we attach to a structure to verify that a factory-built house or commercial structure meets the requirements of this chapter. It could also be a stamp or label attached to a component to verify that it meets the requirements of this chapter.

"Install" is to erect or set in place a structure at a building site. It may also be the construction or assembly of a component as part of a factory-built house or commercial structure.

"Institutional facility" is a building or portion of a building used primarily for detention and correctional occupancies where some degree of restraint or security is required for a time period of twenty-four or more hours. Such occupancies include, but are not restricted to: Penal institutions, reformatories, jails, detention centers, correctional centers, and residential-restrained care.

"Listing agency" is an organization whose business is approving equipment, components, or installations for publication.

"Local enforcement agency" is an agency of city or county government with power to enforce local regulations governing the installation of factory-built housing and commercial structures.

"Manufacturing" is making, fabricating, forming, or assembling a factory-built house, commercial structure, or component.

"Master design plan" is a design plan that expires when a new State Building Code has been adopted.

((~~**"Manufacturing"** is making, fabricating, forming, or assembling a factory-built house, commercial structure, or component.~~))

"One-year design plan" is a design plan that expires one year after approval or when a new State Building Code has been adopted.

"Repair" is the replacement, addition, modification, or removal of any construction, equipment, system, or installation to correct damage in transit or during on-site installation before occupancy.

"Temporary factory built structure" is a building not set on a permanent foundation, which is used for temporary occupancy such as an educational, commercial, or agricultural building. The building must meet the requirements of this chapter and the installation requirements. As required under RCW 43.22.480 all alterations to temporary factory built structures must be preapproved by the department.

"Unit" is a factory-built house, commercial structure, or component.

"Used structure" is a building as defined by section 202 of the International Building Code that has been given a certificate of occupancy by the local building department and has been occupied.

NEW SECTION

WAC 296-150F-0090 What are the requirements for certified plumbers and electricians? Plumbers certified under chapter 18.106 RCW and electricians certified under chapter 19.28 RCW are required for units constructed in Washington. For the purposes of construction at the manufacturing facility, the manufacturer is not required to be a licensed electrical contractor under chapter 19.28 RCW or a registered contractor as required by chapter 18.27 RCW. Manufacturers may hire registered plumbing contractors or licensed electrical contractors to meet this requirement.

Work performed outside the manufacturer's facility must be performed by a registered contractor under chapter 18.27 RCW, electrical contractor and electricians under chapter 19.28 RCW, and certified plumbers under chapter 18.106 RCW.

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150F-0230 What are the insignia application requirements? (1) If you are requesting insignia for units that you intend to manufacture under a *new design plan,* your completed application must include:

(a) A completed design plan approval request form;

(b) ((~~One~~)) Two complete sets of design plans, specifications, engineering analysis, test procedures and results, plus one additional set for each manufacturing location where the design plan will be used;

(c) At least one set of design plans must have an original wet stamp from a professional engineer or architect licensed in Washington state. We will retain the set with the original wet stamp; and

(d) A one-time initial filing fee, the design plan fee (if we approve your design plan) and the fee for each insignia. (See WAC 296-150F-3000.)

(2) If you are requesting insignia under an *approved design plan*, your completed application must include:

(a) A completed application for insignia form; and

(b) The fee for each insignia requested. (See WAC 296-150F-3000.)

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150F-0310 Who can approve design plans? (1) Design plans can be approved by us or by a licensed professional or firm authorized by us (see WAC 296-150F-0420 and 296-150F-0430).

(2) All electrical design plans for new or altered electrical installations for educational ((~~institutions~~)), institutional, health care facilities, and other buildings (see ((~~chapters 296-46, 296-130, 296-140, and 296-150 WAC Table 1 or 2~~)) WAC 296-46B-900) must be reviewed and approved by us.

AMENDATORY SECTION (Amending WSR 07-05-063, filed 2/20/07, effective 4/1/07)

WAC 296-150F-0320 What must I provide with my request for design-plan approval by the department? All requests for design-plan approval must include:

(1) A completed design-plan approval request form;

(2) Two complete sets of design plans, specifications, engineering analysis, test procedures and results plus one additional set for each manufacturing location where the design plan will be used (see WAC 296-150F-0340 and 296-150F-0350);

(3) At least one set of design plans must have an original wet stamp from a professional engineer or architect licensed in Washington state. All new, renewed, and resubmitted plans, specifications, reports and structural calculations prepared by or prepared under his or her direct supervision shall be signed, dated and stamped with their seal. Specifications, reports, and structural calculations may be stamped only on the first sheet, provided this first sheet identifies all of the sheets that follow are included and identified in the same manner. Plans that have not been prepared by or under the engineer's or architect's supervision shall be reviewed by them and they shall prepare a report concerning the plans reviewed. This report shall:

(a) Identify which drawings have been reviewed by drawing number and date;

(b) Include a statement that the plans are in compliance with current Washington state regulations; and

(c) The report shall be stamped and signed by the reviewer.

Any deficiencies shall be corrected on the drawings before submitting to the department or be included in the

report and identify as to how they are to be corrected. This report shall be attached to the plan(s) that were reviewed. We will retain the set with the original wet stamp;

(4) A one-time initial filing fee and the design-plan fee (see WAC 296-150F-3000); and

(5) A "key drawing" to show the arrangement of modules if the plan covers three or more modules.

(6) Electrical plan review for educational, institutional or health care facilities and other buildings. Plan review is a part of the electrical inspection process; its primary purpose is to determine:

(a) That loads and service/feeder conductors are calculated and sized according to the proper NEC or WAC article or section;

(b) The classification of hazardous locations; and

(c) The proper design of emergency and standby systems.

(7) All electrical plans for new or altered electrical installations in educational, institutional, and health or personal care occupancies classified or defined in this chapter must be reviewed and approved before the electrical installation or alteration is started. Approved plans must be available for use during the electrical installation or alteration and for use by the electrical inspector.

(8) All electrical plans for educational facilities, hospitals and nursing homes must be prepared by, or under the direction of, a consulting engineer registered under chapter 18.43 RCW in compliance with chapters 246-320((~~, 180-29,~~)) and 388-97 WAC as applicable and stamped with the engineer's mark and signature.

(9) Plans to be reviewed by the department must be legible, identify the name and classification of the facility, clearly indicate the scope and nature of the installation and the person or firm responsible for the electrical plans. The plans must clearly show the electrical installation or alteration in floor plan view, include switchboard and/or panel board schedules and when a service or feeder is to be installed or altered, must include a riser diagram, load calculation, fault current calculation and interrupting rating of equipment. Where existing electrical systems are to supply additional loads, the plans must include documentation that proves adequate capacity and ratings. The plans must be submitted with a plan review submittal form available from the department.

NEW SECTION

WAC 296-150F-0325 What are the requirements for temporary built structures? Structures built for temporary use must meet all the requirements of this chapter.

NEW SECTION

WAC 296-150F-0495 Contractor deposit accounts. Manufacturers are required to open and maintain, for the purpose of inspection payments, a deposit account. Funds, for the purpose of inspections performed by the department, must be withdrawn from the account and all inspections paid in full prior to an insignia being placed on the manufactured unit.

AMENDATORY SECTION (Amending WSR 07-05-063, filed 2/20/07, effective 4/1/07)

WAC 296-150F-0580 Must I obtain an insignia for used factory-built structures? All used factory-built housing and commercial structures that are to be installed on a building site in Washington state must have an insignia of approval from the department prior to being installed on a building site or it must be approved by the local building official as a moved building or structure as allowed by section ((~~101.2~~)) 3410 of the International Building Code.

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150F-0600 What manufacturing codes apply to factory-built housing and commercial structures? (1) All design, construction, installations, and alterations of factory-built housing, commercial structures, and components must conform with the following codes and the requirements of this chapter:

(a) The State Building Code, chapter 19.27 RCW;

Note: The ((~~Uniform~~)) International Building Code reference to "building official" means the chief prefabricated building specialist or authorized representative at the department of labor and industries.

(b) The Energy Related Building Standards, chapter 19.27A RCW;

(c) The National Electrical Code as referenced in chapter 19.28 RCW and chapter((~~s 296-46 and 296-401~~)) 296-46B WAC.

(2) All construction methods and installations must use accepted engineering practices, provide minimum health and safety to the occupants of factory-built structures and the public, and demonstrate journeyperson quality of work of the various trades.

(3) Requirements for any size, weight, or quality of material modified by the terms "minimum," "not less than," "at least," and similar expressions are minimum standards. The manufacturer may exceed these standards, provided the deviation does not result in inferior installation or defeat the purpose and intent of the standard.

Note: The codes, RCW's, and WAC's referenced in this rule are available for reference at the Washington State Library, the Washington State Law Library, and may be available at your local library.

AMENDATORY SECTION (Amending WSR 05-01-102, filed 12/14/04, effective 2/1/05)

WAC 296-150F-0605 May the required toilet facilities be located in an adjacent building? Under the following conditions, the department will allow the required toilet facilities to be located in adjacent building(s):

(1) The manufacturer shall note in the plan submittal that the requirements of IBC Chapter 29, Section ((~~2902~~)) 2902.1 and Section ((~~2902.1~~)) 2902.2, as amended by the state building code must be verified by the building official; and

(2) A Notification to Local Enforcement Agency (NLEA) must accompany each unit so that the requirements of IBC Chapter 29, Section ((~~2902~~)) 2902.1 and Section

((~~2902.1~~)) 2902.2 as amended by the state building code can be verified by the building official.

AMENDATORY SECTION (Amending WSR 03-12-044, filed 5/30/03, effective 6/30/03)

WAC 296-150P-0020 What definitions apply to this chapter? "Alteration" is the replacement, addition, modification, or removal of any equipment or material that affects the fire and life safety provisions, structural system, plumbing systems, fuel systems and equipment or electrical systems of a recreational park trailer.

The following changes are not considered alterations for purposes of this chapter:

• Repairs with approved parts;

• Modification of a fuel-burning appliance according to the terms of its listing; and

• Adjustment and maintenance of equipment.

"Alteration insignia" is an insignia which indicates a recreational park trailer alteration was approved by the department.

"ANSI" is the American National Standards Institute, Inc., and the institute's rules applicable to recreational park trailers. For the purposes of this chapter, references to ANSI mean ANSI A119.5 Recreational Park Trailers, ((~~1998~~)) current edition.

"Approved" is approved by the department of labor and industries.

"Audit" by the department is the department inspection of a manufacturer's quality control procedures, comprehensive plans, and recreational park trailers.

"Comprehensive design plan" consists of the design plans and copies of drawings such as:

• Floor plans relating to fire and life safety, structural, electrical, plumbing, liquefied petroleum (LP) and/or natural gas systems and appliances and air conditioning systems, if applicable to the plan of each recreational park trailer.

• Plumbing line drawings which describe the size, length and location of gas piping lines, liquid and body waste lines, liquid and body waste tanks, and potable water tanks.

• Electrical drawings. (See WAC 296-150P-0330.)

"Consumer" is a person or organization who buys or leases recreational park trailers.

"Dealer" is a person or organization whose business is offering recreational park trailers for sale or lease.

"Department" is the department of labor and industries. The department may be referred to as "we" or "us" in this chapter. Note: You may contact us at: Department of Labor and Industries, Specialty Compliance, PO Box 44430, Olympia, WA 98504-4430.

"Equipment" is all material, appliances, fixtures, and accessories used in the manufacture or alteration of recreational park trailers.

"Manual" is a reference containing instructions, procedures, responsibilities and other information used to implement and maintain the quality control program of a recreational park trailer manufacturer.

"National Electrical Code" see Appendix 'C' of ANSI A119.5 for reference to the appropriate edition to use for compliance.

"Recreational park trailer" is a trailer-type unit that is primarily designed to provide temporary living quarters for recreational, camping or seasonal use, that meets the following criteria:

• Built on a single chassis, mounted on wheels;

• Having a gross trailer area not exceeding 400 square feet (37.15 square meters) in the set-up mode; and

• Certified by the manufacturer as complying with ANSI A119.5.

"Quality control" is the plan and method for ensuring that the manufacture, fabrication, assembly, installation, storing, handling, and use of materials complies with this chapter and ANSI.

"State-plan insignia" is an insignia which is obtained under the state design-plan approval process.

"System" is a part of a recreational park trailer that is designed to serve a particular function such as plumbing, electrical, heating, mechanical or structural system.

AMENDATORY SECTION (Amending WSR 08-10-075, filed 5/6/08, effective 6/6/08)

WAC 296-150R-0020 What definitions apply to this chapter? "Alteration" is the replacement, addition, modification, or removal of any equipment or material that affects the fire and life safety provisions, plumbing systems, fuel systems and equipment or electrical systems of a recreational vehicle.

The following changes are not considered alterations for purposes of this chapter:

• Repairs with approved parts;

• Modification of a fuel burning appliance according to the terms of its listing; and

• Adjustment and maintenance of equipment.

"Alteration insignia" is an insignia which indicates a vehicle alteration was approved by the department.

"ANSI" is the American National Standards Institute, Inc., and the institute's rules applicable to *Low Voltage Systems in Conversion and Recreational Vehicles and Uniform Plan Approval for Recreational Vehicles*. For the purposes of this chapter, references to ANSI mean ANSI/RVIA 12V *Low Voltage Systems* ((~~2008~~)), current edition, and ANSI/RVIA UPA-1 *Standard on Uniform Plan Approval for Recreational Vehicles* ((~~2003~~)), current edition.

"Approved" is approved by the department of labor and industries.

"Audit" by the department can be either a comprehensive audit or a performance audit. A comprehensive audit is the department inspection of a manufacturer's quality control procedures, comprehensive plans, and vehicles. A performance audit is the department's review of the manufacturer's audit performed by the industry association or other independent auditor.

"Comprehensive design plan" consists of the design plans and copies of drawings such as:

• Floor plans relating to fire and life safety, electrical, plumbing, liquefied petroleum (LP) and/or natural gas systems and appliances and air conditioning systems, if applicable to the plan of each vehicle.

• Plumbing line drawings which describe the size, length and location of gas piping lines, liquid and body waste lines, liquid and body waste tanks, and potable water tanks.

• Electrical drawings. (See WAC 296-150R-0330 and 296-150R-0820.)

"Consumer" is a person or organization who buys or leases recreational vehicles.

"Dealer" is a person or organization whose business is offering recreational vehicles for sale or lease.

"Department" is the department of labor and industries. The department may be referred to as "we" or "us" in this chapter. Note: You may contact us at: Department of Labor and Industries, Specialty Compliance, PO Box 44430, Olympia, WA 98504-4430.

"Equipment" is all material, appliances, fixtures, and accessories used in the manufacture or alteration of recreational vehicles or park trailers.

"Manual" is a reference containing instructions, procedures, responsibilities and other information used to implement and maintain the quality control program of a recreational vehicle manufacturer.

"National Electrical Code" see Chapter 2 of NFPA 1192 *Standard on Recreational Vehicles*, ((~~2008~~)) current edition, for reference to the appropriate edition to use for compliance.

"NFPA" is National Fire Protection Association, and the institute's rules applicable to recreation vehicles. For the purpose of this chapter, references to NFPA means NFPA 1192 *Standard on Recreational Vehicles*, ((~~2008~~)) current edition.

"Quality control" is the plan and method for ensuring that the manufacture, fabrication, assembly, installation, storing, handling, and use of materials complies with this chapter, ANSI, and NFPA.

"Recreational vehicle" is a vehicular type unit primarily designed as temporary living quarters for recreational camping, travel, or seasonal use that either has its own motive power or is mounted on, or towed by, another vehicle or as defined by NFPA 1192 *Standard on Recreational Vehicles*, current edition. Recreational vehicles include: Camping trailers, fifth-wheel trailers, motor homes, travel trailers, and truck campers.

"Self-certification insignia" is an insignia which is obtained under the self-certification approval process.

"State-plan insignia" is an insignia which is obtained under the state design-plan approval process.

"System" is a part of a recreational vehicle that is designed to serve a particular function such as plumbing, electrical, heating, or mechanical system.

"Vehicle" for the purposes of this chapter, is a recreational vehicle.

AMENDATORY SECTION (Amending WSR 99-12-079, filed 5/28/99, effective 6/28/99)

WAC 296-150T-0200 Who must purchase factory-built temporary worker housing insignia? (1) You must obtain insignia from us for each factory-built temporary worker ((~~hosing~~)) housing unit sited in Washington state.

(2) You must have an approved design plan and have passed inspection before an insignia can be attached to your factory-built temporary worker housing structure by us or our authorized agent.

(3) If a unit is damaged in transit after leaving the manufacturing location or during an on-site installation, and a repair is necessary, you must purchase a new insignia from us. The new insignia indicates that the unit was repaired.

NEW SECTION

WAC 296-150T-0495 Contractor deposit accounts. Manufacturers are required to open and maintain, for the purpose of inspection payments, a deposit account. Funds, for the purpose of inspections performed by the department, must be withdrawn from the account and all inspections paid in full prior to an insignia being placed on the manufactured unit.

AMENDATORY SECTION (Amending WSR 99-12-079, filed 5/28/99, effective 6/28/99)

WAC 296-150T-0600 What manufacturing codes apply to factory-built temporary worker housing? (1) All design, construction, installations, and alterations of factory-built temporary worker housing structures must conform with the following codes and the requirements of this chapter:

(a) The temporary worker housing construction code, chapter 246-359 WAC;

(b) The National Electrical Code as referenced in chapter 19.28 RCW and in chapter ((~~296-46~~)) 296-46B WAC.

(2) All construction methods and installations must comply with chapter 246-359 WAC and use accepted engineering practices when used, provide minimum health and safety to the occupants of factory-built temporary worker housing structures and the public, and demonstrate journeyperson quality of work of the various trades.

(3) Requirements for any size, weight, or quality of material modified by the terms "minimum," "not less than," "at least," and similar expressions are minimum standards. The manufacturer may exceed these standards, provided the deviation does not result in inferior installation or defeat the purpose and intent of the standard.

Note: The codes, RCWs, and WACs referenced in this rule are available for reference at the Washington State Library, the Washington State Law Library, and may be available at your local library.

NEW SECTION

WAC 296-150V-0495 Contractor deposit accounts. Manufacturers are required to open and maintain, for the purpose of inspection payments, a deposit account. Funds, for the purpose of inspections performed by the department, must be withdrawn from the account and all inspections paid in full prior to an insignia being placed on the manufactured unit.

AMENDATORY SECTION (Amending WSR 03-12-044, filed 5/30/03, effective 6/30/03)

WAC 296-150V-0800 What codes apply to conversion vendor units or medical units? (1) A conversion vendor unit or medical unit must comply with the following codes where applicable:

(a) The ((~~Uniform~~)) current edition of the International Mechanical Code, with the amendments made by the Washington State Building Code Council, chapter ((~~51-42~~)) 51-52 WAC.

(b)(i) For conversion vending/medical units Article 551, Parts I through VI of National Electrical Code/National Fire Protection Agency (NFPA) 70, ((~~2002~~)) current edition or Article 552, Parts I through V Article of National Electrical Code/National Fire Protection Agency (NFPA) 70, ((~~2002~~)) current edition.

(ii) For medical units the National Electrical Code (NFPA 70, current edition) as referenced in ((~~chapter 19.28 RCW~~)) Article 517 for Patient Care Areas and chapter ((~~296-46A~~)) 296-46B WAC((~~, installing electric wires and equipment~~)).

(c) Chapter 7 of ((~~American National Standards Institute (ANSI) A119.2, 2002~~)) the National Fire Protection Association (NFPA 1192), current edition or the Uniform Plumbing Code as adopted and amended according to chapter 19.27 RCW.

(d) The Washington State Building Code Council, chapter ((~~51-40~~)) 51-50 WAC, ((~~Uniform~~)) International Building Code, Chapter 11, Accessibility as applies to the exterior of the unit relating to customer service facilities in section 1105.4.7.

((~~(e) The Washington State Energy Code, as adopted according to chapter 19.27A RCW, and the Washington State Ventilation and Indoor Air Quality Code, chapter 51-13 WAC, when heating and/or air conditioning is installed.~~))

(2) Provide minimum health and safety to the occupants of conversion vendor units and medical units and the public, and demonstrate journeyman quality of work of the various trades.

(3) Requirements for any size, weight, or quality of material modified by the terms "minimum," "not less than," "at least," and similar expressions are minimum standards. The conversion vendor unit or medical unit may exceed these rules provided the deviation does not result in inferior installation or defeat the purpose and intent of this chapter.

Exception: Sign circuits required by Article 600 of the National Electrical Code will not be required.

AMENDATORY SECTION (Amending WSR 05-01-102, filed 12/14/04, effective 2/1/05)

WAC 296-150V-1180 What requirements apply to conversion vendor unit exits ((~~on all units approved after December 31, 1999~~))? At least one conversion vending unit exit or medical unit exit must meet the following requirements:

(1) Exterior doors must be constructed for exterior use.

(2) The exterior door must be at least a twenty-eight inch wide clear opening by seventy-two inches high.

(3) Locks must be operable from the interior of the unit without use of a key.

(4) Exit doors may either be hinged or sliding. Roll-up doors may not be used to meet the requirements of this section.

(5) Existing units with doors less than twenty-eight inches in width must have a second means of exit. The second means of exit for converted units shall be twenty-four inches by seventeen inches, and for newly built units exits must be a minimum of five square feet of openable area.

(6) Pass-through windows shall be safety glazed based on the IBC Section 2406.1.

Exception: When there are employees, a minimum of twenty-eight inches clear opening must be provided.

AMENDATORY SECTION (Amending WSR 99-18-069, filed 8/31/99, effective 10/1/99)

WAC 296-150V-1185 What exit door requirements apply to self-propelled medical unit exits? Exit door(s) on self-propelled medical units must meet the following requirements:

(1) Exterior doors must be constructed for exterior use.

(2) The exterior door must be at least a twenty-eight inches wide clear opening by seventy-two inches high.

(3) Locks must be operable from the interior of the unit without use of a key.

(4) Exit doors may either be hinged or sliding. Roll-up doors may not be used to meet the requirements of this section.

(5) ((~~Units over twenty-four feet in length must have a minimum of two exit doors.~~)) Exit doors where the threshold of the door is more than fourteen inches above the adjacent grade or road surface must have landings, stairs, handrail, and guardrails meeting the requirements of IBC chapter 10 as referenced in chapter 51-50 WAC.

AMENDATORY SECTION (Amending WSR 99-18-069, filed 8/31/99, effective 10/1/99)

WAC 296-150V-1330 What are the mechanical requirements for a conversion vendor unit or medical unit? When mechanical and ventilation equipment is installed in or on a conversion vendor unit or medical unit, it must be installed according to the requirements of the ((~~Uniform~~)) International Mechanical Code, and to the conditions of the equipment approval or listing.

WSR 12-09-066
PROPOSED RULES
PUGET SOUND CLEAN AIR AGENCY

[Filed April 17, 2012, 12:16 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Section 3.04 (Reasonably Available Control Technology (RACT)).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on May 24, 2012, at 8:45 a.m.

Date of Intended Adoption: May 24, 2012.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@pscleanair.org, fax (206) 343-7522, by May 23, 2011 [2012].

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by May 17, 2012, TTY (800) 833-6388 or (800) 833-6385 (braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Provide a wider range of options to conduct RACT analyses and allow for cost recovery on any RACT analysis and determination that more closely matches level of effort.

Reasons Supporting Proposal: This proposal will provide greater flexibility to the agency to apply the right technical approach to any specific RACT analysis/determination effort.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4052; Implementation and Enforcement: Laurie Halvorson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4030.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

April 17, 2012
Craig Kenworthy
Executive Director

AMENDATORY SECTION

REGULATION I, SECTION 3.04 REASONABLY AVAILABLE CONTROL TECHNOLOGY

(a) Reasonably Available Control Technology (RACT) is required for all existing sources.

(b) RACT for each source category containing 3 or more sources shall be determined by rule by the Department of Ecology or the Agency, except as provided in Section 3.04(c) of this regulation.

(c) Source-specific RACT determinations may be performed under any of the following circumstances:

(1) For replacement of existing control equipment under Article 6 of this regulation;

(2) When required by the federal Clean Air Act;

(3) For sources in source categories containing fewer than 3 sources;

(4) When an air quality problem, for which the source is a contributor, justifies a source-specific RACT determination prior to development of a categorical RACT rule; or

(5) When a source-specific RACT determination is needed to address either specific air quality problems, for which the source is a significant contributor, or source-specific economic concerns.

(d) ((~~Under any of the circumstances listed in Section 3.04(c) of this regulation, t~~))The Control Officer or a duly authorized representative shall have the authority to perform a ((~~source-specific~~)) RACT determination; ((~~analysis~~)) to hire a consultant to perform relevant RACT analyses in whole or in part; or to order the owner or operator to perform RACT analyses ((~~the analysis~~)) and submit the results to the Agency.

(e) The Agency shall assess a fee to be paid by any source included or covered in a RACT determination to cover the direct and indirect costs of developing, establishing or reviewing categorical or source-specific RACT determinations. ((~~In the event that the Agency performs a source-specific RACT analysis of a source, the Agency shall assess a fee against that source to cover the cost of performing the analysis.~~)) The fee for RACT determinations ((~~an analysis performed by the Agency~~)) shall be $150 ((~~5,000.00~~)) an hour. For categorical RACT determinations, the amount of the fees to be paid by a source shall not exceed a source's pro rata portion as determined by the Agency. In addition, where the Agency hires a consultant to prepare RACT analyses, in whole or in part, pursuant to Section 3.04(d), the source shall be responsible for the consultant's fees. (((~~Replacement of control equipment under Section 3.04 (c)(1) shall be subject to the notice of construction review fees under Section 6.04, in lieu of a RACT fee under this section.) This f~~)) Fees shall be due and payable within 30 days of the date of the invoice and shall be deemed delinquent if not fully paid within 90 days of the invoice.

(f) Where current controls are determined to be less than RACT, the Agency shall define RACT for that source or source category and issue a rule or a regulatory order under Section 3.03 of this regulation requiring the installation of RACT.

(g) Emission standards and other requirements contained in rules or regulatory orders in effect at the time of operating permit issuance shall be considered RACT for purposes of permit issuance or renewal.

(h) Replacement of control equipment under Section 3.04 (c)(1) shall be subject to the notice of construction review fees under Section 6.04, in lieu of RACT fees under this section.

WSR 12-09-067
PROPOSED RULES
PUGET SOUND CLEAN AIR AGENCY

[Filed April 17, 2012, 12:17 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Section 5.07 (Annual Registration Fees).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on May 24, 2012, at 8:45 a.m.

Date of Intended Adoption: May 24, 2012.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@pscleanair.org, fax (206) 343-7522, by May 23, 2011 [2012].

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by May 17, 2012, TTY (800) 833-6388 or (800) 833-6385 (braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Increase registration fees and emission fees to reflect an increase in program costs, which are attributable to cost-of-living increases and inflationary impacts. Also, this proposal would eliminate the late provision for invoices not paid within forty-five days.

Reasons Supporting Proposal: To ensure that revenues from registration program fees support the annual budget for the program in FY 13.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4052; Implementation and Enforcement: Laurie Halvorson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4030.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

April 17, 2012
Craig Kenworthy
Executive Director

AMENDATORY SECTION

REGULATION I, SECTION 5.07 ANNUAL REGISTRATION FEES

(a) The Agency shall assess annual fees as set forth in Section 5.07(c) of this regulation for services provided in administering the registration program. Fees received under the registration program shall not exceed the cost of administering the program, which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program. Payment of these fees by the owner or operator of a source shall maintain its active registration status (even if it is not actively operating).

(b) Upon assessment by the Agency, registration fees are due and payable within 45 days of the date of the invoice. They shall be deemed delinquent if not fully paid within 45 days of the date of the invoice ((~~and shall be subject to an additional delinquent fee equal to 25% of the original fee, not to exceed $1,000~~)). Persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than 90 days late with such payments may be subject to a penalty equal to 3 times the amount of the original fee owed (in addition to other penalties provided by chapter 70.94 RCW).

(c) Except as specified in Section 5.07 (d) and (e) of this regulation, registered sources shall be assessed a fee of $1,150 ((~~1,000~~)), plus the following fees:

(1) Sources subject to a federal emission standard as specified in Section 5.03 (a)(1) of this regulation shall be assessed $2,100 ((~~1,750~~)) per subpart of 40 CFR Parts 60-63;

(2) Sources subject to a federally enforceable emission limitation as specified in Section 5.03 (a)(2) or meeting the emission thresholds specified in Section 5.03 (a)(3) of this regulation shall be assessed $2,300 ((~~2,000~~));

(3) Sources subject to the emission reporting requirements under Section 5.05(b) of this regulation shall be assessed $30 ((~~25~~)) for each ton of CO and $60 ((~~50~~)) for each ton of NOX, PM10, SOX, HAP, and VOC, based on the emissions reported during the previous calendar year;

(4) Sources with more than one coffee roaster installed on-site that are approved under a Notice of Construction Order of Approval shall be assessed $2,300 ((~~2,000~~));

(5) Sources of commercial composting with raw materials from off-site and with an installed processing capacity of <100,000 tons per year shall be assessed $5,750 ((~~5,000~~)); and

(6) Sources of commercial composting with raw materials from off-site and with an installed processing capacity of ≥100,000 tons per year shall be assessed $23,000 ((~~20,000~~)).

(d) Gasoline dispensing facilities shall be assessed the following fees based on their gasoline throughput during the previous calendar year (as certified at the time of payment):

(1) More than 6,000,000 gallons. . . . . $4,085 ((~~3,550~~));
(2) 3,600,001 to 6,000,000 gallons . . . $2,030 ((~~1,765~~));
(3) 1,200,001 to 3,600,000 gallons . . . $1,350 ((~~1,175~~));
(4) 840,001 to 1,200,000 gallons . . . . . $675 ((~~590~~));
(5) 200,001 to 840,000 gallons . . . . . $340 ((~~295~~)).

(e) The following registered sources shall be assessed an annual registration fee of $140 ((120)), provided that they meet no other criteria listed in Section 5.03(a) of this regulation:

(1) Sources with spray-coating operations subject to Section 9.16 of this regulation that use no more than 4,000 gallons per year of total coatings and solvents;

(2) Gasoline dispensing facilities subject to Section 2.07 of Regulation II with gasoline annual throughput during the previous calendar year (as certified at the time of payment) of no more than 200,000 gallons;

(3) Motor vehicle and mobile equipment coating operations subject to Section 3.04 of Regulation II;

(4) Unvented dry cleaners using perchloroethylene; and

(5) Batch coffee roasters subject to notification under Section 6.03 (b)(11) of this regulation.

WSR 12-09-068
PROPOSED RULES
PUGET SOUND CLEAN AIR AGENCY

[Filed April 17, 2012, 12:18 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Section 6.04 (Notice of Construction Fees).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on May 24, 2012, at 8:45 a.m.

Date of Intended Adoption: May 24, 2012.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@pscleanair.org, fax (206) 343-7522, by May 23, 2011 [2012].

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by May 17, 2012, TTY (800) 833-6388 or (800) 833-6385 (braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adjust the notice of construction fee schedule to include cost increases for existing transactions, and the addition of some new fee elements unique to certain project proposals.

Reasons Supporting Proposal: The primary benefit of the proposal is to adjust notice of construction review fees to cover increasing program costs.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4052; Implementation and Enforcement: Laurie Halvorson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4030.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

April 17, 2012
Craig Kenworthy
Executive Director

AMENDATORY SECTION

REGULATION I, SECTION 6.04 NOTICE OF CONSTRUCTION FEES

(a) A Notice of Construction application is incomplete until the Agency has received fees as shown below:

Filing Fee (for each application, to be paid prior to any review) . . . . . $1,150 ((1,000))

Coffee Roaster (less than 40 pounds/batch, with thermal oxidizer) . . . . . $600 ((500))

Hot Mix Asphalt Batch Plant . . . . . $8,000 ((7,000))

Soil Thermal Desorption Unit. $5,000

Electric Generation Project: (combined heat input capacity)

10 - 100 million Btu/hr $5,000
101 - 250 million Btu/hr $10,000
>250 million Btu/hr $25,000
Composting Facility $10,000
Commercial Solid Waste Handling Facility $10,000
Landfill Gas System $2,500

Refuse Burning Equipment: (rated charging capacity)

≤12 tons per day $5,000
>12 tons and ≤250 tons per day $20,000
>250 tons per day $50,000

Other (not listed above) for each Piece of Equipment and Control Equipment . . . . . $600 ((500))

Additional Charges (for each application):

SEPA Threshold Determination . . . . . $800 ((700))
(DNS, under Regulation I, Section 2.04)

SEPA Threshold Determination . . . . . $4,000 ((1,500))
(MDNS, under Regulation I, Section 2.07)

Document Collection to Support Conclusion that SEPA Requirements were met by a Previous Environmental Review (not provided by applicant) $800
(See WAC 197-11-600)

Public Notice. . . . . $700 ((500))
(under WAC 173-400-171) (+ publication costs)

Public Hearing . . . . . $2,000 ((500))
(under WAC 173-400-171) (+ publication costs, if separate public notice)

NSPS or NESHAP $1,000
(per subpart of 40 CFR Parts 60, 61, and 63)

Iterative Screening Dispersion Modeling Analysis by Agency (not provided by applicant). $1,000
(under Regulation III, Section 2.07 (c)(1)(B))

Refined Dispersion Modeling Analysis Review . . . . . $1,000 ((700))
(under Regulation III, Section 2.07 (c)(1)(C))

Major Source, Major Modification, or Emission Increases Greater than Prevention of Significant Deterioration (PSD) Thresholds $5,000
(+ Ecology fees)

An Agency request for an Inapplicability Determination for PSD Program Requiring Written Applicability Determination from Ecology. $5,000
(+ Ecology fees)

Establishing Voluntary Limits on Emissions for Synthetic Minor Source Status, Concurrent with Notice of Construction Application Review. $2,000
(See WAC 173-400-091)

Construction or Reconstruction of a Major Source of Hazardous Air Pollutants (see 40 CFR 63.2) $2,500

Tier II Air Toxics Review. $5,000
(under WAC 173-460-090)(+ Ecology fees)

Opacity/Grain Loading Correlation $5,000

(b) A notification under Section 6.03 (b)(1) through Section 6.03 (b)(9) and 6.03 (b)(11) of this regulation is incomplete until the Agency has received a fee of $200 ((~~100~~)). An application processed as a Notice of Construction exemption under Section 6.03 (b)(10) requires payment of the Notice of Construction filing fee only. An application for coverage under a general order of approval issued by this Agency is not subject to the fees in Section 6.04(a) and instead requires payment of a $500 fee, which is due prior to any review of the application.

(c) The Control Officer is authorized to enter into a written cost-reimbursement agreement with an applicant as provided in RCW 70.94.085.

(d) Additional Fee for Service - Second Incomplete Application

Upon receipt of a second incomplete Notice of Construction application from the same applicant for the same project, the Control Officer may cease review of the application and provide written notification of that determination. The Control Officer may resume review of the application if, within 30 days of the date of the notification describing the Agency's receipt of the second incomplete Notice of Construction application, the applicant has deposited $1,000 with the Agency, and executed a fee-for-service agreement with the Agency that allows the Agency to recover the reasonable direct and indirect costs that arise from processing the Notice of Construction application, including the requirements of other relevant laws such as the Washington State Environmental Policy Act (SEPA).

The agreement shall require that the applicant assume full responsibility for paying the Agency for the costs incurred under the fee-for-service agreement. The Agency shall credit the $1,000 deposit made by the applicant towards the costs required by a fee-for-service agreement. The fee-for-service agreement may require the applicant to make progress payments during the application review period. The $1,000 deposit referred to in this section and the costs provided for in a fee-for-service agreement are in addition to the fees required in Section 6.04(a).

If the applicant has not made a $1,000 deposit and executed such a fee-for-service agreement within 30 days of the date of the notification from the Agency describing its receipt of a second incomplete application, the Agency may issue an Intent to Disapprove an Application.

The $1,000 deposit required under this section is not refundable. In addition, any payments made to the Agency under a fee-for-service agreement are not refundable.

(e) Additional Fee - Revised Application

The Control Officer may assess an additional fee for processing a Notice of Construction application when a subsequent significantly revised application is submitted after the original application was determined to be complete and prior to the Agency issuing an Order of Approval or Intent to Disapprove an Application regarding the original application. The revision fee shall be the amount of the fee that was charged for the original Notice of Construction application, including the filing fee. The resulting total fee is the fee for the original Notice of Construction application plus the revision fee.

WSR 12-09-069
PROPOSED RULES
PUGET SOUND CLEAN AIR AGENCY

[Filed April 17, 2012, 12:18 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Section 7.07 (Operating Permit Fees).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on May 24, 2012, at 8:45 a.m.

Date of Intended Adoption: May 24, 2012.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@pscleanair.org, fax (206) 343-7522, by May 23, 2011 [2012].

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by May 17, 2012, TTY (800) 833-6388 or (800) 833-6385 (braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Increase the base fees and emission fees for all operating permit sources, and increase permit transaction fees.

Reasons Supporting Proposal: The fee increases will help ensure that the operating permit program is self-sufficient using fees collected from operating permit sources.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4052; Implementation and Enforcement: Laurie Halvorson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4030.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

April 17, 2012
Craig Kenworthy
Executive Director

AMENDATORY SECTION

REGULATION I, SECTION 7.07 OPERATING PERMIT FEES

(a) The Agency shall assess annual operating permit fees as set forth in Section 7.07(b) below to cover the cost of administering the operating permit program.

(b) Upon assessment by the Agency, the following annual operating permit fees are due and payable within 45 days of the invoice date. They shall be deemed delinquent if not fully paid within 90 days of the date of the invoice and will be subject to an additional delinquent fee equal to 25% of the original fee, not to exceed $6,500 ((~~5,000~~)). In addition, persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than 90 days late with such payments may be subject to a penalty equal to 3 times the amount of the original fee owed (in addition to other penalties provided by chapter 70.94 RCW).

(1) Sources in the following North American Industry Classification System (NAICS) codes (*North American Industry Classification System Manual*, U.S. Executive Office of the President, Office of Management and Budget, 1997), or sources subsequently determined by the control officer to be assigned to either Section 7.07 (b)(1)(i) or 7.07 (b)(1)(ii) shall be subject to the following facility fees:

(i) Operating permit sources with the following NAICS codes:

NAICS	NAICS Description	Fee
221112	Fossil Fuel Electric Power Generation	
324110	Petroleum Refineries	
327213	Glass Container Manufacturing	
327310	Cement Manufacturing	
331111	Iron and Steel Mills	
336411	Aircraft Manufacturing	
336413	Other Aircraft Parts and Auxiliary Equipment Manufacturing	
928110	National Security	$57,200 ((~~44,000~~))

(ii) Operating permit sources with the following NAICS codes:

NAICS	NAICS Description	Fee
311119	Other Animal Food Manufacturing	
311812	Commercial Bakeries	
321912	Cut Stock, Resawing Lumber, and Planing	
321918	Other Millwork (including Flooring)	
321999	All Other Miscellaneous Wood Product Manufacturing	
322222	Coated and Laminated Paper Manufacturing	
326140	Polystyrene Foam Product Manufacturing	
327121	Brick and Structural Clay Tile Manufacturing	
332996	Fabricated Pipe and Pipe Fitting Manufacturing	$14,300 ((~~11,000~~))

(iii) Operating permit sources with NAICS codes other than listed above. . . . . $28,600 ((~~22,000~~))

(2) Additional emission rate fees shall be paid in addition to the annual operating permit fees of Section 7.07 (b)(1):

$30 ((~~25~~)) for each ton of CO reported in the previous calendar year, and

$60 ((~~50~~)) for each ton of NOx reported in the previous calendar year, and

$60 ((~~50~~)) for each ton of PM10 reported in the previous calendar year, and

$60 ((~~50~~)) for each ton of SOx reported in the previous calendar year, and

$60 ((~~50~~)) for each ton of VOC reported in the previous calendar year, and

$60 ((~~50~~)) for each ton of HAP reported in the previous calendar year.

(c) In addition to the fees under Sections 7.07 (b)(1) and (b)(2) above, the Agency shall, on a source-by-source basis, assess the following fees:

(1) $500 ((~~250~~)) for administrative permit amendments [WAC 173-401-720], and

(2) for minor permit modifications [WAC 173-401-725(2) and (3)], a fee equal to 10% of the annual operating permit fee, not to exceed $6,500 ((~~5,000~~)), and

(3) for the original issuance [WAC 173-401-700], significant modification [WAC 173-401-725(4)], reopening for cause [WAC 173-401-730], or renewal [WAC 173-401-710] of an operating permit, a fee equal to 20% of the annual operating permit fee, not to exceed $13,000 ((~~10,000~~)), and

(4) to cover the costs of public involvement under WAC 173-401-800, and

(5) to cover the costs incurred by the Washington State Department of Health in enforcing 40 CFR Part 61, Subpart I and chapter 246-247 WAC.

(d) In addition to the fees described under Sections 7.07 (b) and (c) above, the Agency shall collect and transfer to the Washington State Department of Ecology a surcharge established by the Department of Ecology under chapter 173-401

WAC to cover the Department of Ecology's program development and oversight costs.

(e) Continued payment to the Agency of the annual operating permit fee maintains the operating permit and the status of the source as an operating facility.

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

WSR 12-09-071
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services)
[Filed April 17, 2012, 2:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-05-088.

Title of Rule and Other Identifying Information: The department intends to amend WAC 388-76-10025 License annual fee, 388-76-10146 Qualifications—Training and home care aide certification, 388-76-10160 Background check—General, 388-76-10161 Background check-Washington state—Who is required to have, 388-76-10163 Background check—Process, 388-76-10164 Background check—Results, 388-76-10165 Background check—Valid for two years, 388-76-10175 Background check—Employment—Conditional hire—Pending results, 388-76-10180 Background checks—Employment—Disqualifying information, 388-76-10200 Adult family home—Staff—Availability—Contact information, and 388-76-10955 Remedies—Department must impose remedies.

The department intends to repeal WAC 388-76-10162 Background check—National fingerprint checks—Who is required to have.

The department intends to add new sections WAC 388-76-101631 Background checks—Process—Washington state name and date of birth background check, 388-76-101632 Background checks—Process—National fingerprint background check, 388-76-10166 Background checks—Household members, noncaregiving and unpaid staff—Unsupervised access, 388-76-10176 Background checks—Employment—Provisional hire—Pending results of national fingerprint background check, and 388-76-10181 Background checks—Employment—Nondisqualifying information.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html or by calling (360) 664-6094), on June 5, 2012, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 6, 2012.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on June 5, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by May 22, 2012, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules to comply with and be consistent with Initiative 1163, ESHB 1277 as codified in chapter 70.128 RCW, and ESHB 2314. In addition to implementing Initiative 1163, ESHB 1277 and 2314 the department is going to clarify the provision related to disqualifying crimes related to drugs.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 70.128.040.

Statute Being Implemented: Chapter 70.128 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: Mike Tornquist, P.O. Box 45600, Olympia, WA 98513, (360) 725-3204; Implementation and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98513, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3), a small business economic impact statement is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or federal statutes or regulations.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b), a cost-benefit analysis is not required for rules that are explicitly dictated in statute and that only correct typographical errors, make address changes, or clarify language of rule without changing its effect.

April 16, 2012
Katherine I. Vasquez
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 12-10 issue of the Register.

WSR 12-09-072
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed April 17, 2012, 2:14 p.m.]

Supplemental Notice to WSR 11-23-155.

Preproposal statement of inquiry was filed as WSR 11-07-085.

Title of Rule and Other Identifying Information: Chapter 388-845 WAC, Division of developmental disabilities (DDD) home and community based services waivers; amending WAC 388-845-0001 Definitions, 388-845-0041 What is

DDD's responsibility to provide my services under the DDD HCBS waivers administered by DDD?, 388-845-0120 Will I continue to receive state supplementary payments (SSP) if I am on a waiver?, 388-845-0506 Who is a qualified provider of behavior management and consultation for the children's intensive in-home behavioral supports (CIIBS) waiver?, 388-845-0600 What are community access services?, 388-845-0610 Are there limits to community access services I can receive?, 388-845-1210 Are there limits to the person-to-person service I can receive?, 388-845-1850 Are there limitations to my receipt of specialized nutritional and specialized clothing?, 388-845-2005 Who is a qualified provider of staff/family consultation and training? and 388-845-2170 Are there limitations on my receipt of therapeutic equipment and supplies?; and new sections WAC 388-845-0603 Who is eligible to receive community access services?, 388-845-1030 What are individual technical assistance services?, 388-845-1035 Who are qualified providers of individual technical assistance services?, and 388-845-1040 Are there limits to the individualized technical assistance services I can receive?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html or by calling (360) 664-6094), on May 22, 2012, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 22, 2012.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 22, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by May 8, 2012, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments to chapter 388-845 WAC address:

- Changes to the employment and day services as directed by the legislature,
- Incorporate changes to CIIBS service language,
- Updated provider types in CIIBS services, and individualized technical assistance (ITA),
- DDD's responsibility for administering the HCBS waiver program.

These amendments to chapter 388-845 WAC clarify current definitions in rule to promote consistent expectations for reporting and tracking of employment and community access services. The program "person to person" will no longer exist as currently described in WAC. Clients who previously received "person to person" services may now qualify for "individual technical assistance" services which will now be defined in this amendment. "Community access" rules were modified to allow eligibility for this program for individuals under age sixty-two after employment services have been accessed for nine months.

Clarifying language is provided regarding receipt of SSP services and implementation of individual services. A new rule is added [to] explain how individual services may be implemented prior to the first of the month.

Rules regarding the CIIBS program are amended to address the requirement to access medicaid services first; to describe provider types for staff and family consultation services and behavior management services; and to update information regarding the department's administrative responsibility within the CIIBS waiver program.

These changes were effective July 1, 2011.

In the 2011-13 operating budget, which was effective on May 16, 2011, the legislature appropriated funds directing DDD to:

"to develop and implement the use of a consistent, statewide outcome-based vendor contract for employment and day services by July 1, 2012. The rates paid to vendors under this contract shall also be made consistent. In its description of activities the agency shall include activity listings and dollars appropriated for: Employment services, day services, child development services and county administration of services to the developmentally disabled. The department shall begin reporting to the office of financial management on these activities beginning in fiscal year 2010." 1

1 Washington state operating budget 2011-13, ESHB [2ESHB] 1087, section 205(c), chapter 50, Laws of 2011 Operating budget; June 15, 2011.

In order to achieve the legislative expectation of DDD having outcome-based vendor contracts for employment and day services, DDD must first adopt and implement a standardized methodology to promote consistency in determining an individual's community access acuity level.

Once adopted, this acuity level will serve as the foundation for allocating funds to counties to support employment services for clients of DDD.

SSB 6384 directed the department to ensure that persons with developmental disabilities be given the opportunity to transition to a community access program after enrollment in an employment program. This allowed for individuals who are younger than retirement age to access community access services after trying employment services for nine months. Chapter 388-845 WAC is updated to reflect this direction.

Reasons Supporting Proposal: See Purpose statement above.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.010.

Statute Being Implemented: RCW 71A.12.030, 71A.12.010.

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

Name of Agency Personnel Responsible for Drafting: Alan McMullen, 4450 10th Avenue S.E., Olympia, WA 98504, (360) 725-3524; Implementation: Kris Pederson, 4450 10th Avenue S.E., Olympia, WA 98504, (360) 725-3445; and Enforcement: Don Clintsman, 4450 10th Avenue S.E., Olympia, WA 98504, (360) 725-3421.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business impact was prepared as the amended rules proposed clarify language in the WAC and generally make the rules easier to

understand by the consumer, furthermore, there are no costs imposed on small businesses by these proposed rules. Based on RCW 19.85.025, the proposed rule making is exempt from preparing a small business economic impact statement.

A cost-benefit analysis is not required under RCW 34.05.328. Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

(d) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(e) Rules the content of which is explicitly and specifically dictated by statute;

(f) Rules that set or adjust fees or rates pursuant to legislative standards; or

(g) Rules that adopt, amend, or repeal:

(i) A procedure, practice, or requirement relating to agency hearings; or

(ii) A filing or related process requirement for applying to an agency for a license or permit.

April 12, 2012
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0001 Definitions. "ADSA" means the aging and disability services administration, an administration within the department of social and health services.

"Aggregate services" means a combination of services subject to the dollar limitations in the Basic and Basic Plus waivers.

"CARE" means the comprehensive assessment and reporting evaluation.

"Client or person" means a person who has a developmental disability as defined in RCW 71A.10.020(3) and has been determined eligible to receive services by the division under chapter 71A.16 RCW.

"DDD" means the division of developmental disabilities, a division within the aging and disability services administration of the department of social and health services.

"DDD assessment" refers to the standardized assessment tool as defined in chapter 388-828 WAC, used by DDD to measure the support needs of persons with developmental disabilities.

"Department" means the department of social and health services.

"EPSDT" means early and periodic screening, diagnosis, and treatment, medicaid's child health component providing a mandatory and comprehensive set of benefits and services for children up to age twenty one as defined in WAC 388-534-0100.

"Employment/day program services" means community access, person-to-person, individualized technical assistance, prevocational services or supported employment services subject to the dollar limitations in the Basic and Basic Plus waivers.

"Evidence based treatment" means the use of physical, mental and behavioral health interventions for which systematic, empirical research has provided evidence of statistically significant effectiveness as treatments for specific conditions. Alternate terms with the same meaning are evidence-based practice (EBP) and empirically supported treatment (EST).

"Family" means relatives who live in the same home with the eligible client. Relatives include spouse or registered domestic partner; natural, adoptive or step parent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Family home" means the residence where you and your relatives live.

"Gainful employment" means employment that reflects achievement of or progress towards a living wage.

"HCBS waivers" means home and community based services waivers.

"Home" means present or intended place of residence.

"ICF/MR" means an intermediate care facility for the mentally retarded.

"Individual support plan (ISP)" is a document that authorizes and identifies the DDD paid services to meet a client's assessed needs.

"Integrated settings" mean typical community settings not designed specifically for individuals with disabilities in which the majority of persons employed and participating are individuals without disabilities.

"Legal representative" means a parent of a person who is under eighteen years of age, a person's legal guardian, a person's limited guardian when the subject matter is within the scope of limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

"Living wage" means the amount of earned wages needed to enable an individual to meet or exceed his/her living expenses.

"Necessary supplemental accommodation representative" means an individual who receives copies of DDD planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of DDD when the client does not have a legal guardian and the client is requesting or receiving DDD services.

"Providers" means an individual or agency who meets the provider qualifications and is contracted with ADSA to provide services to you.

"Respite assessment" means an algorithm within the DDD assessment that determines the number of hours of respite care you may receive per year if you are enrolled in the Basic, Basic Plus, Children's Intensive In-Home Behavioral Support, or Core waiver.

"SSI" means Supplemental Security Income, an assistance program administered by the federal Social Security Administration for blind, disabled and aged individuals.

"SSP" means a state-paid cash assistance program for certain clients of the division of developmental disabilities.

"State funded services" means services that are funded entirely with state dollars.

"You/your" means the client.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0041 What is DDD's responsibility to provide my services under the DDD HCBS waivers administered by DDD? If you are enrolled in an HCBS waiver administered by DDD((~~, DDD must meet your assessed needs for health and welfare.~~))

(1) DDD ((~~must address~~)) will provide an annual comprehensive assessment to evaluate your ((~~assessed~~)) health and welfare ((~~needs in~~)) need. Your individual support plan, as specified in WAC 388-845-3055, will document:

(a) Your identified health and welfare needs; and

(b) Your HCBS waiver services and nonwaiver services authorized to meet your assessed need.

(2) You have access to DDD paid services that are provided within the scope of your waiver, subject to the limitations in WAC 388-845-0110 and 388-845-0115.

(3) DDD will provide waiver services you need and qualify for within your waiver.

(4) DDD will not deny or limit ((~~your~~)) the number of waiver services ((~~based on a lack of funding~~)) you are eligible based on a lack of funding.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0120 Will I continue to receive state supplementary payments (SSP) if I am on the waiver? Your participation in one of the DDD HCBS waivers ((~~does not~~)) may affect your continued receipt of state supplemental payment from DDD. To continue to receive SSP, you must meet DDD/SSP programmatic eligibility requirements as identified in WAC 388-827-0115.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0506 Who is a qualified provider of behavior management and consultation for the children's intensive in-home behavioral supports (CIIBS) waiver? (1) Under the CIIBS waiver, providers of behavior management and consultation must be contracted with DDD to provide CIIBS intensive services as one of the following ((~~four~~)) two provider types:

(a) Master's or PhD level behavior specialist, licensed or certified/registered to provide behavioral assessment, intervention, and training;

(b) Behavior technician, licensed or certified/registered to provide behavioral intervention and training, following the lead of the behavior specialist((~~;~~

~~(c) Certified music therapist; and/or~~

~~(d) Certified recreation therapist~~)).

(2) Providers of behavior management and consultation per WAC 388-845-0505 may be utilized to provide counseling and/or therapy services to augment the work of the CIIBS intensive service provider types.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-0600 What are community access services? Community access ((~~services are provided in the community to enhance or maintain your community integration, physical or mental skills.~~)) is an individualized service that provides clients with opportunities to engage in community based activities that support socialization, education, recreation and personal development for the purpose of:

(1) ((~~If you are age sixty-two or older, these services are available to assist you to participate in activities, events and organizations in the community in ways similar to others of retirement age~~)) Building and strengthening relationships with others in the local community who are not paid to be with the person.

(2) ((~~These services are available in the Basic, Basic Plus, and CORE waivers~~)) Learning, practicing and applying skills that promote greater independence and inclusion in their community.

NEW SECTION

WAC 388-845-0603 Who is eligible to receive community access services? You are eligible to receive community access services when you are enrolled in the Basic, Basic Plus or Core waivers and you meet one of the following conditions below:

(1) You are age sixty-two or older; or

(2) You are twenty-one or older and you have participated in a DDD employment program for nine months; or

(3) You and/or your legal representative request that DDD grant an exception, per chapter 71A.12 RCW, to the requirement that you participate in an employment program for nine months prior to transitioning to a community access service because:

(a) You have a medical condition that prevents you from participating in an employment program; or

(b) You have been available for employment planning activities and an employment provider has been unable to provide services within ninety days of your request for employment services.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-0610 Are there limits to community access services I can receive? The following limits apply to your receipt of community access services:

(1) ((~~You must be age sixty-two or older.~~

~~(2)~~)) You cannot ((~~be authorized to~~)) receive community access services if you ((~~receive~~)) are receiving prevocational ((~~services~~)) or supported employment services.

(3) The ((~~dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive~~)) amount of community access services you may receive cannot exceed the employment/day

program yearly limit that is established in your HCBS waiver.

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

NEW SECTION

WAC 388-845-1030 What are individual technical assistance services? Individualized technical assistance service is assessment and consultation to the employment provider and/or client to identify and address existing barriers to employment. This is in addition to supports received through supported employment services or pre-vocational services for individuals who have not yet achieved their employment goal.

NEW SECTION

WAC 388-845-1035 Who are qualified providers of individualized technical assistance services? Providers of individualized technical assistance service must be a county or an individual or agency contracted with a county or DDD.

NEW SECTION

WAC 388-845-1040 Are there limits to the individualized technical assistance services I can receive? (1) Individualized technical assistance service cannot exceed six months in an individual's plan year.

(2) These services are available on the Basic, Basic Plus, Core and Community Protection Waivers.

(3) Individual must be receiving supported employment or pre-vocational services.

(4) The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of supported employment service you may receive.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-1210 Are there limits to the person-to-person service I can receive? (1) You must be age twenty and graduating from high school prior to your July or August twenty-first birthday, age twenty-one and graduated from high school or age twenty-two or older to receive person-to-person services.

(2) The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.

(3) These services will be provided in an integrated environment.

(4) Your service hours are determined by the level of assistance you need to reach your employment outcomes and might not equal the number of hours you spend on the job or in job related activities.

(5) Person to person services will only be available through June 30, 2012.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-1850 Are there limitations to my receipt of specialized nutrition and specialized clothing? (1) The following limitations apply to your receipt of specialized nutrition services:

(a) ((~~Services may be authorized as a waiver service only after you have accessed what is available to you under medicaid including EPSDT per WAC 388-534-0100, and any private health insurance plan;~~

~~(b) Services must be evidence based~~)) Specialized nutrition may be authorized as a waiver service by obtaining an initial denial of funding or information showing that the service is not covered by medicaid or private insurance;

(b) Services must be safe, effective, and individualized;

(c) Services must be ordered by a physician licensed to practice in the state of Washington;

(d) Specialized diets must be periodically monitored by a certified dietitian;

(e) Specialized nutrition products will not constitute a full nutritional regime unless an enteral diet is the primary source of nutrition;

(f) Department coverage of specialized nutrition products is limited to costs that are over and above inherent family food costs;

(g) DDD reserves the right to require a second opinion by a department selected provider; and

(h) Prior approval by regional administrator or designee is required.

(2) The following limitations apply to your receipt of specialized clothing:

(a) ((~~Services may be authorized as a waiver service only after you have accessed what is available to you under medicaid, EPSDT per WAC 388-534-0100, and any private health insurance plan;~~)) Specialized clothing may be authorized as a waiver service by obtaining an initial denial of funding or information showing that the service is not covered by medicaid or private insurance.

(b) ((~~Specialized clothing must be recommended by an appropriate health professional, such as an OT, behavior therapist, or podiatrist;~~)) The department requires your treating professional's written recommendation regarding your need for the service. This recommendation must take into account that the treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

(c) ((~~DDD reserves the right to require a second opinion by a department selected provider; and~~)) The department may require a second opinion from a department selected provider that meets the same criteria as subsection (b) of this section.

(d) Prior approval by regional administrator or designee is required.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-2005 Who is a qualified provider of staff/family consultation and training? To provide staff/family consultation and training, a provider must be one of

the following licensed, registered or certified professionals and be contracted with DDD:

(1) Audiologist;

(2) Licensed practical nurse;

(3) Marriage and family therapist;

(4) Mental health counselor;

(5) Occupational therapist;

(6) Physical therapist;

(7) Registered nurse;

(8) Sex offender treatment provider;

(9) Speech/language pathologist;

(10) Social worker;

(11) Psychologist;

(12) Certified American sign language instructor;

(13) Nutritionist;

(14) Counselors registered or certified in accordance with the requirements of chapter 18.19 RCW;

(15) Certified dietician;

(16) Recreation therapist registered in Washington and certified by the National Council for Therapeutic Recreation; ((~~or~~))

(17) Providers listed in WAC 388-845-0506 and contracted with DDD to provide CIIBS intensive services;

(18) Certified music therapist (for CIIBS only); or

(19) Psychiatrist.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-2170 Are there limitations on my receipt of therapeutic equipment and supplies? The following limitations apply to your receipt of therapeutic equipment and supplies under the CIIBS waiver:

(1) Therapeutic equipment and supplies may be authorized as a waiver service ((~~only after you have accessed what is available to you under medicaid including EPSDT per WAC 388-534-0100, and any private health insurance plan. The department will require evidence that you have accessed your full benefits through medicaid, EPSDT, and private insurance before authorizing this waiver service~~)) by obtaining an initial denial of funding or information showing that the service is not covered by medicaid or private insurance.

(2) The department does not pay for experimental equipment and supplies.

(3) The department requires your treating professional's written recommendation regarding your need for the service. This recommendation must take into account that the treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

(4) The department may require a written second opinion from a department selected professional that meets the same criteria in subsection (3) of this section.

WSR 12-09-076
PROPOSED RULES
HEALTH CARE AUTHORITY
(Medicaid Program)

[Filed April 17, 2012, 2:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-13-099.

Title of Rule and Other Identifying Information: Chapter 18-552 WAC, Respiratory therapy.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room (106A), 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://maa.dshs.wa.gov/pdf/CherryStreet DirectionsNMap.pdf or directions can be obtained by calling (360) 725-1000), on May 22, 2012, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 23, 2012.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on May 22, 2012.

Assistance for Persons with Disabilities: Contact Kelly Richters by May 15, 2012, TTY/TDD (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA's medicaid program is amending chapter 182-552 WAC, Respiratory care *(formerly titled Oxygen and respiratory therapy)*. Major highlights of changes:

- Followed medicare's clinical criteria, where possible.
- Added coverage limits into rule to mirror coverage tables in medicaid provider guide *(formerly known as billing instructions)*.
- Removed requirement for prognosis from the prescription.
- Clarified that the prescription is valid for one year (except for oxygen).
- For oxygen, followed Medicare's Group I and II criteria. The prescription for Group I criteria is valid for one year. The prescription for Group II needs to be reevaluated at three months to see if the client is still borderline.
- Removed allowance for separate payment for qualifying oximetry checks.
- Added the thirty-six month capped rental policy for oxygen to align with current policy.
- Changed limit for a CPAP humidifier from one every three years to one every five years.
- Increased coverage for some CPAP supplies.
- Added language regarding airway clearance devices.
- Removed oxygen clinical criteria (except prescription requirement) for clients under twenty years of age.
- Followed medicare's LCD for RADs … OSA diagnosis is no longer covered except for hypoventilation.
- Adopted Oregon's clinical criteria for apnea monitors.
- Removed allowance of separate payment for heated humidifiers for ventilators (it is included in the current monthly vent rate).

- Added language regarding criteria for a secondary ventilator.
- Removed allowance for payment for one month rental of loaner equipment (K0462) while client's equipment is being repaired.
- Added coverage for two portable suction machines.

Reasons Supporting Proposal: These rule amendments are necessary to improve clarity, update policy regarding respiratory care, reorganize the sections to be consistent with other agency recently filed chapters, and align with the Centers for Medicare and Medicaid Services (CMS) where possible.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: RCW 41.05.021.

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

Name of Proponent: Health care authority, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, HCA, P.O. Box 45504, Olympia, WA, (360) 725-1306; Implementation and Enforcement: Marlene Black, HCA, P.O. Box 45510, Olympia, WA, (360) 725-1577.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes that they do not impose more than minor costs for affected small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

April 17, 2012
Kevin M. Sullivan
Rules Coordinator

NEW SECTION

WAC 182-552-0001 Respiratory care—General. (1) The respiratory care described in this chapter is considered part of the agency's durable medical equipment (DME) benefit. This chapter applies to:

(a) Medicaid clients who require respiratory care in their homes, community residential settings, and skilled nursing facilities;

(b) Providers who supply respiratory care to medicaid clients; and

(c) Licensed health care professionals whose scope of practice allows for the provision of respiratory care.

(2) The medicaid agency covers the respiratory care listed in this chapter according to the limitations and requirements in this chapter.

(3) The medicaid agency pays for respiratory care for medicaid clients when it is:

(a) Covered;

(b) Within the scope of the eligible client's medical care program;

(c) Medically necessary, as defined under chapter 182-500 WAC;

(d) Prescribed by a physician, advanced registered nurse practitioner (ARNP), or physician assistant certified (PAC) within the scope of his or her licensure;

(e) Authorized, as required within this chapter, chapters 182-501 and 182-502 WAC, and the agency's published medicaid provider guides and provider notices;

(f) Billed according to this chapter, chapters 182-501 and 182-502 WAC, and the agency's published medicaid provider guides and provider notices; and

(g) Provided and used within accepted medical or respiratory care community standards of practice.

(4) The agency does not require prior authorization for requests for covered respiratory care for medicaid clients that meets the clinical criteria set forth in this chapter.

(5) The agency requires prior authorization for covered respiratory care for medicaid clients when the clinical criteria set forth in this chapter are not met, including the criteria associated with the expedited prior authorization process.

(a) The medicaid agency evaluates requests requiring prior authorization on a case-by-case basis to determine whether they are medically necessary, according to the process found in WAC 182-501-0165.

(b) Refer to WAC 182-552-1300, 182-552-1325, 182-552-1350, and 182-552-1375 for specific details regarding authorization.

NEW SECTION

WAC 182-552-0005 Respiratory care—Definitions. The following definitions and those in chapter 182-500 WAC apply to this chapter.

"Adult family home" - A residential home licensed to care for up to six residents that provides rooms, meals, laundry, supervision, assistance with activities of daily living, and personal care. In addition to these services, some homes provide nursing or other special care and services.

"Apnea" - The cessation of airflow for at least ten seconds.

"Apnea-hypopnea index (AHI)" - The average number of episodes of apnea and hypopnea per hour of sleep without the use of a positive airway pressure device. For purposes of this chapter, respiratory effort related arousals (RERAs) are not included in the calculation.

"Arterial PaO_2" - Measurement of partial pressure of arterial oxygen.

"Authorized prescriber" - A health care practitioner authorized by law or rule in the state of Washington to prescribe oxygen and respiratory care equipment, supplies, and services.

"Base year" - As used in this chapter, means the year in which the respiratory care medicaid provider guide's current fee schedule is adopted.

"Bi-level respiratory assist device with backup rate" - A device that allows independent setting of inspiratory and expiratory pressures to deliver positive airway pressure (within a single respiratory cycle) by way of tubing and a noninvasive interface (such as a nasal or oral facial mask) to assist spontaneous respiratory efforts and supplement the volume of inspired air into the lungs. In addition, these devices

have a timed backup feature to deliver this air pressure whenever sufficient spontaneous inspiratory efforts fail to occur.

"Bi-level respiratory assist device without backup rate" - A device that allows independent setting of inspiratory and expiratory pressures to deliver positive airway pressure (within a single respiratory cycle) by way of tubing and a noninvasive interface (such as a nasal, oral, or facial mask) to assist spontaneous respiratory efforts and supplement the volume of inspired air into the lungs.

"Blood gas study" - For the purposes of this chapter, is either an oximetry test or an arterial blood gas test.

"Boarding home" - Adult residential care (ARC) facility, enhanced adult residential care (EARC) facility, or assisted living (AL) facility.

"Central sleep apnea (CSA)" - Is defined as:

(1) An apnea-hypopnea index (AHI) greater than or equal to five; and

(2) Central apneas/hypopneas greater than fifty percent of the total apneas/hypopneas; and

(3) Central apneas or hypopneas greater than or equal to five times per hour; and

(4) Symptoms of either excessive sleepiness or disrupted sleep.

"Chronic obstructive pulmonary disease (COPD)" - Any disorder that persistently obstructs bronchial airflow. COPD mainly involves two related diseases: Chronic bronchitis and emphysema. Both cause chronic obstruction of air flowing through the airways and in and out of the lungs. The obstruction is generally permanent and worsens over time.

"Complex sleep apnea (CompSA)" - A form of central apnea specifically identified by the persistence or emergence of central apneas or hypopneas, upon exposure to CPAP or a bi-level respiratory assist device without a back-up rate feature, when obstructive events have disappeared. These clients have predominantly obstructive or mixed apneas during the diagnostic sleep study occurring at greater than or equal to five times per hour. With use of a CPAP or bi-level respiratory assist device without a back-up rate feature, the client shows a pattern of apneas and hypopneas that meets the definition of central sleep apnea (CSA).

"Continuous positive airway pressure (CPAP)" - A single-level device which delivers a constant level of positive air pressure (within a single respiratory cycle) by way of tubing and an interface to assist spontaneous respiratory efforts and supplement the volume of inspired air into the lungs.

"Dependent edema" - Fluid in the tissues, usually ankles, wrists, and the arms.

"Emergency oxygen" - The immediate, short-term administration of oxygen to a client who normally does not receive oxygen, but is experiencing an acute episode which requires oxygen.

"Erythrocythemia" - More hematocrit (red blood cells) than normal.

"FIO_2" - The fractional concentration of oxygen delivered to the client for inspiration. For the purpose of this policy, the client's prescribed FIO_2 refers to the oxygen concentration the client normally breathes when not undergoing testing to qualify for coverage of a respiratory assist device (RAD). That is, if the client does not normally use supplemental oxygen, their prescribed FIO_2 is that found in room air.

"FEV1" - The forced expired volume in one second.

"FVC" - The forced vital capacity.

"Group I" - Clinical criteria, set by medicare, to identify chronic oxygen clients with obvious respiratory challenges as evidenced by low oxygen saturation. The clinical criteria for Group I include any of the following:

• An arterial PaO_2 at or below fifty-five mm Hg or an arterial oxygen saturation (SaO_2) at or below eighty-eight percent taken at rest (awake); or

• An arterial PaO_2 at or below fifty-five mm Hg, or an arterial oxygen saturation at or below eighty-eight percent for at least five minutes taken during sleep for a client who demonstrates an arterial PaO_2 at or above fifty-six mm Hg or an arterial oxygen saturation at or above eighty-nine percent while awake; or

• A decrease in arterial PaO_2 more than ten mm Hg, or a decrease in arterial oxygen saturation more than five percent from baseline saturation for at least five minutes taken during sleep associated with symptoms (e.g., impairment of cognitive processes and nocturnal restlessness or insomnia) or signs (e.g., cor pulmonale, "P" pulmonale on EKG, documented pulmonary hypertension and erythrocytosis) reasonably attributable to hypoxemia; or

• An arterial PaO_2 at or below fifty-five mm Hg or an arterial oxygen saturation at or below eighty-eight percent, taken during exercise for a client who demonstrates an arterial PaO_2 at or above fifty-six mm Hg or an arterial oxygen saturation at or above eighty-nine percent during the day while at rest. In this case, oxygen is provided during exercise if it is documented that the use of oxygen improves the hypoxemia that was demonstrated during exercise when the client was breathing room air.

"Group II" - Clinical criteria, set by medicare, to identify borderline oxygen clients. Their blood saturation levels seem to be within the normal range, but there are additional extenuating issues that suggest a need for oxygen. The clinical criteria for Group II include any of the following:

• The presence of an arterial PaO_2 of fifty-six to fifty-nine mm Hg or an arterial blood oxygen saturation of eighty-nine percent at rest (awake), during sleep for at least five minutes, or during exercise (as described under Group I criteria); and

• Any of the following:

– Dependent edema suggesting congestive heart failure; or

– Pulmonary hypertension or cor pulmonale, determined by measurement of pulmonary artery pressure, gated blood pool scan, echocardiogram, or "P" pulmonale on EKG (P wave greater than three mm in standard leads II, III, or AVF); or

– Erythrocythemia with a hematocrit greater than fifty-six percent.

"Home and community residential settings" - In-home, adult family home, or boarding home.

"Hypopnea" - A temporary reduction of airflow lasting at least ten seconds and accompanied with a thirty percent reduction in thoracoabdominal movement or airflow as compared to baseline, and with at least a four percent decrease in

oxygen saturation. The AHI is the average number of episodes of apnea and hypopnea per hour of sleep without the use of a positive airway pressure device.

"Hypoxemia" - Less than normal level of oxygen in the blood.

"Maximum allowable" - The maximum dollar amount the medicaid agency reimburses a provider for a specific service, supply, or piece of equipment.

"Month" - For the purposes of this chapter, means thirty days.

"Nebulizer" - A medical device which administers drugs for inhalation therapy for clients with respiratory conditions such as asthma or emphysema.

"Obstructive sleep apnea (OSA)" - This syndrome refers to the interruption of breathing during sleep, due to obstructive tissue in the upper airway that collapses into the air passage with respiration.

"Oxygen" - Medical grade liquid or gaseous oxygen.

"Oxygen concentrator" - A medical device that removes nitrogen from room air and retains almost pure oxygen (eighty-seven percent to ninety-five percent) for delivery to a client.

"Oxygen system" - All equipment necessary to provide oxygen to a client.

"Portable oxygen system" - A system which allows the client to be independent of the stationary system for several hours, thereby providing mobility for the client.

"Pulmonary hypertension" - High blood pressure in the vessels that feed through the lungs, causing the right side of the heart to work harder to oxygenate blood.

"Respiratory care" - The care of a client with respiratory needs and all related equipment, oxygen, services, and supplies.

"Respiratory care medicaid provider guide" - A manual containing procedures for billing, which is available online at http://maa.dshs.wa.gov/download.

"Respiratory care practitioner" - A person licensed by the department of health according to chapter 18.89 RCW and chapter 246-928 WAC as a respiratory therapist (RT) or respiratory care practitioner (RCP).

"Respiratory effort related arousals (RERA)" - These occur when there is a sequence of breaths that lasts at least ten seconds, characterized by increasing respiratory effort or flattening of the nasal pressure waveform, which lead to an arousal from sleep. However, they do not meet the criteria of an apnea or hypopnea.

"Restrictive thoracic disorders" - This refers to a variety of neuromuscular and anatomical anomalies of the chest/rib cage area that may result in hypoventilation, particularly while the client sleeps at night.

"Reasonable useful lifetime (RUL)" - For thirty-six month capped oxygen equipment, the RUL is five years. The RUL is not based on the chronological age of the equipment. It starts on the initial date of the rental and runs for five years from that date.

"Stationary oxygen system" - Equipment designed to be used in one location, generally for the purpose of continuous use or frequent intermittent use.

CLIENT ELIGIBILITY

NEW SECTION

WAC 182-552-0100 Respiratory care—Client eligibility. (1) Clients in the following medical assistance programs are eligible for respiratory care:

(a) Categorically needy (CN);

(b) Children's health care as described in WAC 388-505-0210;

(c) Medically needy (MN);

(d) Medical care services as described in WAC 182-508-0005; and

(e) Alien emergency medical (AEM) as described in WAC 388-438-0110, when the medical services are necessary to treat a qualifying emergency medical condition.

(2) Clients who are enrolled in an agency-contracted managed care organization (MCO) must arrange for all respiratory care directly through his or her MCO.

(3) For clients residing in skilled nursing facilities, boarding homes, and adult family homes, see WAC 182-552-0150.

(4) Clients who are eligible for services under medicare and medicaid (medically needy program-qualified medicare beneficiaries) are eligible for respiratory care.

NEW SECTION

WAC 182-552-0150 Respiratory care—Clients residing in skilled nursing facilities, boarding homes, and adult family homes. For eligible clients who reside in skilled nursing facilities, boarding homes, and adult family homes:

(1) The medicaid agency pays, according to the requirements in this chapter, for the chronic use of medically necessary respiratory care.

(2) The medicaid agency does not pay separately for the following:

(a) Emergency oxygen equipment and supplies; and

(b) Licensed respiratory care staff.

PROVIDERS

NEW SECTION

WAC 182-552-0200 Respiratory care—Provider requirements. (1) To receive payment for respiratory care equipment and supplies under this chapter, a provider must:

(a) Meet the general provider requirements in chapter 182-502 WAC;

(b) Obtain prior authorization from the medicaid agency, if required, before delivery to the client and before billing the agency;

(c) Keep initial and subsequent prescriptions according to the requirements within this chapter;

(d) Provide instructions to the client and/or caregiver on the safe and proper use of equipment provided;

(e) Have a licensed health care professional whose scope of practice allows for the provision of respiratory care. The licensed health care professional must also:

(i) Check equipment and ensure equipment settings continue to meet the client's needs; and

(ii) Communicate with the client's authorized prescriber if there are any concerns or recommendations.

(f) Verify that the client has a valid prescription.

(i) To be valid, a prescription must:

(A) Be written, and signed and dated by a physician, advanced registered nurse practitioner (ARNP), or physician's assistant certified (PAC); and

(B) State the specific items or services requested, including the quantity, frequency, and duration/length of need. Prescriptions that only state "as needed" or "PRN" are not sufficient; and

(C) For an initial prescription, not be older than three months from the date the prescriber signed the prescription; or

(D) For subsequent prescriptions, not be older than one year from the date the prescriber signs the prescription (see WAC 182-552-0800 for exception to this time frame for oxygen).

(ii) If oxygen is prescribed:

(A) The following additional information is required:

(I) Flow rate of oxygen;

(II) Estimated length of need;

(III) Frequency and duration of oxygen use; and

(IV) The client's oxygen saturation level.

(B) For clients who meet:

(I) Group I clinical criteria, recertification is required one year after initial certification.

(II) Group II clinical criteria, recertification is required three months after the initial certification and annually thereafter.

(C) Providers may use the client's oxygen saturation or laboratory values to meet recertification requirements.

(2) The medicaid agency does not pay for respiratory care equipment and/or supplies furnished to the agency's clients when:

(a) The authorized prescriber who provides medical justification to the agency for the item provided to the client is an employee of, has a contract with, or has any financial relationship with the provider of the item; or

(b) The authorized prescriber who performs a client evaluation is an employee of, has a contract with, or has any financial relationship with a provider of respiratory care equipment, supplies, and related items.

NEW SECTION

WAC 182-552-0250 Respiratory care—Proof of delivery. (1) When a provider delivers equipment directly to the client or the client's authorized representative, the provider must furnish the proof of delivery when the medicaid agency requests that information.

(2) The medicaid agency requires the proof of delivery to:

(a) Be signed and dated by the client or the client's authorized representative (the date of signature must be the date the item was received by the client); and

(b) Include the client's name and a detailed description of the item(s) delivered, including the quantity, brand name, and serial number.

((~~COVERAGE~~)) APNEA MONITORS

NEW SECTION

WAC 182-552-0300 Respiratory care—Covered—Apnea monitors and supplies. (1) The medicaid agency covers, without prior authorization, the rental of an apnea monitor (cardiorespiratory monitor) with recording feature for a maximum of six months when:

(a) The client is less than one year of age and meets at least one of the following clinical criteria:

(i) Born less than thirty-seven weeks gestation, and the infant is not more than forty-three weeks corrected gestational age;

(ii) Had an apparent life-threatening apneic event (defined as requiring mouth-to-mouth resuscitation or vigorous stimulation);

(iii) Has been diagnosed with bradycardia and is being treated with caffeine, theophylline, or other stimulating agents;

(iv) Has documented gastro-esophageal reflux which results in apnea, bradycardia, or oxygen desaturation;

(v) Has documented apnea greater than twenty seconds in duration;

(vi) Has apnea for periods less than twenty seconds in duration and accompanied by bradycardia, cyanosis, or pallor;

(vii) Has bradycardia (defined as heart rate less than one hundred beats per minute);

(viii) Has oxygen desaturation below ninety percent;

(ix) Has neurologic/anatomic/metabolic or respiratory diseases affecting respiratory drive; or

(x) Is a subsequent sibling of an infant who died of sudden infant death syndrome (SIDS), until the client is one month older than the age at which the earlier sibling died and the client remains event-free; and

(b) The vendor has a licensed clinician with competency in pediatric respiratory care responsible for management of the client's apnea monitoring.

(2) For each subsequent rental period, the client must continue to meet the clinical criteria in subsection (1) of this section and the vendor must obtain prior authorization from the medicaid agency.

(3) Documentation of the result of the use of an apnea monitor must be kept in the client's record.

((~~REIMBURSEMENT~~)) CPAP/BI-LEVEL RAD

NEW SECTION

WAC 182-552-0400 Respiratory care—Continuous positive airway pressure (CPAP) device and supplies. (1) The medicaid agency covers, without prior authorization, one continuous positive airway pressure (CPAP) device including related supplies, per client, every five years. The CPAP device must have a data card and the client must meet the following clinical criteria:

(a) The client is diagnosed with obstructive sleep apnea (OSA) using a clinical evaluation and a positive attended polysomnogram (PSG) performed in a sleep laboratory.

Unattended home sleep studies do not meet the medicaid agency's clinical criteria for reimbursement; and

(b) For clients thirteen years of age and older:

(i) The client's polysomnogram demonstrates an apnea-hypopnea index (AHI) greater than or equal to fifteen events per hour with a minimum of thirty events; or

(ii) The client's polysomnogram demonstrates the AHI is greater than or equal to five and less than or equal to fourteen events per hour with a minimum of ten events with clinical documentation of:

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

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

(c) For clients twelve years of age and younger, the clinical criteria is considered met when there is a documented diagnosis of OSA and polysomnography demonstrates an apnea index (AI) or AHI equal to or greater than one and:

(i) Adenotonsillectomy has been unsuccessful in relieving OSA; or

(ii) Adenotonsillar tissue is minimal; or

(iii) Adenotonsillectomy is inappropriate based on OSA being attributable to another underlying cause (e.g., craniofacial anomaly, obesity) or adenotonsillectomy is contraindicated; or

(iv) Family does not wish to pursue surgical intervention.

(2) If a client meets the criteria in subsection (1) of this section but a CPAP device has been tried and proven ineffective, the medicaid agency will cover a bi-level respiratory assist device (RAD) without the back-up rate. Ineffective, in this case, is defined as documented failure to meet therapeutic goals using a CPAP during the titration portion of a facility-based study or during home use despite optimal therapy (i.e., proper mask selection and fitting and appropriate pressure setting).

(3) The AHI is calculated on the average number of events per hour. If the AHI is calculated based on less than two hours of sleep, the total number of recorded events used to calculate the AHI must be at least the number of events that would have been required in a two-hour period (i.e., must reach greater than or equal to thirty events without symptoms or greater than or equal to ten events with symptoms). The medicaid agency pays for an initial three-month rental period for CPAP devices.

(4) The medicaid agency purchases a CPAP device after the three-month rental period when the following documentation of clinical benefit is recorded in the client's file:

(a) A face-to-face clinical reevaluation of the client by the authorized prescriber which documents that symptoms of obstructive sleep apnea are improved; and

(b) A review of objective evidence by the authorized prescriber of the client's adherence to use of the CPAP device. Adherence is defined as use of the CPAP device greater than or equal to four hours per night on seventy percent of nights during a consecutive thirty-day period anytime during the first three months of initial usage.

(5) The medicaid agency does not pay for a CPAP device when the client is diagnosed with upper airway resistance syndrome (UARS).

(6) The medicaid agency pays for the purchase of a heated humidifier for a CPAP device, once every five years from the date the item was deemed purchased, per client.

(7) Replacement of CPAP device.

(a) The medicaid agency requires prior authorization for the replacement of a CPAP device if the client has had the device for less than five years.

(b) After five years, the client must have a face-to-face evaluation with the treating authorized prescriber that documents that the client continues to use and benefit from the device. The medicaid agency does not require a new PSG (sleep test), trial period, or prior authorization.

(c) Replacement supplies - The medicaid agency pays for replacement supplies for a CPAP device as follows:

(i) Full face mask, limit one every six months;

(ii) Face mask interface for full face mask, limit one every three months;

(iii) Nasal interface (mask or cannula type), with or without head strap, limit one every six months;

(iv) Cushion for use on nasal mask interface, limit one every three months;

(v) Pillow for use on nasal cannula type interface, limit one pair every three months;

(vi) Headgear, chin strap, and tubing with or without integrated heating element, limit one every six months;

(vii) Filters - Disposable, limit two every thirty days;

(viii) Filters - Nondisposable, limit one every six months; and

(ix) Water chamber for humidifier, limit one every six months.

(d) Prior authorization is required if the client does not meet the clinical criteria in this section or if the medicaid agency has purchased a bi-level respiratory assist device for the client within the last five years.

NEW SECTION

WAC 182-552-0500 Respiratory care—Covered—Bi-level respiratory assist devices and supplies. (1) The medicaid agency covers, without prior authorization, one bi-level respiratory assist device (RAD), with or without a back-up rate feature, per client every five years. The client must have a clinical disorder characterized as one of the following and meet the clinical criteria for the specific condition as listed in subsections (2) through (5) of this section.

(a) Restrictive thoracic disorders (e.g., neuromuscular diseases or severe thoracic cage abnormalities); or

(b) Severe chronic obstructive pulmonary disease (COPD); or

(c) Central sleep apnea or complex sleep apnea; or

(d) Hypoventilation syndrome.

(2) Restrictive thoracic disorders - The medicaid agency pays for, without prior authorization, a bi-level RAD either with or without the back-up rate feature, when all of the following clinical criteria are met:

(a) The client has been diagnosed with a neuromuscular disease (e.g., amyotrophic lateral sclerosis (ALS)) or a severe thoracic cage abnormality (e.g., post-thoracoplasty for tuberculosis); and

(b) Chronic obstructive pulmonary disease (COPD) does not contribute significantly to the individual's pulmonary limitation; and

(c) One or more of the following criteria are met:

(i) An arterial blood gas $PaCO_2$, done while awake and breathing the client's prescribed FIO_2 (fractionated inspired oxygen concentration) is greater than or equal to forty-five mm Hg; or

(ii) Sleep oximetry demonstrates oxygen saturation less than or equal to eighty-eight percent for greater than or equal to five minutes of nocturnal recording time (minimum record time of two hours), done while breathing the client's prescribed recommended FIO_2; or

(iii) For a neuromuscular disease (only), either of the following:

(A) Maximal inspiratory pressure is less than sixty cm H_2O; or

(B) Forced vital capacity is less than or equal to fifty percent predicted.

(3) Severe chronic obstructive pulmonary disease (COPD).

(a) The medicaid agency pays, without prior authorization, for a bi-level RAD, without the back-up rate feature, when all of the following clinical criteria are met:

(i) An arterial blood gas $PaCO_2$, done while awake and breathing the client's prescribed FIO_2, is greater than or equal to fifty-two mm Hg; and

(ii) Sleep oximetry demonstrates oxygen saturation less than or equal to eighty-eight percent for greater than or equal to five minutes of nocturnal recording time (minimum recording time of two hours), done while breathing oxygen at two LPM or the client's prescribed FIO_2, whichever is higher; and

(iii) Prior to initiating therapy, obstructive sleep apnea and treatment with CPAP has been considered and ruled out.

(b) The medicaid agency pays, without prior authorization, for a bi-level RAD, with the back-up rate feature, for clients with COPD who qualified for a bi-level RAD under (3)(a) of this section when:

(i) Started any time after a period of initial use of the bi-level RAD without the back-up rate feature when both of the following clinical criteria are met:

(A) An arterial blood gas $PaCO_2$, done while awake and breathing the client's prescribed FIO_2, shows that the client's $PaCO_2$ worsens greater than or equal to seven mm Hg compared to the original result from criterion in subsection (3)(a)(i) of this section; and

(B) A facility-based PSG demonstrates oxygen saturation less than or equal to eighty-eight percent for greater than or equal to five minutes of nocturnal recording time (minimum recording time of two hours) while using a bi-level RAD without the back-up rate feature that is not caused by obstructive upper airway events, i.e., AHI less than five; or

(ii) Started at a time no sooner than sixty-one days after initial issue of the bi-level RAD without the back-up rate feature, when both of the following clinical criteria are met:

(A) An arterial blood gas $PaCO_2$ is done while awake and breathing the client's prescribed FIO_2, still remains greater than or equal to fifty-two mm Hg; and

(B) Sleep oximetry while breathing with the bi-level RAD without back-up rate feature, demonstrates oxygen saturation less than or equal to eighty-eight percent for greater than or equal to five minutes of nocturnal recording time (minimum recording time of two hours), done while breathing oxygen at two LPM or the client's prescribed FIO_2, whichever is higher.

(4) Central sleep apnea or complex sleep apnea (i.e., not due to airway obstruction). The medicaid agency pays for, without prior authorization, a bi-level RAD with or without the back-up rate feature, when the client's polysomnogram test reveal all of the following:

(a) The diagnosis of central sleep apnea (CSA) or complex sleep apnea (CompSA);

(b) Significant improvement of the sleep-associated hypoventilation with the use of a bi-level RAD with or without the back-up rate feature on the settings that will be prescribed for initial use at home, while breathing the client's prescribed FIO_2.

(5) Hypoventilation syndrome.

(a) The medicaid agency pays for, without prior authorization, a bi-level RAD without the back-up rate feature, when the clinical criteria in (a)(i) and (ii) of this subsection, or either (a)(iii) or (iv) of this subsection are met:

(i) An initial arterial blood gas $PaCO_2$, done while awake and breathing the client's prescribed FIO_2, is greater than or equal to forty-five mm Hg; and

(ii) Spirometry shows an FEV1/FVC greater or equal to seventy percent and an FEV1 greater than or equal to fifty percent of predicted; or

(iii) An arterial blood gas $PaCO_2$, done during sleep or immediately upon awakening, and breathing the client's prescribed FIO_2, shows the client's $PaCO_2$ worsened greater than or equal to seven mm Hg compared to the original result in (a) of this subsection; or

(iv) A facility-based PSG demonstrates oxygen saturation less than or equal to eighty-eight percent for greater than or equal to five continuous minutes of nocturnal recording time (minimum recording time of two hours) that is not caused by obstructive upper airway events, i.e., AHI less than five.

(b) The medicaid agency pays for, without prior authorization, a bi-level RAD with the back-up rate feature, when the clinical criteria in (b)(i) and (ii) of this subsection, and either (b)(iii) or (iv) of this subsection are met:

(i) A covered bi-level RAD without the back-up rate feature is being used; and

(ii) Spirometry shows an FEV1/FVC greater than or equal to seventy percent and an FEV1 greater than or equal to fifty percent of predicted; and

(iii) An arterial blood gas $PaCO_2$, done while awake and breathing the client's prescribed FIO_2, shows that the client's $PaCO_2$ worsens greater than or equal to seven mm Hg compared to the ABG result performed to qualify the client for the bi-level RAD without the back-up rate feature; or

(iv) A facility-based PSG demonstrates oxygen saturation less than or equal to eighty-eight percent for greater than or equal to five continuous minutes of nocturnal recording time (minimum recording time of two hours) that is not caused by obstructive upper airway events, i.e., AHI less than

five while using a bi-level RAD without the back-up rate feature.

(6) For a bi-level RAD without the back-up rate feature, the medicaid agency pays as follows:

(a) An initial three-month rental period. In accordance with medicare's guidelines, the medicaid agency requires a face-to-face clinical reevaluation of the client by the treating authorized prescriber, between day thirty-one and day ninety-one of the rental period, which documents the following in the client's file to continue rental:

(i) The progress of the client's relevant symptoms; and

(ii) The client's compliance with using the device.

(b) Purchases after the requirements of (a) of this subsection are met.

(7) For a bi-level RAD with the back-up rate feature used with:

(a) An invasive interface, the medicaid agency pays for the rental only.

(b) A noninvasive interface, the medicaid agency pays as follows:

(i) An initial three-month rental period. In accordance with medicare's guidelines, the medicaid agency requires a face-to-face clinical reevaluation of the client by the treating authorized prescriber, between day thirty-one and day ninety-one of the rental period, which documents the following in the client's file to continue rental:

(ii) The progress of the client's relevant symptoms; and

(iii) The client's compliance with using the device.

(iv) Purchase after a total of thirteen months of rental.

(8) Prior authorization is required if the client does not meet the clinical criteria in this section or if the medicaid agency has purchased a CPAP device or other respiratory assist device for the client within the last five years.

(9) Replacement of bi-level RAD. The medicaid agency's policy for replacement of a bi-level RAD is the same as for a CPAP device. See WAC 182-552-0400(6).

AIRWAY CLEARANCE DEVICES

NEW SECTION

WAC 182-552-0600 Respiratory care—Covered—Airway clearance devices. Chest physiotherapy (CPT), which is also known as percussion and postural drainage (P/PD), is traditionally seen as the standard of care of secretion clearance methods. There are client instances when conventional manual CPT is unavailable, ineffective, or not tolerated. The medicaid agency then covers the following types of airway clearance devices when medically necessary for an individual with a diagnosis that is characterized by excessive mucus production and difficulty clearing secretions:

(1) Mechanical percussors. One per client, per lifetime;

(2) Oscillatory positive expiratory pressure devices. One per client every one hundred and eighty days;

(3) Positive expiratory pressure devices. Requires prior authorization (PA);

(4) Cough stimulating device, alternating positive and negative airway pressure. Requires PA; and

(5) High frequency chest wall oscillation air-pulse generator system. Requires PA.

NEBULIZERS/HUMIDIFIERS/INHALATION DRUGS

NEW SECTION

WAC 182-552-0650 Respiratory care—Covered—Nebulizers, humidifiers, and accessories. (1) The medicaid agency covers, without prior authorization, the purchase of a nebulizer and related compressor, with limits, when the following medicare clinical criteria are met.

(a) Small volume nebulizer and related compressor for the administration of inhalation drugs for:

(i) The management of obstructive pulmonary disease;

(ii) A client with cystic fibrosis or bronchiectasis;

(iii) A client with HIV, pneumocystosis, or complications of organ transplants; or

(iv) Persistent, thick, or tenacious pulmonary secretions.

(b) Large volume nebulizer and related compressor to deliver humidity to a client with thick, tenacious secretions and who has one or more of the following:

(i) Cystic fibrosis;

(ii) Bronchiectasis;

(iii) A tracheostomy; or

(iv) A tracheobronchial stent.

(c) Filtered nebulizer when necessary to administer pentamidine to clients with HIV, pneumocystosis, or complications of organ transplants.

(2) The medicaid agency limits payments, per client, as follows:

(a) Compressor - One every five years. Requires thirteen months rental first. After thirteen months, the compressor is considered purchased.

(b) Nebulizer with compressor - One every five years. Reimbursement includes instruction on the proper use and cleaning of the equipment.

(3) The medicaid agency pays separately for medically necessary accessories as follows:

(a) Administration set. Purchase only.

(i) With small volume filtered or nonfiltered pneumatic nebulizer, disposable. Limited to one per client every thirty days.

(ii) With small volume nonfiltered pneumatic nebulizer, nondisposable. Limited to one per client every six months.

(b) Aerosol mask, used with nebulizer. Purchase only. Limited to one per client every thirty days.

(c) Corrugated tubing, used with large volume nebulizer. Purchase only.

(i) Disposable, limited to one unit (one hundred feet) per client every sixty days.

(ii) Nondisposable, limited to one unit (ten feet) per client every twelve months.

(d) Face tent. Purchase only. Limited to one per client every thirty days.

(e) Filter. Purchase only.

(i) Disposable, limited to two per client every thirty days.

(ii) Nondisposable, limited to one per client every ninety days.

(f) Large volume nebulizer, disposable, unfilled, used with aerosol compressor. Limited to ten per client every thirty days.

(g) Small volume nonfiltered pneumatic nebulizer, disposable. Purchase only. Limited to two per client every thirty days.

(h) Tracheostomy mask, each. Purchase only. Limited to four per client every thirty days.

(i) Heated humidifier with temperature monitor and alarm for clients who have a tracheostomy but who are not ventilator dependent. Monthly rental only. Prior authorization is required.

(j) Water collection device, used with large volume nebulizer. Purchase only. Limited to eight per client every thirty days.

(k) Water, distilled, used with large volume nebulizer, 1000 ml. Limited to fifty units per client every thirty days.

(l) Immersion external heater for a nebulizer. Purchase only. Prior authorization is required.

(4) Providers must monitor the amount of supplies and accessories a client is actually using and assure that the client has nearly exhausted the supply on hand prior to dispensing any additional items.

(5) The medicaid agency does not pay for a large volume nebulizer, related compressor/generator, and water or saline when used predominantly to provide room humidification.

NEW SECTION

WAC 182-552-0700 Respiratory care—Covered—Inhalation drugs and solutions. Inhalation drugs and solutions are included in the medicaid agency's prescription drug program. Refer to chapter 182-530 WAC.

OXYGEN AND OXYGEN EQUIPMENT

NEW SECTION

WAC 182-552-0800 Respiratory care—Covered—Oxygen and oxygen equipment. The medicaid agency follows medicare clinical guidelines for respiratory care, unless otherwise described in this chapter.

(1) The medicaid agency covers, without prior authorization, the rental of a stationary oxygen system and/or a portable oxygen system, as follows:

(a) For clients, twenty years of age and younger, when prescribed by the client's treating practitioner; or

(b) For clients, twenty-one years of age and older, when prescribed by a practitioner and the client meets medicare group I or group II clinical criteria as defined in WAC 182-552-005. Prior authorization is required for clients, twenty-one years of age and older, who do not meet medicare clinical criteria.

(2) Oxygen and oxygen equipment - Capped rental:

(a) Capped rental applies to in-home oxygen use by medical assistance clients only;

(b) The medicaid agency's payment for stationary oxygen system equipment and/or portable oxygen system equipment is limited to thirty-six monthly rental payments. During the rental period, the medicaid agency's payment includes any supplies, accessories, oxygen contents, delivery and associated costs, instructions, maintenance, servicing, and repairs;

(c) Oxygen systems are deemed capped rental (provider continues to own the equipment) after thirty-six months.

(i) The supplier who provides the oxygen equipment for the first month must continue to provide any necessary oxygen equipment and related items and services through the thirty-six month rental period unless one of the exceptions in (e) of this subsection is met.

(ii) The same provider is required to continue to provide the client with properly functioning oxygen equipment (including maintenance and repair), and associated supplies for the remaining twenty-four months of the equipment's reasonable useful lifetime (RUL).

(iii) The same provider may bill the medicaid agency for oxygen contents, disposable supplies, and maintenance fees only. Maintenance fee payment is limited to one every six months.

(d) At any time after the end of the five-year RUL for the oxygen equipment, the provider may replace the equipment, thus beginning a new thirty-six month rental period.

(e) A thirty-six month rental period may restart in the following situations only. Providers must follow the medicaid agency's expedited prior authorization process, see WAC 182-552-1300, Respiratory care—Authorization.

(i) The initial provider is no longer providing oxygen equipment or services;

(ii) The initial provider's core provider agreement with the medicaid agency is terminated or expires;

(iii) The client moves to an area which is not part of the provider's service area (this applies to medicaid only clients);

(iv) The client moves into a permanent residential setting; or

(v) The pediatric client is transferred to an adult provider.

(f) The medicaid agency may authorize a restart of the thirty-six month rental period when extenuating circumstances exist that result in a loss or destruction of oxygen equipment that occurred while the client was exercising reasonable care under the circumstances (e.g., fire, flood, etc.) (see WAC 182-501-0050(7)). Providers must obtain prior authorization from the medicaid agency.

(3) Stationary oxygen systems/contents.

(a) The medicaid agency pays a maximum of one rental payment for stationary oxygen systems including contents, per client, every thirty days. The medicaid agency considers a stationary oxygen system as one of the following:

(i) Compressed gaseous oxygen;

(ii) Stationary liquid oxygen; or

(iii) A concentrator.

(b) Contents only: The medicaid agency pays a maximum of one payment for stationary oxygen contents, per client, every thirty days, when the client owns the stationary oxygen system or the capped monthly rental period is met.

(c) Maintenance: The medicaid agency pays for one maintenance fee of a stationary oxygen concentrator and oxygen transfilling equipment every six months only when the capped rental period is met or the client owns the stationary oxygen concentrator. The maintenance fee is fifty percent of the monthly rental rate.

(4) Portable oxygen systems/oxygen contents:

(a) The medicaid agency pays a maximum of one rental payment for portable oxygen systems including oxygen contents, per client, every thirty days. The medicaid agency considers a portable oxygen system to be either gas or liquid.

(b) Contents only: The medicaid agency pays a maximum of one payment for portable oxygen contents, per client, every thirty days, when the client owns the portable oxygen system or when the capped monthly rental period is met.

(c) Maintenance: The medicaid agency pays for one maintenance fee of a portable oxygen concentrator and oxygen transfilling equipment every six months only when the capped rental period is met or the client owns the portable oxygen concentrator. The maintenance fee is fifty percent of the monthly rental rate.

(5) The medicaid agency does not pay for oxygen therapy and related services, equipment or supplies for clients twenty-one years of age and older, with, but not limited to, the following conditions:

(a) Angina pectoris in the absence of hypoxemia;

(b) Dyspnea without cor pulmonale or evidence of hypoxemia; and

(c) Severe peripheral vascular disease resulting in clinically evident desaturation in one or more extremities but in the absence of systemic hypoxemia.

(6) The medicaid agency does not pay separately for humidifiers with rented oxygen equipment. All accessories, such as humidifiers necessary for the effective use of oxygen equipment are included in the monthly rental payment.

(7) The medicaid agency does not pay separately for spare tanks of oxygen and related supplies as backup or for travel.

(8) The medicaid agency requires a valid prescription for oxygen in accordance with WAC 182-552-200. In addition, for both initial and ongoing prescriptions for the use of oxygen, the medicaid agency requires the following:

(a) For clients who meet medicare's group I criteria (chronic oxygen clients):

(i) A prescription for the initial twelve months or the authorized prescriber's specified length of need, whichever is shorter, and a renewed prescription at least every twelve months thereafter; and

(ii) Documented verification, at least every twelve months, that oxygen saturations or lab values substantiate the need for continued oxygen use for each client. For ongoing coverage, the provider may perform the oxygen saturation measurements. The medicaid agency does not accept lifetime certificates of medical need (CMNs).

(b) For clients who meet medicare's group II criteria (borderline oxygen clients):

(i) A prescription for the initial three months or the authorized prescriber's specified length of need, whichever is shorter and a renewed prescription is required three months after the initial certification and annually thereafter.

(ii) Verification that oxygen saturations or lab values substantiate the need for continued oxygen use must be documented in the client's file. For ongoing coverage, the provider may perform the oxygen saturation measurements. The medicaid agency does not accept lifetime CMNs.

(9) The medicaid agency requires that documentation of oxygen saturation and lab values taken to substantiate the medical necessity of continued oxygen be kept in the client's record.

(10) Oxygen supplies - Replacement. The medicaid agency pays for replacement oxygen supplies after the thirty-six month capped rental period or if the client owns the equipment as follows:

(a) Nasal cannula, limited to two per client every thirty days;

(b) Tubing (oxygen), limited to one replacement per client every thirty days; and

(c) Variable concentration mask, limited to two per client every thirty days.

(11) See WAC 182-552-1200, Respiratory care—Noncovered services.

OXIMETERS

NEW SECTION

WAC 182-552-0900 Respiratory care—Covered—Oximeters. (1) The medicaid agency covers the purchase of oximeters for clients eighteen years of age and older with prior authorization as follows:

(a) One standard oximeter, per client, every twenty-four months; or

(b) One enhanced oximeter, per client, every thirty-six months.

(2) The medicaid agency covers the purchase of oximeters for clients seventeen years of age and younger, in the home, as follows:

(a) When the client meets one of the following clinical criteria:

(i) Has chronic lung disease and is on supplemental oxygen;

(ii) Has a compromised or artificial airway; or

(iii) Has chronic lung disease requiring ventilator or bi-level respiratory assist device; and

(b) The following limitations apply:

(i) One standard oximeter, per client, every twenty-four months, without prior authorization; or

(ii) One enhanced oximeter, per client, every thirty-six months, with expedited prior authorization.

(3) The medicaid agency pays for replacement supplies as follows:

(a) Cables for enhanced oximeter only, limited to two per client per year. Prior authorization (PA) is required.

(b) Probes.

(i) Nondisposable, limited to one per client every one hundred eighty days.

(ii) Disposable, limited to four per client every thirty days.

VENTILATORS

NEW SECTION

WAC 182-552-1000 Respiratory care—Covered—Respiratory and ventilator equipment and supplies. (1) The medicaid agency covers the rental of a ventilator, equip-

ment, and related disposable supplies when the ventilator is for the treatment of chronic respiratory failure (chronic carbon dioxide retention).

(2) The medicaid agency's monthly rental rate includes ventilator maintenance and accessories including, but not limited to, humidifiers, nebulizers, alarms, temperature probes, batteries, chargers, adapters, connectors, fittings, tubing, disposable circuits, and filters. The medicaid agency does not pay separately for ventilator accessories unless the client owns the ventilator system, see subsection (5) of this section.

(3) Ventilators, equipment, and related disposable supplies must:

(a) Be used exclusively by the client for whom it is requested;

(b) Be FDA-approved; and

(c) Not be included in any other reimbursement methodology such as, but not limited to, a diagnosis-related group (DRG).

(4) The medicaid agency pays for a back-up (secondary) ventilator at fifty percent of the monthly rental rate when one or more of the following clinical criteria are met:

(a) The client cannot maintain spontaneous ventilations for four or more consecutive hours;

(b) The client lives in an area where a replacement ventilator cannot be provided within two hours;

(c) The client requires mechanical ventilation during mobility as prescribed in their plan of care.

(5) The medicaid agency pays for the purchase of the following replacement ventilator accessories only for client-owned ventilator systems:

(a) Gel-cell battery charger - One every twenty-four months;

(b) Gel-cel heavy-duty battery - One every twenty-four months;

(c) Battery cables - Once every twenty-four months; and

(d) Breathing circuits - Four every thirty days.

(6) Pressure support ventilators.

(a) For clients eighteen years of age and older, the medicaid agency requires prior authorization;

(b) For clients seventeen years of age and younger, the medicaid agency requires expedited prior authorization (EPA).

(i) The following criteria must be met in order to use the EPA process:

(A) The client is currently using a pressure support ventilator;

(B) The client must be able to take spontaneous breaths;

(C) There must be an authorized prescriber's order for the pressure support setting; and

(D) The client must be utilizing the ventilator in the pressure support mode.

(ii) If the client has no clinical potential for weaning, the medicaid agency's EPA is valid for twelve months; or

(iii) If the client has the potential to be weaned, then the medicaid agency's EPA is valid for six months;

(iv) To continue using EPA after the valid time period has lapsed, a vendor must document in the client's file that the client continues to meet the EPA criteria for a pressure support ventilator.

SUCTION PUMPS

NEW SECTION

WAC 182-552-1100 Respiratory care—Covered—Suction pumps and supplies. (1) The medicaid agency covers suction pumps and supplies when medically necessary for airway clearance or tracheostomy suctioning.

(2) The medicaid agency pays for a maximum of two suction devices per client in a five-year period as follows:

(a) The medicaid agency rents one primary suction device (stationary or portable) per client, for use in the home and one secondary suction device, per client, for backup or portability.

(b) The medicaid agency considers the suction devices purchased after twelve months rental.

(3) The medicaid agency pays for supplies for suction devices as follows:

(a) Catheter - Closed system. Limit one per day per client.

(b) Catheter - Any type other than closed system:

(i) Clients eight years of age and older, one hundred fifty per client, every thirty days;

(ii) Clients seven years of age and younger, three hundred per client, every thirty days.

(c) Oropharyngeal suction catheter, limited to four per client every thirty days.

(d) Canister - Disposable:

(i) Limited to five per client every thirty days for primary suction device;

(ii) Limited to five per client every thirty days for secondary suction device.

(e) Canister - Nondisposable. Limited to one per client every twelve months.

(f) Tubing. Limited to fifteen per client every thirty days.

NONCOVERED SERVICES

NEW SECTION

WAC 182-552-1200 Respiratory care—Noncovered services. (1) The medicaid agency pays for respiratory care only when listed as covered in this chapter. In addition to the noncovered services found in WAC 182-501-0070, the medicaid agency does not cover:

(a) Emergency or stand-by oxygen systems;

(b) Portable nebulizers;

(c) Kits and concentrates for use in cleaning respiratory equipment;

(d) Intrapulmonary percussive ventilation systems and related accessories;

(e) Batteries for a CPAP;

(f) Items or services which primarily serve as a convenience for the client or caregiver;

(g) Oximetry checks;

(h) Loaner equipment.

(2) The medicaid agency evaluates a request for respiratory care listed as noncovered in this chapter under the provisions of WAC 182-501-0160.

AUTHORIZATION

NEW SECTION

WAC 182-552-1300 Respiratory care—Authorization. (1) The medicaid agency requires providers to obtain authorization for covered respiratory care as required in this chapter, chapters 182-501 and 182-502 WAC, and in published agency medicaid provider guides and/or provider notices or when the clinical criteria required in this chapter are not met.

(a) For prior authorization (PA), a provider must submit a written request to the medicaid agency as specified in the agency's published respiratory care medicaid provider guide.

(b) For expedited prior authorization (EPA), a provider must document that the client has met the clinically appropriate EPA criteria outlined in the medicaid provider guide. The appropriate EPA number must be used when the provider bills the medicaid agency.

(c) Upon request, a provider must provide documentation to the medicaid agency showing how the client's condition met the criteria for PA or EPA.

(2) Authorization requirements in this chapter are not a denial of service.

(3) When a service requires authorization, the provider must properly request authorization in accordance with the medicaid agency's rules, medicaid provider guides, and provider notices.

(4) When authorization is not properly requested, the medicaid agency rejects and returns the request to the provider for further action. The medicaid agency does not consider the rejection of the request to be a denial of service.

(5) The medicaid agency's authorization of service(s) does not necessarily guarantee payment.

(6) The medicaid agency evaluates requests for authorization of covered respiratory care equipment and supplies that exceed limitations in this chapter on a case-by-case basis in accordance with WAC 182-501-0169.

(7) The medicaid agency may recoup any payment made to a provider if the agency later determines that the service was not properly authorized or did not meet the EPA criteria. Refer to WAC 182-502-0100 (1)(c).

NEW SECTION

WAC 182-552-1325 Prior authorization. (1) The medicaid agency requires providers to obtain prior authorization for certain items and services before delivering that item or service to the client, except when the items and services are covered by a third-party payer. The item or service must also be delivered to the client before the provider bills the medicaid agency.

(2) All prior authorization requests must be accompanied by a completed General Information for Authorization form (HCA 13-835), in addition to any program specific medicaid agency forms as required within this chapter. Agency forms are available on-line at http://hrsa.dshs.wa.gov/mpforms.shtml.

(3) When the medicaid agency receives the initial request for prior authorization, the prescription(s) for those items or services must not be older than three months from the date the agency receives the request.

(4) The medicaid agency requires certain information from providers in order to prior authorize the purchase or rental of equipment. This information includes, but is not limited to, the following:

(a) The manufacturer's name;

(b) The equipment model; and

(c) A detailed description of the item.

(5) For prior authorization requests, the medicaid agency requires the prescribing provider to furnish client-specific justification for respiratory care. The medicaid agency does not accept general standards of care or industry standards for generalized equipment as justification.

(6) The medicaid agency considers requests for new respiratory care that do not have assigned health care common procedure coding system (HCPCS) codes and are not listed in the agency's published issuances, including medicaid provider guides and provider notices. These items require prior authorization. The provider must furnish all of the following information to the medicaid agency to establish medical necessity:

(a) A detailed description of the item(s) or service(s) to be provided;

(b) The cost or charge for the item(s);

(c) A copy of the manufacturer's invoice, price list or catalog with the product description for the item(s) being provided; and

(d) A detailed explanation of how the requested item(s) differs from an already existing code description.

(7) The medicaid agency does not pay for the purchase, rental, or repair of respiratory care equipment that duplicates equipment the client already owns or rents. If the provider believes the purchase, rental, or repair of respiratory care equipment is not duplicative, the provider must request prior authorization and submit the following to the medicaid agency:

(a) Why the existing equipment no longer meets the client's medical needs; or

(b) Why the existing equipment could not be repaired or modified to meet the client's medical needs; and

(c) Upon request, documentation showing how the client's condition met the criteria for PA or EPA.

(8) A provider may resubmit a request for prior authorization for an item or service that the medicaid agency has denied. The medicaid agency requires the provider to include new documentation that is relevant to the request.

NEW SECTION

WAC 182-552-1350 Limitation extension (LE). (1) The medicaid agency limits the amount, frequency, or duration of certain covered respiratory care, and reimburses up to the stated limit without requiring prior authorization.

(2) Certain covered items have limitations on quantity and frequency. 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.

(3) The medicaid agency requires a provider to request prior authorization for a limitation extension (LE) in order to exceed the stated limits for respiratory care. All requests for prior authorization must be accompanied by a completed General Information for Authorization form (HCA 13-835) in addition to any program specific medicaid agency forms as required within this chapter. Agency forms are available online at http://hrsa.dshs.wa.gov/mpforms.shtml.

(4) The medicaid agency evaluates such requests for LE under the provisions of WAC 182-501-0169.

NEW SECTION

WAC 182-552-1375 Expedited prior authorization (EPA). (1) The expedited prior authorization (EPA) process is designed to eliminate the need for written requests for prior authorization for selected respiratory care procedure codes.

(2) The medicaid agency requires a provider to create an authorization number for EPA for selected respiratory care procedure codes. The process and criteria used to create the authorization number is explained in the agency published respiratory care medicaid provider guide. The authorization number must be used when the provider bills the medicaid agency.

(3) Upon request, a provider must provide documentation to the medicaid agency showing how the client's condition met the criteria for EPA.

(4) A written request for prior authorization is required when a situation does not meet the EPA criteria for selected respiratory care procedure codes.

(5) The medicaid agency may recoup any payment made to a provider under this section if the provider did not follow the EPA process and criteria.

REIMBURSEMENT

NEW SECTION

WAC 182-552-1400 Respiratory care—Reimbursement—General. (1) The medicaid agency pays qualified providers who meet all of the conditions in WAC 182-502-0100, for covered respiratory care provided on a fee-for-service (FFS) basis as follows:

(a) To medicaid agency-enrolled durable medical equipment (DME) providers, pharmacies, and home health agencies under their national provider identifier (NPI) numbers, subject to the limitations of this chapter, and according to the procedures and codes in the agency's current respiratory care medicaid provider guide; and

(b) In accordance with the health care common procedure coding system (HCPCS) guidelines for product classification and code assignment.

(2) The medicaid agency updates the maximum allowable fees for respiratory care at least once per year, unless otherwise directed by the legislature or unless deemed necessary by the agency.

(3) The medicaid agency sets, evaluates, and updates the maximum allowable fees for respiratory care using available published information including, but not limited to:

(a) Commercial data bases;

(b) Manufacturer's catalogs;

(c) Medicare fee schedules; and

(d) Wholesale prices.

(4) The medicaid agency may adopt policies, procedure codes, and/or rates that are inconsistent with those set by medicare if the agency determines that such actions are necessary.

(5) The medicaid agency's maximum payment for respiratory care is the lesser of either of the following:

(a) Provider's usual and customary charges; or

(b) Established rates, except as provided in WAC 182-502-0110(3).

(6) The medicaid agency is the payer of last resort for clients with medicare or third-party insurance.

(7) The medicaid agency does not pay for respiratory care provided to a client who is enrolled in an agency-contracted managed care organization (MCO), but who did not use one of the MCO's participating providers.

(8) The medicaid agency's reimbursement rate for covered oxygen and respiratory equipment and supplies includes all of the following:

(a) Any adjustments or modifications to the equipment that are required within three months of the date of delivery or are covered under the manufacturer's warranty. This does not apply to adjustments required because of changes in the client's medical condition;

(b) Any pick-up and/or delivery fees or associated costs (e.g., mileage, travel time, gas, etc.);

(c) Telephone calls;

(d) Shipping, handling, and/or postage;

(e) Maintenance for rented equipment including, but not limited to, testing, cleaning, regulating, and assessing the client's equipment;

(f) Fitting and/or setup; and

(g) Instruction to the client or client's caregiver in the appropriate use of the respiratory care.

(9) Respiratory care equipment, supplies, and related repairs and labor charges that are supplied to eligible clients under the following reimbursement methodologies are included in those methodologies and are not reimbursed under fee-for-service (FFS):

(a) Hospice provider's per diem reimbursement;

(b) Hospital's diagnosis-related group (DRG) reimbursement;

(c) Managed care organization's capitation rate;

(d) Skilled nursing facilities per diem rate; and

(e) Professional service's resource-based relative value system reimbursement (RBRVS) rate.

(10) The provider must make warranty information, including date of purchase, applicable serial number, model number or other unique identifier of the respiratory care equipment, and warranty period, available to the medicaid agency upon request.

(11) The dispensing provider who furnishes respiratory care equipment or supplies to a client is responsible for any costs incurred to have a different provider repair the equipment when:

(a) Any equipment or supply that the medicaid agency considers purchased requires repair during the applicable warranty period;

(b) The provider refuses or is unable to fulfill the warranty; and

(c) The respiratory care equipment or supply continues to be medically necessary.

(12) If rental respiratory equipment or supplies must be replaced during the warranty period, the medicaid agency recoups fifty percent of the total amount previously paid toward rental and eventual purchase of the respiratory equipment or supply provided to the client if:

(a) The provider is unwilling or unable to fulfill the warranty; and

(b) The respiratory care equipment or supply continues to be medically necessary.

(13) The medicaid agency does not reimburse for respiratory care equipment and supplies, or related repairs and labor charges under FFS when the client is any of the following:

(a) An inpatient hospital client;

(b) Terminally ill and receiving hospice care; or

(c) Enrolled in a risk-based MCO that includes coverage for such items and/or services.

(14) The medicaid agency rescinds any purchase order for a prescribed item if the equipment or supply was not supplied to the client before the client:

(a) Dies;

(b) Loses medical eligibility;

(c) Becomes covered by a hospice agency; or

(d) Becomes covered by an MCO.

(15) See WAC 182-543-9100, 182-543-9200, 182-543-9300, and 182-543-9400 for other reimbursement methodologies.

NEW SECTION

WAC 182-552-1500 Respiratory care equipment and supplies—Reimbursement—Decision to rent or purchase. (1) The medicaid agency bases the decision to rent or purchase respiratory care equipment and supplies for a client, or pay for repairs and associated labor for client-owned equipment, on cost and on the length of time the client needs the equipment.

(2) A provider must not bill the medicaid agency for the rental or purchase of equipment supplied to the provider at no cost by suppliers/manufacturers.

(3) The medicaid agency purchases new equipment only.

(a) A new item that is placed with a client initially as a rental item is considered a new item by the medicaid agency at the time of purchase.

(b) A used item that is placed with a client initially as a rental item must be replaced by the supplier with a new item prior to purchase by the medicaid agency.

(4) The medicaid agency requires a dispensing provider to ensure the item rented to a client is:

(a) In good working order; and

(b) Comparable to equipment the provider rents to individuals with similar medical equipment needs who are either private pay or who have other third-party coverage.

(5) The medicaid agency's minimum rental period for covered respiratory care equipment and supplies is one day.

(6) The medicaid agency's reimbursement amount for rented respiratory care equipment and supplies includes all of the following:

(a) A full service warranty;

(b) Cost of delivery to, or pick up from, the client's residence and, when appropriate, to and from the room in which the equipment will be used;

(c) Fitting, setup, adjustments, and modifications;

(d) Maintenance, repair and/or replacement, and cleaning of the equipment;

(e) Instructions to the client and/or client's caregiver for safe and proper use of the equipment; and

(f) All medically necessary accessories, contents, and disposable supplies, unless separately billable according to the agency's current respiratory care medicaid provider guide.

(7) The medicaid agency considers some rented equipment to be purchased after twelve months' rental unless the equipment is restricted as rental only; this equipment is identified in the respiratory care medicaid provider guide.

(8) Respiratory care equipment and supplies purchased by the medicaid agency for a client are the client's property, unless identified as capped rental items by the agency. Capped rental items are considered the property of the provider and are identified in the respiratory care medicaid provider guide.

(9) The medicaid agency stops paying for any rented equipment effective the date of a client's death. The medicaid agency prorates monthly rentals as appropriate.

(10) For a client who is eligible for both medicare and medicaid, the medicaid agency pays only the client's coinsurance and deductibles. The medicaid agency 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.

(11) The medicaid agency does not obtain or pay for insurance coverage against liability, loss and/or damage to rental equipment that a provider supplies to a client.

(12) The medicaid agency does not pay for:

(a) Defective equipment;

(b) The cost of materials covered under the manufacturer's warranty or administrative fees charged by the manufacturer to perform warranty or repair work; or

(c) Repair or replacement of equipment as a result of the client's carelessness, negligence, recklessness, or misuse in accordance with WAC 182-501-0050(7). The medicaid agency may request documentation (e.g., police report, etc.) at its discretion.

(13) Capped rental oxygen equipment and client-owned equipment:

(a) Capped rental oxygen equipment is considered to have a reasonable useful lifetime of five years. The medicaid agency will pay for new equipment on capped rental items for eligible clients after five years of continuous use, at which point the capped rental period of thirty-six months will start again.

(b) Equipment is considered to be client-owned if it is not identified as a capped rental item in the agency's respira-

tory care medicaid provider guide and if the medicaid agency has reached the maximum reimbursement for the item.

(c) The agency pays for the repair of client-owned respiratory equipment with prior authorization. The age of the equipment is considered, and all of the following criteria must be met:

(i) All warranties are expired;

(ii) The cost of the repair is less than fifty percent of the cost of a new item and the provider has supporting documentation; and

(iii) The repair has a warranty for a minimum of ninety days.

NEW SECTION

WAC 182-552-1600 Respiratory care equipment and supplies—Reimbursement—Methodology for purchase, rental, and repair. (1) The medicaid agency sets, evaluates, and updates the maximum allowable fees for purchased respiratory care equipment and supplies at least once yearly using one or more of the following:

(a) The current medicare rate, as established by the federal Centers for Medicare and Medicaid Services (CMS), for a new purchase if a medicare rate is available;

(b) A pricing cluster; or

(c) On a by-report basis.

(2) Establishing reimbursement rates for purchased respiratory care equipment and supplies based on pricing clusters.

(a) A pricing cluster is based on a specific health care common procedure coding system (HCPCS) code.

(b) The medicaid agency's pricing cluster is made up of all the brands/models for which the agency obtains pricing information. However, the medicaid agency may limit the number of brands/models included in the pricing cluster. The medicaid agency considers all of the following when establishing the pricing cluster:

(i) A client's medical needs;

(ii) Product quality;

(iii) Introduction, substitution, or discontinuation of certain brands/models;

(iv) Cost; and/or

(v) Available alternatives.

(c) When establishing the fee for purchased respiratory care equipment and supplies in a pricing cluster, the maximum allowable fee is the median amount of available manufacturer's list or suggested retail prices for all brands/models as noted in (b) of this subsection.

(3) The medicaid agency evaluates items, procedures, and services billed using miscellaneous procedure codes, when an established code is not available, on a case-by-case basis for medical necessity, appropriateness, and reimbursement value. The medicaid agency calculates the purchase reimbursement rate for these items at eighty percent of the manufacturer's list or suggested retail price as of October thirty-first of the base year or the cost from the manufacturer's invoice.

(4) The medicaid agency's maximum allowable fees for monthly rental are updated at least once yearly and are established using one of the following:

(a) For items with a monthly rental rate on the current medicare fee schedule, as established by CMS, the medicaid agency equates its maximum allowable fee for monthly rental to the current medicare monthly rental rate;

(b) For items that have a new purchase rate but no monthly rental rate on the current medicare fee schedule, as established by CMS, the medicaid agency sets the maximum allowable fee for monthly rental at one-tenth of the new purchase price of the current medicare rate; or

(c) For items not included in the current medicare fee schedule, as established by CMS, the medicaid agency considers the maximum allowable monthly reimbursement rate as by-report. The medicaid agency calculates the monthly reimbursement rate for these items at one-tenth of eighty percent of the manufacturer's list or suggested retail price as of October thirty-first of the base year or one-tenth the cost from the manufacturer's invoice.

(5) The medicaid agency's maximum allowable fees for daily rental are updated at least once yearly and are established using one of the following:

(a) For items with a daily rental rate on the current medicare fee schedule, as established by CMS, the medicaid agency equates its maximum allowable fee for daily rental to the current medicare daily rental rate;

(b) For items that have a new purchase rate but no daily rental rate on the current medicare fee schedule, as established by CMS, the medicaid agency sets the maximum allowable fee for daily rental at one three-hundredth of the new purchase price of the current medicare rate; or

(c) For items not included in the current medicare fee schedule, as established by CMS, the medicaid agency considers the maximum allowable daily reimbursement rate as by-report. The medicaid agency calculates the daily reimbursement rate for these items at one three-hundredth of eighty percent of the manufacturer's list or suggested retail price as of October thirty-first of the base year or one three-hundredth of the cost from the manufacturer's invoice.

(6) The medicaid agency, with prior authorization, will pay for repairs of client-owned equipment only. In addition to agency-specific forms identified in the respiratory care medicaid provider guide, all of the following requirements must be met in order to receive authorization and reimbursement for a repair of client-owned equipment:

(a) The provider must submit a manufacturer pricing sheet showing manufacturer's list or suggested retail price (MSRP) or manufacturer invoice showing the cost of the repair identifying and itemizing the parts. The invoice must indicate the wholesale acquisition cost, the manufacturer's list or suggested retail price (MSRP) for all parts used in the repair for which reimbursement is being sought. Reimbursement for parts used in a repair will be:

(i) Eighty percent of the manufacturer's list or suggested retail price as of October thirty-first of the base year; or

(ii) The cost from the manufacturer's invoice.

(b) Reimbursement for actual labor charges will be made according to the medicaid agency's current fee schedule. The provider must follow HCPCS coding guidelines and submit an authorization request accordingly with actual labor units identified and supported by documentation. Base labor

charges or other administrative-like fees will not be reimbursed.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-552-001	Scope.
WAC 182-552-005	Definitions.
WAC 182-552-100	Client eligibility.
WAC 182-552-200	Providers—General responsibilities.
WAC 182-552-210	Required records.
WAC 182-552-220	Requirements for oxygen providers.
WAC 182-552-230	Requirements for infant apnea monitors.
WAC 182-552-240	Requirements for respiratory care practitioners.
WAC 182-552-300	Coverage.
WAC 182-552-310	Coverage—Oxygen and oxygen equipment.
WAC 182-552-320	Coverage—Continuous positive airway pressure (CPAP) and supplies.
WAC 182-552-330	Coverage—Ventilator therapy, equipment, and supplies.
WAC 182-552-340	Coverage—Infant apnea monitor program.
WAC 182-552-350	Coverage—Respiratory and ventilator therapy.
WAC 182-552-360	Coverage—Suction pumps and supplies.
WAC 182-552-370	Coverage—Inhalation drugs and solutions.
WAC 182-552-380	Coverage—Oximeters.
WAC 182-552-390	Coverage—Nursing facilities.
WAC 182-552-400	Reimbursement for covered services.
WAC 182-552-410	Reimbursement methods.
WAC 182-552-420	Reimbursement methodology.

WSR 12-09-085
PROPOSED RULES
HIGHLINE COMMUNITY COLLEGE

[Filed April 18, 2012, 8:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-05-096.

Title of Rule and Other Identifying Information: Title 132I WAC, Community colleges—Highline community college.

Hearing Location(s): Highline Community College, 2400 South 240th Street, Building 2, Des Moines, WA 98198, on June 7, 2012, at 3:00 p.m.

Date of Intended Adoption: July 12, 2012.

Submit Written Comments to: Lois Eriksson, P.O. Box 98000, Des Moines, WA 98198-9800, e-mail http://wac revision.highline.edu, fax (206) 890-3754, by June 7, 2012.

Assistance for Persons with Disabilities: Contact Access Services by May 24, 2012, TTY (206) 870-4853 or (206) 592-3857 (voice) or (253) 237-1106 (video phone) or Access @highline.edu.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: 1. Chapter 132I-116 WAC, Parking and traffic regulations, clarifying existing rules, terminology, and appeals process.

2. Chapter 132I-120 WAC, Student rights and responsibilities, clarifying existing rules, terminology and appeals process except as noted for WAC 132I-124-020 and chapter 132I-310 WAC.

3. Chapter 132I-122 WAC, Withholding services for outstanding debts, clarifying existing rules, terminology, and appeals process.

4. WAC 132I-124-020 Weapons prohibited, moving the regulations on weapons from WAC 132I-120-100 (4)(e) into a new section, specifically including firearms, and making them applicable to everyone, not just to students.

5. WAC 132I-130-020 Tuition and fee schedule, updating locations for tuition and fee schedules.

6. Chapter 132I-134 WAC, Designation of rules coordinator, designating the vice-president for administration as rules coordinator.

7. Chapter 132I-140 WAC, Use of facilities, establishing rules for first amendment activities by noncollege groups, clarifies existing rules, terminology, and appeals processes.

8. Chapter 132I-160 WAC, Admissions and registration procedures, updating and clarifying existing rules.

9. Chapter 132I-276 WAC, Access to public records, updating to comply with current laws and regulations and clarifying existing rules.

10. Chapter 132I-300 WAC, Nondiscrimination and harassment complaint procedures, updating protected classes, simplifying and clarifying existing procedures.

11. Chapter 132I-310 WAC, Nonacademic complaint procedure, moving the student nonacademic complaint procedure from WAC 132I-120-350 to a new chapter to make the nonacademic complaint procedure available to everyone.

Statutory Authority for Adoption: RCW 28B.50.140.

Rule is necessary because of federal law, Civil Rights Act of 1964; Title IX Education Amendments of 1972.

Name of Proponent: Highline Community College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Larry T. Yok, 23835 Pacific Highway South, Kent, WA 98032, (206) 592-3545.

No small business economic impact statement has been prepared under chapter 19.85 RCW. None of these revisions to Title 132I WAC impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These revisions are administrative and reflect current business practices. They do not require any changes in operations.

April 18, 2012
Larry T. Yok
Vice-President
for Administration

AMENDATORY SECTION (Amending WSR 04-23-044, filed 11/12/04, effective 12/13/04)

WAC 132I-116-020 Definitions. As used in this document, the following words shall mean:

(1) **Campus:** Any property or facility over which Highline Community College exercises control as the owner, lessee, or tenant.

(2) **College:** Highline Community College, or any additional community college hereafter established with Community College District 9, state of Washington, and collectively, those responsible for its control and operations.

((~~(2)~~)) (3) **College community:** Trustees, students, employees, and guests on college owned or controlled facilities.

((~~(3)~~)) (4) **College facilities:** Includes any or all property controlled or operated by the college.

((~~(4)~~)) (5) **Student:** Includes all persons attending or enrolled at the college, both full time and part time.

((~~(5)~~)) (6) **Campus ((~~police chief~~)) safety and security supervisor:** An employee of Highline Community College District 9, state of Washington, who is responsible to the vice-president for administration for campus security, safety, parking, and traffic control.

((~~(6)~~)) (7) **Registered vehicle:** A vehicle registered with the campus safety and security office.

(8) **Motor vehicle:** An automobile, truck, motor-driven cycle, scooter, or any vehicle powered by an engine or motor.

((~~Also included will be~~)) (9) **Nonmotorized vehicle:** Bicycles, skateboards, and other ((~~nonengine~~)) vehicles not equipped with engines or motors.

((~~(7)~~)) (10) **Visitor:** Any person(s), other than currently enrolled students or college employees, who ((~~comes~~)) is on ((~~to~~)) the campus as a guest(s) or to visit the campus for meetings and/or other purposes.

((~~(8)~~)) (11) **School year:** Unless otherwise designated, the time period commencing with the summer quarter of the community college calendar year and extending through the subsequent fall, winter, and spring quarters.

AMENDATORY SECTION (Amending Order 020, filed 6/26/84)

WAC 132I-116-030 Applicable parking and traffic rules and regulations—Areas affected. The following rules and regulations apply ((~~upon lands devoted to educational and recreational activities of~~)) to all persons operating vehicles on Highline Community ((~~College~~)) College's campus.

(1) The motor vehicle and other traffic laws of the state of Washington. ((~~These shall be applicable upon all lands located within the state of Washington.~~))

(2) The municipal traffic code of the city of Des Moines, state of Washington((~~. This code applies upon all lands~~)), to the extent that the college owns or controls property located within the city of Des Moines.

(3) The municipal traffic code of the city of Kent to the extent the college owns or controls property within the city of Kent.

(4) Any other municipal traffic codes applicable to college owned or controlled property that is located outside of the boundaries of the cities identified in subsections (2) and (3) of this section.

(5) The Highline Community College parking and traffic regulations((~~. These~~)), as set forth in this chapter, shall be applicable to all ((~~lands which are or may hereafter be devoted to the educational, recreational, or parking activities of~~)) properties owned or controlled by Highline Community College. In case of conflict with the state, county or municipal motor vehicle laws, those laws shall govern and take precedence over the ((~~college rules~~)) college's parking and traffic regulations.

AMENDATORY SECTION (Amending WSR 04-23-044, filed 11/12/04, effective 12/13/04)

WAC 132I-116-040 Parking and traffic responsibility. The vice-president for administration is responsible for parking and traffic management on campus. In general, the responsibility is delegated to the safety and security ((~~chief who is to coordinate with the vice-president of students~~)) supervisor. ((~~Likewise,~~)) All duly appointed ((~~safety and security officers and other~~)) safety and security employees of Highline Community College shall ((~~be delegated~~)) have the authority to enforce all college parking and traffic regulations under the supervision of the safety and security supervisor.

AMENDATORY SECTION (Amending WSR 04-23-044, filed 11/12/04, effective 12/13/04)

WAC 132I-116-050 Permits required for vehicles on campus. No person shall park or leave any motor vehicle, whether attended or unattended, upon the campus of Highline Community College without a permit issued by the safety and security office unless the vehicle is parked in a parking space designated for visitors. All persons parking on the campus will be given a reasonable time to secure a temporary or permanent permit from the safety and security office.

(1) A valid permit is:

(a) A current Highline Community College vehicle permit displayed in accordance with instructions.

(b) A temporary or guest permit authorized by the safety and security office and displayed in accordance with instructions.

(2) Parking permits are not transferable, except as provided in WAC 132I-116-100.

(3) The college reserves the right to refuse the issuance of a parking permit to any applicant.

(4) Visitors may park in designated "visitor" parking spaces without securing a permit. Visitor parking spaces are not available for use by currently enrolled students or college employees, provided that no motor vehicle shall occupy a "visitor" parking space in excess of the posted time limit.

AMENDATORY SECTION (Amending WSR 04-23-044, filed 11/12/04, effective 12/13/04)

WAC 132I-116-070 Authorization for issuance of permits. The safety and security office is authorized to issue parking permits to students, faculty, ((~~and~~)) staff members, visitors and guests of the college pursuant to the following regulations:

(1) Students may be issued a parking permit upon the registration of ((~~his~~)) their motor vehicles with the safety and security office at the beginning of each academic ((~~period~~)) quarter.

(2) Full-time and part-time faculty and staff members may be issued a parking permit upon the registration of their motor vehicles at the time they begin their employment at the college.

(3) Full-time faculty and staff personnel may be issued a second ((~~car~~)) motor vehicle permit for another personally owned motor vehicle. A condition of issuance is that at no time will more than one vehicle be parked on campus.

(4) Car pool permits ((~~are~~)) may be issued to faculty, staff, and students. A car pool is defined as being from two to five persons. One transferable permit will be issued by the safety and security office for each car pool. This permit is transferable only among the registered members of the car pool. This permit will be displayed in accordance with the instructions provided with the permit. A condition of issuance is that at no time will more than one vehicle owned by members of the pool be parked on campus.

(5) The safety and security office may issue temporary and special parking permits when such permits are necessary to enhance the business or operation of the college.

(6) ((~~Any~~)) Permit-holders may obtain temporary parking permits at the safety and security office without charge for an unregistered vehicle when necessary due to the nonavailability of ((~~his~~)) their registered vehicles.

AMENDATORY SECTION (Amending WSR 04-23-044, filed 11/12/04, effective 12/13/04)

WAC 132I-116-090 Display of permit. Permits for automobiles, trucks, and other four-wheeled motorized vehicles must be ((~~hung in the front window from the rearview mirror~~)) easily visible through the vehicle's front windshield. Permits for motorcycles, motor scooters, and motorized bicycles must be placed in a location on the vehicle that is easily visible. Permits not displayed in accordance with the provisions of this section shall not be valid and ((~~vehicles displaying~~)) with the ((~~improper~~)) improperly placed permits shall be subject to citation. ((~~Permits shall be displayed on the front fender of a motorcycle, scooter, or bicycle.~~))

AMENDATORY SECTION (Amending WSR 04-23-044, filed 11/12/04, effective 12/13/04)

WAC 132I-116-100 Transfer of permits. Parking permits are transferable between vehicles registered to the permit holder. Permits may be reissued as authorized by the safety and security ((~~chief~~)) supervisor.

AMENDATORY SECTION (Amending Order 020, filed 6/26/84)

WAC 132I-116-110 Permit revocation. Parking permits are licenses and remain the property of the college and may be recalled for any of the following reasons:

(1) When the purpose for which the permit was issued changes or no longer exists; or

(2) When a permit is used for an unregistered vehicle or by an unauthorized individual; or

(3) Falsification of a parking permit application; or

(4) Continued violation of parking rules and regulations; or

(5) Counterfeiting or altering of a parking permit; or

(6) Failure to comply with a final decision of the ((~~citation review committee or~~)) institutional hearing officer.

AMENDATORY SECTION (Amending WSR 04-23-044, filed 11/12/04, effective 12/13/04)

WAC 132I-116-130 Permit holder's responsibility ((~~of person to whom permit issued~~)). The person to whom a permit is issued is the permit holder and is responsible for all violations of the parking and traffic rules and regulations involving the vehicle for which the permit was issued. Provided, however, that such responsibility shall not relieve any other persons who ((~~violate these~~)) operate the permitted vehicle from complying with these parking and traffic rules and regulations. In the event that a vehicle in violation is not ((~~registered~~)) the subject of a permit with the college, the vehicle's current registered owner will be responsible for the violation(s) of the campus regulations.

AMENDATORY SECTION (Amending Order 020, filed 6/26/84)

WAC 132I-116-140 Designation of parking spaces. The parking spaces available on campus shall be designated and allocated in such a manner as will best achieve the objective of the rules and regulations contained in this document.

(1) Faculty and staff spaces shall be designated.

(2) Student spaces shall be designated for their use((~~, provided physically handicapped students may be granted special permits to park in proximity to the classrooms used by such students~~)).

(3) Parking spaces shall be designated for use of visitors and guests on campus.

(4) Parking spaces shall be designated for motorcycles, motorized bicycles, and scooters.

(5) Parking spaces may be designated for other purposes as deemed necessary.

(6) Parking spaces shall be designated for disabled individuals who display a disabled parking placard or license plate issued by the Washington department of licensing as authorized by chapter 46.19 RCW or a similar agency of another state.

AMENDATORY SECTION (Amending WSR 04-23-044, filed 11/12/04, effective 12/13/04)

WAC 132I-116-150 Parking within designated spaces. (1) ((~~Any person parking a~~)) Vehicles on the Highline Community College ((~~property~~)) campus shall ((~~park his vehicle~~)) be parked in designated parking areas only. These areas are marked by a curb, white lines, or signs. Parking on or over a line constitutes a violation.

(2) No motor vehicle may be parked ((~~any place where official signs prohibit parking~~)) in posted "no parking" and "fire lane" zones, ((~~or~~)) within ten feet of a fire hydrant; on any area ((~~which~~)) that has been landscaped or designed for landscaping; or on any ((~~cement~~)) paved walkway or unpaved pathway designated for pedestrian use((~~, except for the purposes of maintenance by an appropriate Highline Community College employee or by an agent from an outside firm employed by Highline Community College~~)). This prohibition shall not apply to vehicles operated by the college maintenance or safety and security employees, by persons who have received express authorization from the safety and security office, or ((~~in the case of~~)) emergency response vehicles.

(3) No motorcycles, motorized bicycles, scooters, or bicycles shall be parked inside a building, ((~~near~~)) against a building or handrails, or ((~~on a path or~~)) sidewalk or other pedestrian pathway. Bicycles must be secured to racks as provided.

(4) Motor vehicles ((~~which~~)) that have been parked in excess of ((~~72~~)) seventy-two hours and ((~~which~~)) that appear to be ((~~inoperative~~)) inoperable or abandoned may be impounded and stored at the expense of ((~~either or both~~)) the owner and/or operator thereof, pursuant to WAC 132I-116-222.

(5) ((~~Personnel who require parking~~)) Persons seeking to park on campus longer than ((~~normal parking~~)) seventy-two hours ((~~may~~)) must apply ((~~through~~)) and receive authorization from the safety and security office ((~~for permission~~)).

(6) All vehicles shall follow traffic arrows and other markings established for the purposes of directing traffic on campus.

(7) No vehicle shall be parked so as to occupy any portion of more than one parking space or stall as designated within the parking area. The fact that other vehicles may have been so parked as to require the vehicle parked to occupy a portion or more than one space or stall shall not constitute an excuse for ((~~a~~)) violation of this section.

(8) No vehicle shall be parked on the campus except in those areas set aside and designated pursuant to WAC 132I-116-140.

AMENDATORY SECTION (Amending Order 020, filed 6/26/84)

WAC 132I-116-170 Night parking. Students, faculty, and staff with a valid parking permit may park in any ((~~area A or B~~)) spaces on a first-come first-serve basis between the hours of 4:00 p.m. and 10:45 p.m., provided that disabled parking spaces remain restricted to motor vehicles displaying valid disabled parking permits, parking placards or license plates from an authorized governmental agency.

AMENDATORY SECTION (Amending WSR 04-23-044, filed 11/12/04, effective 12/13/04)

WAC 132I-116-190 Regulatory signs and directions. The safety and security ((~~chief~~)) supervisor is authorized to erect signs, barricades, and other structures and to paint marks or other directions upon the entry ways and streets on campus and upon the various parking lots owned or operated by the college. Such signs, barricades, structures, markings, and directions shall be ((~~so~~)) made and placed as to best effectuate the objectives of these rules and regulations, in the opinion of the vice-president for administration or his or her designee. Drivers of vehicles shall observe and obey the signs, barricades, structures, markings, and directions erected pursuant to this section. Drivers shall also comply with the directions ((~~given them by the safety and security officer or other~~)) from safety and security personnel including commissioned law enforcement officers in the control and regulation of traffic.

AMENDATORY SECTION (Amending Order 003, filed 9/27/73)

WAC 132I-116-200 ((~~Speed limit.~~)) Vehicle operation. (1) No vehicle shall be operated on the campus at a speed in excess of ten miles per hour or as posted. No vehicle of any type shall at any time use the campus parking lots for testing, racing, or other unauthorized activities.

(2) No vehicle shall be operated in such a negligent or reckless manner as to place person(s) or property in danger of injury or grievous harm.

(3) Upon a roadway designated for one-way traffic, a vehicle shall be driven only in the direction designated at all or such times as shall be indicated by official traffic control devices.

(4) No motorized vehicle shall be operated on pedestrian walkways or pathways with the exception of official college vehicles, emergency response vehicles, and vehicles granted permission to do so by the safety and security office.

AMENDATORY SECTION (Amending WSR 04-23-044, filed 11/12/04, effective 12/13/04)

WAC 132I-116-210 Pedestrian's right of way. (1) The operator of a vehicle shall ((~~yield right-of-way, slowing~~)), slow down or ((~~stopping~~)) stop, if need be, to yield the right of way to any pedestrian, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle ((~~which~~)) that is so close that it is impossible or unsafe for the driver to yield.

(2) Whenever any vehicle slows or stops so as to yield to pedestrian traffic, the operator of any other vehicle approaching from the rear shall not overtake and pass such a vehicle which has slowed or stopped to yield to pedestrian traffic.

(((~~(3) Where a sidewalk is provided, pedestrian shall proceed upon such a sidewalk.~~)))

AMENDATORY SECTION (Amending WSR 04-23-044, filed 11/12/04, effective 12/13/04)

WAC 132I-116-222 Impounding of vehicles. Any vehicle parked ((~~upon lands devoted to the educational, recreational, or parking activities of Highline Community College~~)) on campus in violation of these regulations, including the motor vehicle and other traffic laws of the state of Washington and the traffic code of the ((~~city~~)) cities of Des Moines and Kent as incorporated in WAC 132I-116-030, may be impounded and ((~~taken to such place for storage as the safety and security chief selects~~)) towed to an impound lot by a duly authorized towing company under contract to provide towing services to the college. The expense of such impounding and storage shall be charged to the owner or operator of the vehicle and paid by him prior to its release. The college and its employees shall not be liable for loss or damage of any kind resulting from such immobilization, impounding, and/or storage.

((~~Impounding of vehicles shall~~)) Circumstances in which vehicles may be impounded include, but are not ((~~be~~)) limited to the following:

(1) Blocking a roadway ((~~which blocks the flow of~~)) in a manner that impedes vehicular or pedestrian traffic;

(2) Blocking a walkway ((~~which~~)) in a manner that impedes ((~~the flow of~~)) pedestrian traffic;

(3) Blocking a ((~~fire hydrant or fire lane~~)) fire lane or impeding access to a fire hydrant including parking within ten feet of a fire hydrant;

(4) Creating a safety hazard in the opinion of the safety and security ((~~chief~~)) supervisor or his or her designee;

(5) Blocking ((~~another~~)) a legally parked car;

(6) Parking in a marked "tow-away" or "no parking" zone;

(7) Having an accumulation of four or more outstanding college parking/traffic violations;

(8) Illegally parking in a handicapped parking space;

(9) Parking anywhere other than a designated parking area; or

(10) Parking on campus for more than seventy-two hours without prior authorization from the safety and security office.

AMENDATORY SECTION (Amending WSR 04-23-044, filed 11/12/04, effective 12/13/04)

WAC 132I-116-230 Report of accident. The operator of any vehicle involved in an accident on campus resulting in injury to or death of any person or damage to either vehicles of $500.00 or more, shall within twenty-four hours report such accident to the safety and security ((~~chief~~)) office. This does not relieve any person so involved in an accident from ((~~his~~)) their responsibility to file a state of Washington motor vehicle accident report within twenty-four hours after such accident.

AMENDATORY SECTION (Amending WSR 04-23-044, filed 11/12/04, effective 12/13/04)

WAC 132I-116-240 Specific traffic and parking regulations and restrictions authorized. Upon special occasions or during emergencies, the safety and security ((~~chief~~)) supervisor is authorized to impose additional traffic and parking regulations and restrictions consistent with the objectives specified in WAC 132I-116-010.

AMENDATORY SECTION (Amending Order 020, filed 6/26/84)

WAC 132I-116-250 Enforcement. Parking and traffic rules and regulations will be enforced throughout the calendar year((~~. Parking and traffic rules and regulations are enforced~~)) on a twenty-four hour daily basis.

AMENDATORY SECTION (Amending WSR 04-23-044, filed 11/12/04, effective 12/13/04)

WAC 132I-116-260 Issuance of traffic citations. Upon the violation(s) of any of the parking and traffic rules and regulations contained in ((~~this document~~)) chapter 132I-116 WAC, the safety and security ((~~chief or subordinates~~)) personnel are authorized to issue ((~~traffic~~)) citations, setting forth the date, the approximate time, permit number, license number, name of permit holder, infraction, ((~~officer~~)) safety and security employee, and schedule of fines. ((~~Such traffic~~)) Parking citations may be served by attaching or affixing a copy thereof in some prominent place outside such vehicle or by personally serving the operator. ((~~Violation(s) of the college parking and traffic rules and regulations refers to:~~

~~(1) No parking permit displayed. Highline Community College parking permit is necessary when parking in any area on campus. The permit must be prominently displayed.~~

~~(2) Failure to stop at stop sign/signals. The failure to bring a vehicle to a complete stop at properly erected and identified stop signs/signals.~~

~~(3) Failure to yield right of way. The fact of depriving another vehicle or pedestrian of the right of way at an intersection or crosswalk.~~

~~(4) Improper parking. Parking a vehicle in areas that are intended for purposes more than parking, i.e., fire lanes, driveways, sidewalks, lawns, or taking more than one parking stall.~~

~~(5) Parking in the wrong area. Parking in faculty/staff areas, disabled persons area, or visitor area and/or any other area differing from the locations indicated on the issued permit.~~

~~(6) Negligent/reckless driving. The operation of a vehicle in such a manner as to place person(s) or property in danger of injury or grievous harm.~~

~~(7) Speeding. The operation of a vehicle in such a manner as to exceed the posted speed limits.~~

~~(8) Wrong way on one-way roadways. Upon a roadway so designated for one-way traffic, a vehicle shall be driven~~

~~only in the direction designated at all or such times as shall be indicated by official traffic control devices.~~

~~(9) Permits not displayed pursuant to the provisions of this chapter shall not be valid.~~

~~(10) Other violations. Clearly indicated and an actual violation of the law or traffic ordinances. The violation must be recorded in the space provided on HCC parking/traffic citation.~~))

AMENDATORY SECTION (Amending WSR 04-23-044, filed 11/12/04, effective 12/13/04)

WAC 132I-116-270 Fines and penalties. (1) Fines may be levied for ((~~all~~)) any violations of the rules and regulations contained in chapter 132I-116 WAC ((~~132I-116-260~~)).

In addition to a fine imposed under these regulations, illegally parked vehicle(s) may be ((~~taken to a place for storage as the safety and security chief selects. The expenses of such impoundings and storage shall be the responsibility of the registered owner or driver of the vehicle. The college shall not be liable for loss or damage of any kind resulting from such impounding and storage~~)) subject to impound pursuant to WAC 132I-116-222.

(2) A schedule of parking and traffic fines and penalties ((~~schedule~~)) shall be adopted by the board of trustees.

(3) An accumulation of ((~~traffic violations~~)) unpaid citations that are more than twenty calendar days overdue from the date of the citation(s) by a student ((~~shall~~)) may be cause for disciplinary action, and the ((~~vice-president of students~~)) chief student affairs officer (CSAO) may initiate disciplinary proceedings against such students. No disciplinary action shall be taken until the student has completed the appeal process or waived his or her appeal rights.

(4) An accumulation of ((~~traffic violations~~)) unpaid citations that are more than twenty calendar days overdue from the date of the citation(s) by faculty or staff members shall be turned over to the ((~~controller~~)) financial services office for the collection of fines ((~~not received by the vice-president for administration, or his designee~~)). The collection process shall not commence until the faculty or staff member has completed the appeal process or waived his or her appeal rights.

(5) Parking and traffic ((~~violations~~)) citations will be processed by the ((~~college~~)) campus safety and security office. Parking and traffic fines are to be paid to the ((~~safety and security~~)) cashier's office.

(6) Parking and traffic fines shall be charged for offenses ((~~as indicated in a separate document~~)) according to the schedule established by the board of trustees.

(7) In the event a student fails or refuses to pay a fine, the following may result:

(a) Student may have a hold placed on his or her record and may not be eligible to register;

(b) Student may not be able to obtain a transcript or his or her grades or credits;

(c) Student may not receive a degree ((~~until all fines are paid~~));

(d) Student may be denied future parking privileges;

(e) Student's vehicle may be impounded((~~.~~));

(f) Student's debt may be turned over to a collection agency in accordance with the college's collection policy.

(8) Parking and traffic fines are due twenty calendar days from the date of citation. Provided that if ((~~an~~)) timely appeal is ((~~taken~~)) filed, such fine shall be due twenty calendar days from the date of service upon the violator of the ((~~result of~~)) order terminating the appeal.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-116-280 Parking fees. Parking fees shall be specified and adopted by the board of trustees((~~, specifying the charge per year and quarter~~)).

AMENDATORY SECTION (Amending WSR 04-23-044, filed 11/12/04, effective 12/13/04)

WAC 132I-116-300 Appeal of fines and penalties. Any ((~~fines and penalties levied against a violator~~)) citation for violation of ((~~the~~)) these rules and regulations ((~~set forth herein~~)), may be appealed. The appeal must be ((~~made~~)) submitted in writing, within twenty calendar days from the date of the citation, to the safety and security ((~~chief~~)) supervisor or designee, who will:

(1) Review the appeal and confer with the appellant to determine whether a satisfactory solution, to all parties, can be reached without further administrative action. If a solution satisfactory to all parties cannot be reached, the safety and security supervisor will issue and serve the appellant with a brief written order explaining why the appeal was denied. Service shall be in person or by first class mail. For purposes of this regulation, service by mail will be deemed complete on the third business day after the order is deposited in the mail.

(2) ((~~If the appellant is not satisfied with the decision~~)) An appeal of the safety and security ((~~chief, an appeal~~)) supervisor's order may be ((~~made,~~)) submitted in writing((~~,~~)) to the college's vice-president for administration or designee within twenty-one calendar days ((~~of the appellant's receipt of the decision~~)) after service of the safety and security supervisor's order is complete. The written appeal must be accompanied by a copy of the security supervisor's order. Within twenty ((~~working~~)) calendar days from the receipt of any such appeal, the college's vice-president for administration or his or her designee shall render a written decision. ((~~The~~)) This decision will be final.

(3) The final legal recourse for an appellant is to the Washington state superior court system.

(4) In the event that the appeal involves an impounded vehicle, the ((~~owner of such vehicle~~)) vehicle's owner shall have the right to a hearing before the safety and security supervisor or his or her designee within forty-eight hours of a request, or on the ((~~first workday after impoundment if the vehicle is impounded on a Friday or on a Thursday if a three-day weekend, whichever is longer, for such, before the safety and security chief~~)) next business day if the forty-eight hour period terminates on a weekend or holiday. The vehicle's owner ((~~of the vehicle~~)) shall also be entitled to a release of ((~~his~~)) the vehicle upon payment of a bond to the college in the amount of the sum of the impoundment costs and the total

of all fines due and owing. If at the hearing it is shown that the vehicle was improperly impounded, the owner of the vehicle shall be entitled to a refund of the costs of impoundment. The vehicle's owner may appeal the safety and security supervisor's order as provided in WAC 132I-116-300(2).

(5) In all appeals under this section, the appellant carries the burden of proof, which shall be a preponderance of the evidence.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132I-116-285	Schedule of parking fees.

AMENDATORY SECTION (Amending WSR 08-01-088, filed 12/17/07, effective 1/17/08)

WAC 132I-120-100 College community expectations((~~, and code of conduct~~)). (1) Civility statement. Members of Highline Community College community accept the responsibility to promote a learning and working environment which ensures mutual respect, civility, honesty, and fairness. Members of the college community are expected to uphold the college's values and ethics necessary to maintain a positive campus climate, which includes health, safety and welfare of the campus community. To be active participants in the process of education, college community members will strive to adhere to the following expectations:

(a) To be positive contributors to the college, the city of Des Moines, and the surrounding community.

(b) To conduct themselves with civility and be held accountable as members of the HCC community.

(c) To be honest and take responsibility for treating others with respect and dignity.

(d) To be open to the concepts of leadership, diversity, and wellness.

(e) To be open-minded and prepared to learn.

(2) Educational expectations. Students who choose to attend Highline Community College also choose to participate actively in the adult learning process offered by the college. As a process, learning is not a product or commodity, which is bought and sold, but rather, it is a relationship between instructors who are willing to teach, staff who are willing to support, and students who are willing to learn. Therefore, the responsibility for learning is shared equally between students, staff, and faculty.

(3) Student responsibilities. The college is responsible for providing its students with an educational environment rich in the high quality resources needed by students to attain their individual educational goals. In return, students are responsible for making themselves aware of the full breadth of the resources available, for the timely choosing and appropriate use of these resources, and for the specific behavioral tasks necessary for attaining the desired learning outcomes. Student responsibilities include but are not limited to the following: To actively participate in the learning process by adhering to the college's policies, practices, and procedures; attending all class sessions; utilizing campus resources; participating actively in the advising process; seeking timely assistance in meeting educational goals; and assuming responsibility for the selection of courses to achieve those goals.

(((~~(4) Code of conduct. As members of the college community, students are expected to obey all college rules and regulations and are prohibited from engaging in any unlawful conduct. Any student who, either as a principal actor, aid, abettor, or accomplice as defined in RCW 9A.08.020, as now law or hereafter amended, violates any local, state or federal law, interferes with the personal rights or privileges of others or the educational process of the college, or violates the code of conduct which includes, but is not limited to, the categories listed below, shall be subject to disciplinary action as provided in this chapter (see WAC 132I-120-410).~~

~~(a) Personal offenses.~~

~~(i) Assault, reckless endangerment, intimidation, or interference upon another person in the manner set forth in RCW 9A.36.010 through 9A.36.050, or 28B.10.570 through 28B.10.572, as now law or hereafter amended.~~

~~(ii) Disorderly, disruptive, or abusive behavior which interferes with the rights of others or obstructs or disrupts teaching, learning, research, or administrative functions.~~

~~(iii) Inattentiveness, inability, or failure to follow the reasonable instructions of any college employee acting within their professional responsibility, thereby infringing upon the rights and privileges of others.~~

~~(iv) Refusal to comply with any lawful order to leave the college campus or any portion thereof by college personnel when necessary for the college to achieve its purpose of providing educational programs and services.~~

~~(v) Unauthorized assembly, obstruction, or disruption which materially and substantially interferes with vehicular or pedestrian traffic, classes, hearings, meetings, the educational and administrative functions of the college, or the rights and privileges of others.~~

~~(vi) Filing of a formal complaint falsely accusing another member of the college community with violating a provision of this chapter.~~

~~(vii) Falsely reporting an emergency, such as by setting off or otherwise tampering with any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities.~~

~~(viii) Submitting information known to be false, misinterpreted, or fraudulent to college officials or on college records.~~

~~(ix) Engaging in unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature where such behavior offends the recipient or a third party, causes discomfort or humiliation, or creates an intimidating, offensive, or hostile work or learning environment.~~

~~(x) Stalking behavior in which a student repeatedly engages in a course of conduct directed at another person and makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her family; where the threat is reasonably determined by the college to seriously alarm, torment, or terrorize the person; and where the threat is additionally determined by the college to serve no legitimate purpose.~~

(xi) Destruction or alteration of any evidence that could be used during an investigation or college proceeding.

(xii) Any malicious act or behavior which causes harm to any person's physical or mental well-being. Harassment includes intentionally and repeatedly following or contacting another person in a manner that alarms, annoys, intimidates, harasses, or causes substantial emotional distress.

(b) Property offenses.

(i) Actual or attempted theft or robbery (RCW 9A.56.010 through 9A.56.060 and 9A.56.100) of property or services belonging to the college or college community member including but not limited to knowingly possessing stolen property.

(ii) Malicious mischief that causes damage to or destruction of any college facility or other public, private, or personal property.

(iii) Unauthorized use of college equipment and supplies for personal gain.

(iv) Unauthorized use of a motorized vehicle, skateboard, bicycle, or other personal vehicle on campus pedestrian walkways.

(v) Unauthorized entry, access, or presence upon the property of the college or into a college facility or portion thereof which has been reserved, restricted, or placed off limits or unauthorized possession or use of key, access code, or password to any college facility or system.

(vi) Misuses of information technology. The following is prohibited: Failure to comply with laws, license agreements, and contracts governing network, software and hardware; abuse of communal resources; use of computing resources for illegal or unauthorized commercial purposes or personal gain. It is the obligation of college students to be aware of their responsibilities as outlined in the *Computing Resources Appropriate Use Policy*: http://flightline.highline.edu/ic/policies/aup.php. Failure to comply may result in loss of access to college computing resources, as well as administrative, civil or criminal action under Washington state or federal law.

(c) Status offenses.

(i) Forgery, falsification, or alteration of official documents, records, or correspondence.

(ii) Refusal to provide positive identification (e.g., student or state identification card; valid driver's license) when requested by any identified college official.

(d) Offenses pertaining to drugs/alcohol/smoking.

(i) Smoking outside of the designated smoking areas.

(ii) Possession or consumption of alcoholic beverages on college property or at a college-sponsored event is prohibited unless attendees are over the age of twenty-one and an alcohol permit has been obtained.

(iii) Controlled substances. Using, possessing, delivering, selling or being under the influence of legend drugs, including anabolic steroids, androgens, or human growth hormones, as defined by RCW 69.41.010 and 69.41.300 or any other controlled substance as defined in RCW 69.50.101 as now law or hereafter amended, except upon valid prescription or order of a practitioner is subject to additional sanctions, including disqualification from participation in college-sponsored athletic events. For the purpose of this regulation, "sale" shall include the statutory meaning defined in RCW 69.04.005 as now law or hereafter amended.

(e) Regulations governing firearms and weapons.

(i) It shall be the policy of the college that carrying, exhibiting, displaying, or drawing any weapon, as defined in RCW 9.41.250 as now law or later amended, is prohibited. Such weapons may include but are not limited to, dagger, sword, knife (with larger than a three-inch blade), or any cutting or stabbing instrument, club, or any other weapons, including fake weapons capable of producing bodily harm, emotional distress, and/or property damage.

(ii) Explosives, incendiary devices, or any weapons facsimiles are prohibited on college property or in college facilities.

(iii) The above regulations shall not apply to equipment or material that is owned, used, or maintained by the college, nor will they apply to law enforcement officers or authorized contractors performing work for the college.

(f) Other misconduct: Any other conduct or action in which the college can demonstrate a clear and distinct threat to college property, the educational process, or any other legitimate function of the college or the health or safety of any member of the college community.

(5) Academic honesty.

(a) Students attending Highline Community College are expected to participate as responsible members of the college community, which includes assuming full responsibility for maintaining honesty and integrity in all work submitted for credit and in any other work assigned by faculty.

(b) Violations of academic honesty include, but are not limited to:

(i) Plagiarism: The unauthorized use or close imitation of the words, ideas, data, images, or product of another and the representation of them as one's own original work.

(ii) Cheating: Use or attempted use of unauthorized materials, information, or study aids; an act of deceit by which a student attempts to misrepresent academic skills or knowledge; unauthorized or attempted unauthorized copying or collaboration.

(iii) Fabrication: Intentional misrepresentation or invention of any information, such as falsifying research, inventing or exaggerating data, or listing incorrect or fictitious references.

(iv) Collusion: Assisting another to commit an act of academic dishonesty, such as paying or bribing someone to acquire a test or assignment, or increase the score on a test or assignment; taking a test or doing an assignment for someone else; allowing someone to do these things for one's own benefit.

(v) Academic misconduct: Intentionally violating college policies, such as altering grades, misrepresenting one's identity, failing to report known incidents of academic dishonesty, or participating in obtaining or distributing any part of a test or any information about a test.

(c) Penalties for academic dishonesty.

(d) If a student is found guilty of academic dishonesty, any one or a combination of the following sanctions may be imposed by the faculty member:

(i) Verbal or written warning.

~~(ii) A grade of 0% (0.0) or otherwise lowered grade for the assignment, project, or test.~~

~~(e) The following sanction may be imposed by the faculty member only after a formal hearing is conducted by the chief student affairs officer, and the chief student affairs officer approves the sanction:~~

~~A grade of 0% (0.0) or otherwise lowered grade for the course, overriding a student's withdrawal from the course.~~

~~(f) The chief student affairs officer may also issue the following disciplinary sanctions, in accordance with the Highline student rights and responsibilities code (WAC 132I-120-410(11)):~~

~~(i) Disciplinary admonition and warning.~~

~~(ii) Disciplinary probation with or without the loss of privileges for a definite period of time. The violation of the terms of the disciplinary probation or the breaking of any college rule during the probation period may be grounds for suspension or expulsion from the college.~~

~~(iii) Suspension from Highline Community College for a definite period of time.~~

~~(iv) Dismissal from Highline Community College.~~

~~(g) Academic dishonesty complaint and hearing procedures.~~

~~(i) The faculty member observing or investigating the apparent act of academic dishonesty shall document the incident by writing down the time, date, place, and a description of the act and/or any other pertinent information.~~

~~(ii) The faculty member may collect evidence to corroborate the allegation.~~

~~(iii) The faculty member shall provide the student an opportunity to explain the incident.~~

~~(iv) The faculty member shall explain to the student the procedures and penalties for academic dishonesty and shall give the student a copy of the Highline Community College academic honesty policy.~~

~~(v) The faculty member may resolve the matter informally by determining an appropriate sanction, which may include a verbal or written warning, or a grade of 0% (0.0) or otherwise lowered grade on an assignment, project, or test, or no further action.~~

~~(vi) The faculty member shall submit a copy of the Academic Dishonesty Report form to the office of the chief student affairs officer. The report shall be kept on file and may be presented as evidence for more stringent sanctions, should the student commit subsequent violation(s) of the academic honesty policy.~~

~~(vii) If the faculty member wishes to initiate more stringent sanctions in addition to lowering or failing an assignment and/or verbal or written warning (e.g., assign a failing grade for the course), the student must be entitled to a formal hearing with the chief student affairs officer. Following a formal hearing, sanctions imposed by the chief student affairs officer may range from no further action (no failing grade for the course) to dismissal from the college (WAC 132I-120-410(11)). The chief student affairs officer may not overturn the sanctions imposed by the faculty member ((d)(i) and (ii) of this subsection).~~

~~(viii) The faculty member shall submit a copy of the Academic Dishonesty Report form and any additional evidence to the chief student affairs officer within ten days of the alleged act of academic dishonesty, which initiates the formal hearing process.~~

~~(ix) Within ten days of receiving an Academic Dishonesty Report form, the chief student affairs officer or designee shall notify the student in writing of the date, time and location of the hearing. At the hearing, the student shall meet with the chief student affairs officer or designee to hear the charges and present his/her side of the case. If the student chooses not to attend or fails to appear, the hearing will be conducted in the student's absence.~~

~~(x) The chief student affairs officer or designee will consider any evidence submitted within seven days of the hearing, and interview persons as warranted. The chief student affairs officer or designee determines if the action recommended by the faculty member is appropriate.~~

~~(xi) Within ten days of the hearing, the chief student affairs officer or designee shall send written notification of the results to the student and faculty member. The decision of the chief student affairs officer or designee is final. (With permission, contents of this policy were adapted from "Academic Integrity Policy," Portland Community College, Portland, Oregon.)~~

~~(6) Violation of any of the above regulations may also constitute violation of criminal laws or ordinances of various cities, municipalities, counties, the state of Washington, or the United States and may subject a violator to criminal sanctions in addition to any sanctions imposed by the college.~~))

NEW SECTION

WAC 132I-120-101 Student code of conduct. (1) Code of conduct. As members of the college community, students are expected to obey all college rules and regulations and are prohibited from engaging in any unlawful conduct. Any student who, either as a principal actor, aid, abettor, or accomplice as defined in RCW 9A.08.020, as now law or hereafter amended, violates any local, state or federal law, interferes with the personal rights or privileges of others or the educational process of the college, or violates the code of conduct which includes, but is not limited to, the categories listed below, shall be subject to disciplinary action as provided in this chapter (see WAC 132I-120-410).

(a) Personal offenses.

(i) Assault, reckless endangerment, intimidation, or interference upon another person in the manner set forth in RCW 9A.36.010 through 9A.36.050, or 28B.10.570 through 28B.10.572, as now law or hereafter amended.

(ii) Disorderly, disruptive, or abusive behavior which interferes with the rights of others or obstructs or disrupts teaching, learning, research, or administrative functions.

(iii) Inattentiveness, inability, or failure to follow the reasonable instructions of any college employee acting within their professional responsibility, thereby infringing upon the rights and privileges of others.

(iv) Refusal to comply with any lawful order to leave the college campus or any portion thereof by college personnel when necessary for the college to achieve its purpose of providing educational programs and services.

(v) Unauthorized assembly, obstruction, or disruption which materially and substantially interferes with vehicular

or pedestrian traffic, classes, hearings, meetings, the educational and administrative functions of the college, or the rights and privileges of others.

(vi) Filing of a formal complaint falsely accusing another member of the college community with violating a provision of this chapter.

(vii) Falsely reporting an emergency, such as by setting off or otherwise tampering with any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities.

(viii) Submitting information known to be false, misinterpreted, or fraudulent to college officials or on college records.

(ix) Engaging in unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature where such behavior offends the recipient or a third party, causes discomfort or humiliation, or creates an intimidating, offensive, or hostile work or learning environment.

(x) Stalking behavior in which a student repeatedly engages in a course of conduct directed at another person and makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her family; where the threat is reasonably determined by the college to seriously alarm, torment, or terrorize the person; and where the threat is additionally determined by the college to serve no legitimate purpose.

(xi) Destruction or alteration of any evidence that could be used during an investigation or college proceeding.

(xii) Any malicious act or behavior which causes harm to any person's physical or mental well-being. Harassment includes intentionally and repeatedly following or contacting another person in a manner that alarms, annoys, intimidates, harasses, or causes substantial emotional distress.

(b) Property offenses.

(i) Actual or attempted theft or robbery (RCW 9A.56.010 through 9A.56.060 and 9A.56.100) of property or services belonging to the college or college community member including but not limited to knowingly possessing stolen property.

(ii) Malicious mischief that causes damage to or destruction of any college facility or other public, private, or personal property.

(iii) Unauthorized use of college equipment, supplies, and facilities for personal gain.

(iv) Unauthorized use of a motorized vehicle, skateboard, bicycle, or other personal vehicle on campus pedestrian walkways.

(v) Unauthorized entry, access, or presence upon the property of the college or into a college facility or portion thereof which has been closed, reserved, restricted, or placed off limits or unauthorized possession or use of key, access code, or password to any college facility or system.

(vi) Misuses of information technology. The following is prohibited: Failure to comply with laws, regulations, license agreements, or contracts governing use of college networks, software and hardware; abuse of communal resources; and, use of college computing resources for illegal or unauthorized commercial purposes or personal gain. It is the obligation of college students to be aware of their responsibilities as outlined in the *Computing Resources Appropriate Use Policy*, which is available on the Highline Community College web site. Failure to comply may result in loss of access to college computing resources, as well as administrative, civil or criminal action under Washington state or federal law.

(c) Status offenses.

(i) Forgery, falsification, or alteration of official documents, records, or correspondence.

(ii) Refusal to provide positive identification (e.g., student or state identification card; valid driver's license) when requested by any identified college official.

(d) Offenses pertaining to drugs/alcohol/smoking.

(i) Smoking outside of the designated smoking areas.

(ii) Possession or consumption of alcoholic beverages on college property or at a college-sponsored event is prohibited unless attendees are over the age of twenty-one and an alcohol permit has been obtained.

(iii) Controlled substances. Using, possessing, delivering, selling or being under the influence of legend drugs, including anabolic steroids, androgens, or human growth hormones, as defined by RCW 69.41.010 and 69.41.300 or any other controlled substance as defined in RCW 69.50.101 as now law or hereafter amended, except upon valid prescription or order of a practitioner is subject to additional sanctions, including disqualification from participation in college-sponsored athletic events. For the purpose of this regulation, "sale" shall include the statutory meaning defined in RCW 69.04.005 as now law or hereafter amended.

(e) Other misconduct: Any other conduct or action in which the college can demonstrate a clear and distinct threat to college property, the educational process, or any other legitimate function of the college or the health or safety of any member of the college community.

(2) Violation of any of the above regulations may also constitute violation of criminal laws or ordinances of various cities, municipalities, counties, the state of Washington, or the United States and may subject a violator to criminal sanctions in addition to any sanctions imposed by the college.

NEW SECTION

WAC 132I-120-102 Academic honesty. (1) Students attending Highline Community College are expected to participate as responsible members of the college community, which includes assuming full responsibility for maintaining honesty and integrity in all work submitted for credit and in any other work assigned by faculty.

(2) Violations of academic honesty include, but are not limited to:

(a) Plagiarism: The unauthorized use or close imitation of the words, ideas, data, images, or product of another and the representation of them as one's own original work.

(b) Cheating: Use or attempted use of unauthorized materials, information, or study aids; an act of deceit by which a student attempts to misrepresent academic skills or knowledge; unauthorized or attempted unauthorized copying or collaboration.

(c) Fabrication: Intentional misrepresentation or invention of any information, such as falsifying research, inventing

or exaggerating data, or listing incorrect or fictitious references.

(d) Collusion: Assisting another to commit an act of academic dishonesty, such as paying or bribing someone to acquire a test or assignment, or increase the score on a test or assignment; taking a test or doing an assignment for someone else; allowing someone to do these things for one's own benefit.

(e) Academic misconduct: Intentionally violating college policies, such as altering grades, misrepresenting one's identity, failing to report known incidents of academic dishonesty, or participating in obtaining or distributing any part of a test or any information about a test.

(3) Penalties for academic dishonesty.

(a) All suspected academic dishonesty will be reported, with evidence attached, to the chief student affairs officer as a means of tracking.

(b) If a student commits academic dishonesty, any one or a combination of the following sanctions may be imposed by the faculty member:

(i) Verbal or written warning.

(ii) A grade of 0% (0.0) or otherwise lowered grade for the assignment, project, or test.

(iii) The following sanction may be imposed by the faculty member only after a formal hearing is conducted by the chief student affairs officer, and the chief student affairs officer approves the sanction:

A grade of 0% (0.0) or otherwise lowered grade for the course, overriding a student's withdrawal from the course.

(c) In accordance with the Highline student rights and responsibilities code (WAC 132I-120-410), the chief student affairs officer may issue a formal disciplinary warning letter for a student's first reported offense of academic dishonesty. The warning letter may be issued in lieu of a formal hearing; however, it will not be reported to transfer institutions or other requesting agencies.

(d) In accordance with the Highline student rights and responsibilities code (WAC 132I-120-410), the chief student affairs officer will summon a student to a formal hearing for a second or subsequent offense of academic dishonesty.

(e) Disciplinary actions for second or subsequent offenses of academic dishonesty include, but are not limited to, the sanctions outlined in WAC 132I-120-410, which may be imposed upon students according to the procedure outlined in WAC 132I-120-421.

(4) Academic dishonesty complaint and hearing procedures.

(a) The faculty member observing or investigating the apparent act of academic dishonesty shall document the incident by writing down the time, date, place, and a description of the act and/or any other pertinent information.

(b) The faculty member may collect evidence to corroborate the allegation.

(c) The faculty member shall provide the student an opportunity to explain the incident.

(d) The faculty member shall explain to the student the procedures and penalties for academic dishonesty and shall give the student a copy of the Highline Community College academic honesty policy.

(e) The faculty member may resolve the matter informally by determining an appropriate sanction, which may include a verbal or written warning, or a grade of 0% (0.0) or otherwise lowered grade on an assignment, project, or test, or no further action.

(f) The faculty member shall submit a copy of the Academic Dishonesty Report form to the office of the chief student affairs officer. The report shall be kept on file and may be presented as evidence for more stringent sanctions, should the student commit subsequent violation(s) of the academic honesty policy.

(g) If the faculty member wishes to initiate more stringent sanctions in addition to lowering or failing an assignment and/or verbal or written warning (e.g., assign a failing grade for the course), or if the student has committed more than one academic dishonesty offense, the student must be entitled to a formal hearing with the chief student affairs officer or his or her designee. Following a formal hearing, sanctions imposed by the chief student affairs officer may range from no further action (no failing grade for the course) to dismissal from the college (WAC 132I-120-410). The chief student affairs officer may not overturn the sanctions imposed by the faculty member ((d)(i) and (ii) of this subsection).

(h) The faculty member shall submit a copy of the Academic Dishonesty Report form and any additional evidence to the chief student affairs officer within ten days of the alleged act of academic dishonesty, which initiates the formal hearing process.

(i) Within ten days of receiving an Academic Dishonesty Report form, the chief student affairs officer or designee shall notify the student in writing of the date, time and location of the hearing. At the hearing, the student shall meet with the chief student affairs officer or designee to hear the charges and present his/her side of the case. If the student chooses not to attend or fails to appear, the hearing will be conducted in the student's absence.

(j) The chief student affairs officer or designee will consider any evidence submitted within seven days of the hearing, and interview persons as warranted. The chief student affairs officer or designee determines if the action recommended by the faculty member is appropriate.

(k) Within ten days of the hearing, the chief student affairs officer or designee shall send written notification of the results to the student and faculty member. The decision of the chief student affairs officer or designee is final. (With permission, contents of this policy were adapted from "Academic Integrity Policy," Portland Community College, Portland, Oregon.)

AMENDATORY SECTION (Amending WSR 08-01-088, filed 12/17/07, effective 1/17/08)

WAC 132I-120-105 Student rights. The following rights are guaranteed to each student within the limitations of statutory law and college policy as deemed necessary to achieve the educational goals of the college:

(1) Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary or capricious, but are responsible for meeting the standards of academic performance established by their instructors. Grade complaints are administered through the *Complaints against Faculty Members* section 807 of the Highline College Education Association (HCEA) HCC negotiated agreement.

(d) Students have the right to a learning environment that is free from unlawful discrimination, inappropriate and disrespectful conduct, and sexual harassment.

(2) Due process.

(a) It is guaranteed that students have the right to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this student rights and responsibilities code is entitled to procedural due process as set forth in this chapter.

(3) Distribution and posting. Students may distribute or post printed or published material subject to official written procedures available in the student programs office. All free publications not in violation of state and/or federal laws may be distributed from authorized public areas subject to time, place, and manner as determined by the college. ((~~Material may not be distributed in college parking lots or be placed on or in automobiles.~~)) Students distributing printed materials are responsible for litter control of all distributed material.

(4) Off-campus speakers. Recognized student organizations shall have the right to invite outside speakers to speak on campus subject to the availability of campus facilities, funding, and compliance with the college procedures available in the student programs office.

(5) Commercial activities. The use of college grounds or facilities for commercial or private gain is prohibited except with the approval of the student programs office consistent with vending and fund-raising guidelines. Commercial activities which generate contractual and/or financial debt relationships with students are prohibited. The college reserves the right to charge commercial vendors for the use of college facilities.

(6) Sale of merchandise. All merchandise offered for commercial sale may be sold only through the college bookstore or college food services except when approved by the student programs office or affiliated academic department as part of the cocurricular experience.

AMENDATORY SECTION (Amending WSR 08-01-088, filed 12/17/07, effective 1/17/08)

WAC 132I-120-315 Right of assembly. (1) Students have the right to conduct or participate in any assembly as defined in WAC 132I-120-030 on facilities that are generally available to the public provided that such assemblies:

(a) Are conducted in an orderly ((~~and respectful~~)) manner;

(b) Do not unreasonably interfere with classes, scheduled meetings or ceremonies, or college sponsored events;

(c) Do not unreasonably interfere with pedestrian or vehicular traffic; or

(d) Do not cause destruction or damage to college property.

(2) ((~~Any student, group, or organization planning an assembly on college property must reserve the college facilities with the student programs office.~~)) College groups are encouraged to notify the campus safety and security office no later than forty-eight hours in advance of an event. However, unscheduled events are permitted so long as the event does not interfere with any other function occurring at the facility or college.

(3) Assemblies which violate these rules may be ordered to disperse by college personnel ((~~in accordance with Washington state statutes~~)).

(4) Any campus community member who violates any provision of this rule may be required to leave the campus or facility and((~~/or be referred to civilian authorities for criminal prosecution~~)) may be issued a no trespass admonishment.

AMENDATORY SECTION (Amending WSR 08-01-088, filed 12/17/07, effective 1/17/08)

WAC 132I-120-350 Student ((~~complaint process~~)) nonacademic complaints against college employees. (((~~(1) Purpose and definition. The purpose of this procedure is to provide students with guidelines which promote constructive dialogue, understanding, and informal resolution of student complaints and concerns. This process also provides an avenue for formal procedures should an informal approach be ineffective. A complaint is hereby defined as a statement that expresses a student's dissatisfaction with the performance or action of a college employee, which the student believes to be unfair or inconsistent with college policy or procedures.~~

~~(2) Exclusions of complaint process. This procedure is not to be used where other procedures are required for the resolution of specific categories of student complaints or student appeals. Student concerns covered by existing college policy or procedures (e.g., *Complaints Against Faculty Members* section 807 of the HCEA/HCC negotiated agreement) are excluded from this complaint process and should be brought to the attention of the appropriate college administrator.~~

~~(3) Time limitations. A student wishing to express a complaint, as previously defined, should do so no later than two weeks from the time the student should have been aware of the concern. Timely initiation of a complaint rests with the student.~~

~~(4) Complaint process procedures.~~

~~(a) Step 1: Discuss complaint with staff member. The student should discuss the complaint informally and thoroughly with the staff member to whom the complaint is directed. Both parties should openly discuss the student complaint/concern and attempt to understand the other's perspectives, explore alternatives, and arrive at a satisfactory resolution to the complaint. If the student and staff member are~~

~~unsuccessful at finding a resolution, or the student is dissatisfied with the complaint resolution, the student should then move to step 2.~~

~~(b) Step 2: Express complaint in writing. Within ten days of meeting with the staff member, if resolution is unsuccessful through informal discussion, the student shall express the complaint in writing and forward the written complaint to the staff member and the staff member's immediate supervisor. At the student's request, the chief student affairs officer will assign an HCC community member to serve as an advocate to assist in clarifying the complaint process and guiding the student through the complaint process.~~

~~(c) Step 3: Supervisor conference. Upon receiving the student's written complaint, the immediate supervisor may ask the staff member for a written response and shall, within five days following receipt of the student's written complaint, hold a conference with the involved parties. The supervisor may request supporting materials from either the staff member or student. If after discussion, mediation, and review of materials at the conference, the involved parties are unable to find a mutually acceptable resolution, the supervisor shall render a verbal decision on the complaint to all parties or shall within five days provide a written copy of his/her decision of the complaint to each involved party.~~

~~(d) Step 4: Executive conference. If the decision of the immediate supervisor does not resolve the complaint to the satisfaction of the student, the chief student affairs officer or designee shall, on request of the student, convene a conference of all previously involved parties and any additionally affected supervisors within seven days. All written statements and supporting materials from involved parties will be provided to the chief student affairs officer or designee prior to the conference. Written materials will be retained in the chief student affairs officer's office. If after discussion, mediation, and review of materials at the conference, the involved parties are unable to find a mutually acceptable resolution, the chief student affairs officer or designee shall within seven days render a written decision on the complaint and will provide copies to all involved parties. The decision of the chief student affairs officer or designee will be final.~~)) Students with complaints against college employees regarding nonacademic issues shall use the complaints procedure described in chapter 132I-310 WAC.

AMENDATORY SECTION (Amending WSR 08-01-088, filed 12/17/07, effective 1/17/08)

WAC 132I-120-400 Authority and responsibility for discipline. (1) The board of trustees, acting by written order and in accordance with Washington state statutes, delegates to the president of the college the authority to administer student disciplinary action.

(2) Administration of the disciplinary procedure is the responsibility of the chief student affairs officer. The chief student affairs officer or designee(s) shall serve as the principal investigator and administrator for alleged violations of this code.

(3) Summary action (emergency procedure).

(a) The instructor and students are responsible for conduct in the classroom or at any course-related activity or event. The instructor is authorized to take reasonable steps as necessary when behavior of the student materially or substantially disrupts normal classroom procedures. Instructors may remove a student for the single class session in which disruptive behavior occurs. When such behavior results in expulsion from a class session, the instructor must report the infraction in writing to the chief student affairs officer at the earliest opportunity. When the faculty member, division chair and chief student affairs officer concur that such behavior poses a serious threat, the student may be removed from class pending the outcome of disciplinary action. In all cases involving classroom disruption, the chief student affairs officer or designee will proceed with the investigation and/or disciplinary proceedings at the earliest opportunity consistent with the procedural requirements established in this chapter.

(b) The administrator in charge of any college office, department, or facility is responsible for conduct in that area. Staff shall take reasonable action in response to urgent situations as may be necessary to maintain order when they have reason to believe that such action is necessary for the safety and well-being of the student or the protection of the college community or facilities. Any such summary action must be reported to the chief student affairs officer at the earliest opportunity.

(c) A student being formally charged or under investigation for a violation of ((~~this code~~)) any provision set forth in WAC 132I-120-101 or 132I-120-102 may not excuse him or herself from disciplinary proceedings by withdrawing from the college.

AMENDATORY SECTION (Amending WSR 08-01-088, filed 12/17/07, effective 1/17/08)

WAC 132I-120-415 Authority to request identification. In situations of apparent misconduct or apparent unauthorized presence in a college facility, ((~~it may be necessary for~~)) properly identified college ((~~personnel to~~)) faculty or staff may ask ((~~a person~~)) individuals to produce ((~~evidence of being a currently enrolled student at the college. Failure~~)) a current student identification card or other proof of enrollment. A student who fails to comply with a legitimate request for identification from a properly identified college ((~~employee~~)) faculty or staff is a violation of WAC 132I-120-100 (4)(c)(ii) and may ((~~result in a~~)) be subject to disciplinary action ((~~if the person is found to be a student~~)). In emergency situations, cases of serious misconduct, or where there is a substantial danger to the college community or college property, ((~~failure to produce identification by a student may result in the assumption by college personnel that the person questioned is not a student and may result in civil or criminal action~~)) college faculty or staff may presume that an individual who refuses to produce student identification in response is not a student and may take actions consistent with such a presumption.

AMENDATORY SECTION (Amending WSR 08-01-088, filed 12/17/07, effective 1/17/08)

WAC 132I-120-421 Initial disciplinary proceedings. (1) All disciplinary proceedings shall be initiated by the chief student affairs officer or designee. Students may be placed on

suspension pending commencement of disciplinary action, pursuant to the conditions set forth in WAC 132I-120-426.

(2) Any student accused of violating any provision of ((~~the rules of conduct~~)) WAC 132I-120-101 or of a second or subsequent violation of any provision of WAC 132I-120-102 shall be notified of an initial disciplinary proceeding either in person, or by college e-mail account with confirmation by certified mail and shall be given written notice of such meeting with the chief student affairs officer or designee. The student will be informed in writing of the provision(s) the student is charged with violating, and the range of possible sanctions for the offense. The student will be given seven days to respond. If the student fails to respond or fails to appear, the initial disciplinary hearing may be held in the student's absence.

(3) After considering the evidence in the case, interviewing the accused student, giving the student the opportunity to respond, and then again reviewing the case with any new information, the chief student affairs officer or designee may take any of the following actions:

(a) Terminate the proceeding, exonerating the student or students;

(b) Dismiss the case after whatever intervention and advice is deemed appropriate;

(c) Impose any of the sanctions listed in WAC 132I-120-410;

(d) Any disciplinary action taken by the chief student affairs officer or designee may be appealed by the student in accordance with WAC 132I-120-441.

(4) Within ten days of the initial disciplinary hearing, the chief student affairs officer shall issue a written order setting forth the facts and conclusions supporting his or her decision and the discipline imposed, if any. This order shall contain a statement describing how the order may be appealed.

AMENDATORY SECTION (Amending WSR 08-01-088, filed 12/17/07, effective 1/17/08)

WAC 132I-120-426 Summary suspension proceedings. (1) If the chief student affairs officer or designee has cause to believe that any student(s):

(a) Has violated any provision of this chapter; and

(b) Presents an imminent danger to other student(s) and/or community members, then the student(s) shall be summarily suspended, and a "notice of summary suspension proceedings" will be served to the student's last known address by regular mail, certified mail and/or in person. The chief student affairs officer or designee shall enter an order as provided by law if the student(s) is to be summarily suspended.

(2) The notice shall be entitled "notice of summary suspension proceedings" and shall state:

(a) The charges against the student(s) including reference to the provisions of WAC ((~~132I-120-100~~)) 132I-120-101 or statutory law involved; and

(b) That the student(s) charged must appear before the chief student affairs officer or designee at a time specified in the notice for the hearing. The hearing shall be held as soon as practicable after the "notice of summary suspension" has been served to the student(s). The hearing may be combined with an initial disciplinary proceeding in accordance with WAC 132I-120-421.

AMENDATORY SECTION (Amending WSR 08-01-088, filed 12/17/07, effective 1/17/08)

WAC 132I-120-428 Posthearing decision by the chief student affairs officer. (1) If the chief student affairs officer or designee, at the conclusion of the summary suspension hearing, finds that there is probable cause to believe that:

(a) The student(s) against whom specific violations are alleged has actually committed one or more such violations; and

(b) Summary suspension of the said student(s) is necessary for the safety of the student(s) and members of the campus community, or to protect the college facilities and/or educational process, and/or to restore order to the campus; and

(c) Such violation(s) constitute grounds for disciplinary action as provided for in WAC ((~~132I-120-100~~)) 132I-120-101;

(2) Then the chief student affairs officer may continue to enforce the suspension of the student(s) from college and may impose any other appropriate disciplinary action(s).

AMENDATORY SECTION (Amending WSR 08-01-088, filed 12/17/07, effective 1/17/08)

WAC 132I-120-442 Hearing procedures before the discipline committee. (1) The discipline committee shall ((~~conduct a hearing within~~)) have fifteen days after the formal written appeal has been received to schedule the appeal hearing. The appeal hearing must be conducted within forty-five days after the formal written appeal has been received. The hearing will be conducted pursuant to RCW 34.05.413 through 34.05.476.

(2) The student has a right to a fair and impartial hearing. However, the student's failure to cooperate with the committee's hearing procedures or failure to appear shall not preclude the discipline committee from making its findings of fact, conclusions, and recommendations.

(3) The student may be represented by a licensed attorney admitted to practice in the state of Washington as counsel at the disciplinary hearing. If the student elects to be represented by counsel, the student shall notify the chair at the time of appeal or((~~, if the hearing is held at the request of the college,~~)) at least ((~~fifteen~~)) twenty days prior to the hearing.

(4) In all disciplinary proceedings, the college shall be represented by the chief student affairs officer or designee. The chief student affairs officer shall present the college's case against the student accused of violating the rules of conduct. In cases in which the student elects to be represented by a licensed attorney, the chief student affairs officer may elect to have the college represented by an assistant attorney general with the assistance of the chief student affairs officer.

(5) The record in a formal hearing shall consist of all documents as required by law and as specified in RCW 34.05.476 as now law or hereafter amended.

(6) All records of disciplinary proceedings shall be maintained in the chief student affairs officer's office and shall be available only during the course of the disciplinary proceeding to the discipline committee, the student, representing

attorneys, and any other college official designated by the chief student affairs officer or as otherwise required by law.

(7) Following the conclusion of the disciplinary proceeding, access to records of the case and the hearing files shall be limited to those designated by the chief student affairs officer or as otherwise required by law.

(8) Following final disposition of the case and any appeals therefrom, the chief student affairs officer may direct the destruction of any records of any disciplinary proceedings, provided that such destruction is in conformance with the requirements of chapter 40.14 RCW, as now law or hereafter amended.

(9) The discipline committee may expedite the time of the hearing at the request of the student or continue for good cause.

(10) If at any time during the hearing, a visitor disrupts the proceedings, the chair of the discipline committee may exclude that person from the hearing.

(11) Any student of the college attending the disciplinary hearing who disrupts the proceedings after the presiding officer has asked the student to cease or to leave the hearing room, shall be subject to disciplinary action.

(12) All testimony of parties and witnesses shall be made under oath or affirmation.

(13) Members of the discipline committee must avoid ex parte (one-sided) communications with any party involved in the hearing regarding any issue other than communications necessary to maintain an orderly procedural flow to the hearing.

AMENDATORY SECTION (Amending WSR 08-01-088, filed 12/17/07, effective 1/17/08)

WAC 132I-120-444 Decision by the discipline committee. (1) Upon conclusion of the disciplinary hearing, the discipline committee shall consider all the evidence presented and decide by majority the following actions:

(a) Terminate the proceedings and exonerate the student; or

(b) Uphold the initial disciplinary action; or

(c) Impose any of the disciplinary actions as provided in this chapter, and impose more serious sanctions if warranted.

(2) The committee's written decision shall include findings of fact, conclusions, and recommendations for the final disposition of the matter.

(3) Within ((~~ten~~)) fifteen days after the hearing, the student will be provided with a copy of the committee's findings of fact and conclusions. The copy shall be dated and contain a statement advising the student of their right to submit a written statement to the president of the college appealing the recommendation of the discipline committee.

AMENDATORY SECTION (Amending WSR 08-01-088, filed 12/17/07, effective 1/17/08)

WAC 132I-120-450 Final appeal. Any student who is aggrieved by the findings or conclusions of an appeal to the discipline committee may appeal in writing to the president within ten days of ((~~official notice to the student by the committee~~)) the student receiving the committee's facts and conclusions. The president may, at his or her discretion, suspend any disciplinary action pending determination of the merits of the findings, conclusions, and disciplinary actions imposed. In the consideration of such an appeal, the president shall base his or her findings and decision on only the official written record of the case. The president shall not engage in an ex parte communication with any of the parties regarding the appeals. The president shall conduct the review within fifteen days of notice of appeal and shall provide a written conclusion to all parties within twenty days after completion of the appeal process. The president's decision shall be final.

AMENDATORY SECTION (Amending WSR 08-01-088, filed 12/17/07, effective 1/17/08)

WAC 132I-120-500 Review of rules. The HCC student rights and responsibilities code shall be reviewed at regular intervals by the chief student affairs officer. The chief student affairs officer may convene an ad hoc review committee ((~~shall convene upon the request of the chief student affairs officer~~)) when she or he believes it is appropriate.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-122-020 Withholding services for outstanding debts. ((~~Upon receipt of a request for services where there is an outstanding debt due the institution from the requesting person, the institution shall notify the person, in writing by certified mail to the last known address, that the services will not be provided since there is an outstanding debt due the institution, and further that until that debt is satisfied, no such services will be provided to the individual.~~

~~Notification that services will be withheld~~)) (1) Where there is an outstanding debt owed to the college and upon receipt of a written request inquiring as to the reason(s) for services or refund being withheld, the college shall provide a written explanation why the services or refund are being withheld. The college will also identify the amount of the outstanding debt, and further explain that until that debt is satisfied (or stayed by bankruptcy proceedings or discharged in bankruptcy), no such services and/or refund will be provided to the individual. The written explanation shall also inform the individual that he or she has a right to a hearing before a person designated by the ((~~president of the institution~~)) vice-president for administration if he or she believes that no debt is owed((~~. Notification shall also indicate~~)) and specify that the request for the hearing must be made within ((~~twenty-one~~)) ten days from the date ((~~such notice~~)) the written explanation is received.

(2) Upon receipt of a timely request for a hearing, the person designated by the ((~~president~~)) vice-president shall have the records and files of the institution available for review and, at that time, shall hold a brief adjudicative proceeding concerning whether the individual owes or owed any outstanding debts to the institution. After the brief adjudicative proceeding, an order shall be entered by the ((~~president's~~)) vice-president's designee indicating whether the institution is correct in withholding services and/or applying off set for the outstanding debt. If the outstanding debt is found to be owed by the individual involved, no further services shall be provided until the debt has been paid. The order

and notice of discontinued service shall be sent to the individual within ten business days after the hearing.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-122-030 Appeal of initial order upholding the withholding of services for outstanding debts. Any person aggrieved by an order issued under WAC 132I-122-020 may file an appeal with the president or his or her designee. The appeal must be in writing and must clearly state errors in fact or matters in extenuation or mitigation which justify the appeal. The appeal must be filed within ((~~twenty-one~~)) ten days from the date on which the appellant received notification of the order issued under WAC 132I-122-020 upholding the withholding of services for outstanding debts. The president's or designee's determination shall be final.

NEW SECTION

WAC 132I-124-020 Weapons prohibited. (1) Carrying, exhibiting, displaying, or drawing of any weapon is prohibited. Such weapons may include, but are not limited to, firearms, daggers, swords, knives (with larger than a three-inch blade), or any cutting or stabbing instrument, club, or any other weapons, including fake weapons capable of producing bodily harm, emotional distress, and/or property damage.

(2) Explosives, incendiary devices, or any weapons facsimiles are prohibited on college property or in college facilities.

(3) This prohibition shall not apply to equipment or material that is owned, used, or maintained by the college, nor will it apply to law enforcement officers or authorized contractors performing work for the college. Individuals may carry a self-defense chemical spray, which is a device carried solely for the purpose of lawful self-defense that is compact in size, designed to be carried on or about the person, and contains not more than two ounces of chemical. Any person who desires to bring a weapon on college property must seek and receive prior written approval from the vice-president of administration or his or her designee.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-130-020 Location of schedules. Additional and detailed information and specific amounts to be charged for each category of students will be found in the class schedule, college web site, and at the following locations on the Highline campus:

(1) The office of admissions;

(2) The registration and records office((;

~~(3) The controller's office;~~

~~(4) The continuing education office~~)).

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-134-010 Rules coordinator. The rules coordinator for this institution shall have an office located at the office of the ((~~director of personnel~~)) vice-president for administration, with the following mailing address:

Highline Community College
Office of ((~~Personnel Services~~)) the Vice-President for Administration
P.O. Box 98000
2400 South 240th Street
Des Moines, WA 98198-9800

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-140-010 Purpose. The trustees of Highline Community College believe that educational and community service opportunities are extended to the community when the college's buildings, grounds, and facilities are made available for use by the students, faculty, administration, staff, and the community. This use shall not interfere with regular college activities and shall be in accordance with the public interest((,)) and welfare, all applicable state and federal laws ((~~of the state of Washington~~)), and shall be in the best interest(s) of the college as interpreted by the administration of Highline Community College and/or the board of trustees.

College facilities are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities and other activities directly related to the educational mission of the college. The public character of the college does not grant to individuals an unlimited license to engage in activity that limits, interferes with, or otherwise disrupts the normal activities for and to which the college's facilities and grounds are dedicated. Accordingly, the college is a designated public forum opened for the limited purposes recited herein and further subject to the time, place, and manner limitations and restrictions set forth in this policy.

The purpose of the time, place, and manner regulations set forth in this policy is to establish procedures and reasonable controls for the use of college facilities for both college and noncollege groups. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of college groups and noncollege groups who are interested in using the campus for the purposes of constitutionally protected speech, assembly or expression. The college recognizes that college groups should be accorded the opportunity to utilize the facilities and grounds of the college to the fullest extent possible. The college intends to open its facilities to noncollege groups to a lesser extent as set forth herein.

Intended or actual use in conflict with these policies or construed to be in any way detrimental to the college's best interests and/or original intent for that facility are strictly prohibited.

Nothing in this chapter is intended to alter the students' right of assembly as set forth in WAC 132I-120-315.

NEW SECTION

WAC 132I-140-011 Definitions. (1) "College" means Highline College, Community College District 9.

(2) "College groups" means individuals who are currently enrolled students or current employees of the college who are affiliated with a recognized student organization or a recognized employee group of the college.

(3) "College facilities" includes all buildings, structures, grounds, office space and parking lots.

(4) "Limited public forum areas" means those areas of each campus that the college has chosen to open as places for expressive activities protected by the First Amendment to the United States Constitution, subject to reasonable time, place or manner restrictions.

(5) "First Amendment activities" includes, but is not necessarily limited to, informational picketing, petition circulation, the distribution of informational leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments and/or other types of constitutionally protected assemblies to share information, perspective or viewpoints.

(6) "Noncollege groups" means individuals, or combinations of individuals, who are not currently enrolled students or current employees of the college or who are not officially affiliated or associated with a recognized student organization or a recognized employee group of the college.

NEW SECTION

WAC 132I-140-012 Use of facilities. (1) Subject to the regulations and requirements of this policy, both college and noncollege groups may use the campus limited forums as specified in WAC 132I-140-013(2) for First Amendment activities between the hours of 7:00 a.m. and 11:00 p.m.

(2) Noncollege groups shall not affix or attach posters and signs to any college structure or equipment. Signs shall be no larger than three feet by five feet and no individual may carry more than one sign.

(3) Noncollege groups shall not use amplified sound systems nor shall they bring any other equipment such as, but not limited to, chairs, tables and staging.

(4) College groups are encouraged to notify the campus safety and security office no later than forty-eight hours in advance of an event. However, unscheduled events are permitted so long as the event does not interfere with any other function occurring at the facility or college.

(5) College group events shall not last longer than eight hours from beginning to end unless permission is granted by the appropriate vice-president. Such permission must be made without consideration of the viewpoint of the activity.

(6) All sites used for First Amendment activities shall be cleaned and left in their original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for the cost of restoring the facility to its preevent condition and for the repair of damaged property.

(7) All fire, safety, sanitation, and special regulations specified for the event are to be obeyed. The college cannot and will not provide utility connections or hook-ups for purposes of First Amendment activities conducted pursuant to this policy.

(8) The event must not be conducted in such a manner that it obstructs vehicular, bicycle, pedestrian or other traffic or otherwise interferes with ingress or egress to the college, or to college buildings or facilities or to college activities or events. The event must not create safety hazards or pose unreasonable safety risks to college students, faculty, employees or invitees to the college.

(9) The event must not interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students. The event must not materially infringe on the rights and privileges of college students, employees or invitees to the college.

(10) There shall be no overnight camping on college facilities or grounds. Camping is defined to include sleeping, cooking activities or storing personal belongings or the erection of tents or other shelters or structures used for purposes of personal habitation.

(11) College facilities may not be used for commercial sales, solicitations, advertising or promotional activities unless:

(a) Such activities serve educational purposes at the college; and

(b) Such activities are under the sponsorship of a college department or office or officially chartered student club; or

(c) Such activities are licensed by the college by a facilities rental agreement or other contractual arrangement.

(12) The event must also be conducted in accordance with any other applicable college policies and regulations, local ordinance and state or federal laws.

NEW SECTION

WAC 132I-140-013 Additional requirements for noncollege groups. (1) College buildings, rooms and athletic fields may be rented by noncollege groups in accordance with the college's facilities policies and procedures. Noncollege groups may otherwise use college facilities as identified in this policy.

(2) The college designates the following areas as the sole limited public forum areas for use by noncollege groups for First Amendment activities on the Des Moines campus:

(a) The area west of the student services building (building 6) between the building's east entrance doors and the lecture hall (building 7).

(b) The south plaza of the library building (building 25 bounded by building 23 and building 26 and excluding the landscaped areas).

(3) Noncollege groups that seek to use the campus limited forum areas to engage in First Amendment activities shall provide notice to the chief student affairs officer (CSAO) or their designee no later than forty-eight hours prior to the desired time of the event along with the following information:

(a) The name, address and telephone number of the individual, group, entity or organization sponsoring the event (hereinafter "the sponsoring organization"); and

(b) The date, time and requested location of the event; and

(c) The estimated number of people expected to participate in the event.

(4) Noncollege group events shall not last longer than eight hours from beginning to end.

NEW SECTION

WAC 132I-140-014 Distribution of materials. Information may be distributed as long as it is not obscene or libelous or does not advocate or incite imminent unlawful conduct. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information. College groups may post information on bulletin boards, kiosks and other display areas designated for that purpose and may distribute materials throughout open areas of the campus. Noncollege groups may distribute materials only at the site designated for noncollege groups.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-140-015 Trespass. (1) Individuals who are not students or members of the faculty or staff and who violate these regulations will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by the president, or his or her designee, to leave the college property. Such a request prohibits the entry of and withdraws the license or privilege to enter onto or remain upon any portion of the college facilities by the person or group of persons requested to leave. Such persons shall be subject to arrest under the provisions of chapter 9A.52 RCW((~~, as now law or hereafter amended~~)).

(2) Members of the college community (students, faculty, and staff) who do not comply with these regulations will be reported to the appropriate college office or agency for action in accord with established college policies.

(3) Persons who violate a district policy may have their license or privilege to be on district property revoked and be ordered to withdraw from and refrain from entering upon any district property. Remaining on or reentering district property after one's license or privilege to be on that property has been revoked shall constitute trespass and such individual shall be subject to arrest for criminal trespass.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-140-016 Prohibited conduct at college facilities. (1) State law governs the use or possession of intoxicants on campus or at college functions. The use or possession of unlawful drugs or narcotics, not medically prescribed, on college property or at college functions, is prohibited. Students, faculty, or staff obviously under the influence of intoxicants, unlawful drugs, or narcotics while in college facilities shall be subject to disciplinary action.

(2) The use of tobacco is restricted by law and by regulations of the smoking policy to designated smoking areas.

(3) Destruction of public property is prohibited by state law.

NEW SECTION

WAC 132I-140-017 Posting of a bond and hold harmless statement. (1) When using college buildings or athletic fields, an individual or organization may be required to post a bond and/or obtain insurance to protect the college against cost or other liability in accordance with the college's facility use policy.

(2) When the college grants permission to a college group or noncollege group to use its facilities, it is with the express understanding and condition that the individual or organization assumes full responsibility for any loss or damage.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-140-110 Right to deny use of facilities. (1) The trustees authorize the college to rent facilities to individuals or groups either affiliated or unaffiliated with the college. Procedures related to the rental of college facilities, including pricing and insurance requirements, are available in the hospitality services office.

(2) The trustees reserve the right to deny facility use to noncollege individuals or groups ((~~of a private nature~~)) whose activities((~~, be they secret or otherwise,~~)) are inconsistent with the open and public nature of Highline Community College ((~~and~~)) or where such use would conflict with the purpose of local, state and federal laws ((~~against discrimination~~)).

(((~~(2)~~))) (3) If at any time actual use of college facilities by the individual or group constitutes an unreasonable disruption of the normal operation of the college, such use shall immediately terminate, all persons engaged in such use shall immediately vacate the premises, and leave the college property upon command of the appropriate college official.

(((~~(3) Any individual or group granted permission to~~))) (4) Use of college facilities shall ((~~agree in advance to abide by~~)) be conditioned upon compliance with all college rules and regulations. The college reserves the right to deny use of college facilities to any individual or group ((~~whose past conduct indicates a likelihood that college rules and regulations will not be obeyed.~~

~~(4) No single group shall be allowed use of facilities on a regular or continuing basis~~)) who violates or has a history of violating college rules and regulations.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-140-120 Basis of fee assessment. (1) The basis for establishing and charging use fees reflects the college's assessment of the present market, the cost of operations, and ((~~an evaluation of the intended purpose and its relationship to the purposes of this college. The position of the board of trustees is that~~)) the degree to which the proposed event advances the college's educational mission. Groups or organizations affiliated with the college should be permitted access to facilities at the lowest charge on the fee schedule which may include complimentary use. A current fee sched-

ule is available ((~~to interested persons from~~)) at the hospitality services office ((~~of continuing education~~)).

(2) The college does not wish to compete with any private enterprise. Therefore((~~, the college reserves the right to deny applications for facility use when the administration and/or the board of trustees believes a commercial facility can be patronized. At no time shall facility use be granted for a commercial activity at a rental rate, or upon terms, less than the full and fair rental value of premises used~~)) individuals or groups not affiliated with the college shall be charged for facility use according to the fee schedule established by the board of trustees; provided that the president or his or her designee may grant a reduced rate when the presence of such individual or group advances the college's educational mission.

(3) Any individual or group desiring to rent college facilities shall sign a rental agreement. In the case of a group, an authorized representative of the group shall sign the rental agreement. By a group signing the agreement, the signatory specifies he or she has authority to enter into agreement on behalf of the group and if the group fails to pay the amount due, the signatory becomes responsible for all charges arising from the rental agreement. Any such charges may include an interest payment for overdue accounts as specified on the rental agreement but not less than one percent per month.

(4) The college reserves the right to require an advance deposit up to one hundred percent of the rental fee.

(5) The college reserves the right to make pricing changes without prior written notice.

(6) The primary purpose of college facilities is to serve the instructional programs of the college including, but not limited to, college events and activities. The board of trustees reserves the right to cancel any permit and refund any payments for use of college facilities and equipment if the group's use of college facilities and/or equipment would violate any federal, state, local law, or college law, regulation, or rule or when the planned use could subject the college to any unreasonable risk of liability.

(7) In the event of a cancellation of a facility use permit by the applicant, that group is liable for all college costs and expenses in preparing the college facility for its use.

(8) All admission charges must be approved by the college prior to issuance of a facility use permit.

(9) Individuals or groups using the college's facilities shall conduct all activities in accordance with all applicable local, state, and federal laws including the rules and regulations adopted by the college in Title 132I WAC and as specified in the rental agreement. The college assumes no responsibility for consequences of any act or omission of any third party. The individual or group is responsible for damages incurred by third parties (including invitees, licensees, guests, employees, and members of the group) during their possession of the premises. The college assumes no liability for damage or loss of personal property or equipment left in any rental space during or after the event. The individual or group assumes full responsibility for the conduct of its invitees, licensees, guests, patrons, members, employees, or third parties hired to provide services for the individual or group.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-140-134 Request for brief adjudicative proceeding over denial of facility use. (1) Upon the denial of a facilities use permit, the college must serve upon the individual or group a brief written statement explaining the reason(s) for the denial and information about the appeals process herein.

(2) Any ((~~organization~~)) individual or group that is denied use of college facilities or objects to the conditions under which use of college facilities is permitted may ((~~challenge said denial by filing~~)) file an appeal as specified in WAC 132I-140-135(2) with the ((~~president's~~)) president or his or her designee.

(3) Upon receipt of such appeal, the ((~~president's~~)) president or his or her designee shall hold a brief adjudicative proceeding.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-140-135 Appeal of denial of facility use. (1) Any ((~~organization~~)) individual or group whose application for facility use has been denied or that objects to the conditions under which facility use is permitted may appeal such decision to the president or his or her designee.

(2) The appeal must be in writing and must clearly state errors in fact or matters in extenuation or mitigation ((~~which~~)) that justify the appeal. The appeal must be filed within twenty-one days from the date of service upon appellant of the order denying use of facilities.

(3) The president's or his or her designee shall consider each party's view and shall issue a brief written statement of the reasons for his or her decision. The president's or his or her designee's determination shall be final.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-140-140 Supervision during activity. (1) Signatories of the rental agreement as well as adult organization leaders are responsible for group conduct and are expected to remain with their group during all activities at college facilities. ((~~When the use of special facilities makes it necessary that supervision be provided,~~)) The trustees reserve the right to require a staff member to represent the college at any activity on ((~~Highline Community~~)) college facilities. Such service shall be paid at the current rate, by the ((~~organization~~)) individual or group requesting use of the facility ((~~(see WAC 132I-140-160)~~)), and does not relieve the ((~~organization~~)) individual or group from safeguarding the college's property.

(2) The campus safety and security staff or some other authority of the college will open and lock all rented facilities. Keys to buildings or facilities will not be issued or loaned on any occasion to any ((~~using organization with the exception of keys to designated off-campus locations~~)) individual or group not affiliated with the college.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-140-150 Care and maintenance of facilities and equipment. (1) College-owned equipment shall not be removed from college facilities for loan or rental. ((~~Organizations~~)) Individuals or groups wishing to use equipment in connection with a rental should make arrangements through the hospitality services office ((~~of continuing education~~)) at the time of application for a rental agreement. Further rental and operational restrictions may be outlined when the ((~~application is approved~~)) rental agreement is signed.

(2) ((~~Appropriate equipment is expected when using facilities when the absence of such special equipment may be detrimental to that facility~~)) Individuals or groups renting college facilities are responsible for providing special equipment and clothing that may be necessary to protect college property from damage (e.g., tennis shoes must be worn on gymnasium floors).

(3) ((~~Organizations~~)) Individuals and groups allowed use of college facilities are required to leave the premises in ((~~as good~~)) the same condition as when the ((~~organization was~~)) individuals and groups were admitted to its use. After facility use, ((~~organizations~~)) individuals and groups are required to arrange for proper disposal of decorations and other refuse when restoring the facility to its original condition ((~~for resumption of college use~~)).

(4) Custodial and other services beyond those regularly scheduled to support normal college activities may be required for specific activities by outside groups, based on the size of group, the complexities of the event, or the facilities being used. Needed custodial services beyond that normally scheduled will result in that ((~~organization~~)) individual or groups being charged at the established rate. All extra custodial time required as a result of the ((~~organization's~~)) individual's or group's use of the facility will be charged to the ((~~organization~~)) individual or group, including those receiving complimentary usage.

(5) The campus safety and security staff should be contacted for problems with facilities. The campus safety and security staff will monitor any permit violations.

(6) ((~~All~~)) Any moving of college equipment for facility use will be under permission and supervision of the college.

(7) Any decoration or use of a college facility that may result in permanent damage or injury to ((~~the~~)) that facility is strictly prohibited.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-140-160 Athletic facilities. (1) ((~~Highline Community~~)) College playing fields may be used by community members and groups provided such use does not interfere with regular college activities and that proper permits for use of college grounds have been secured for such activities ((~~other than unorganized casual use~~)) from the athletic department.

(2) ((~~Highline Community College allows only highly restricted use in scheduling the use of the swimming pool. Permitted users shall comply with all pool regulations, as determined by the college. Such regulations may vary based on the anticipated use. Applications should be made on a use of facility form obtained through the college's office of continuing education. A condition of rental is the college's right to set forth the number of lifeguards and to select and hire these lifeguards on its own criteria. Cost of usage will include these employee's salaries and other personnel expenses.~~

~~(3)~~)) The pavilion may be used by community organizations subject to the same restrictions and regulations governing the use of other facilities. Because of the size of the facility, most users will be required to have college personnel on site during usage. Cost of usage will include these employee's salaries and other personnel expenses.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-140-170 Liability for damage. ((~~The lessee of~~)) All individuals or groups renting or using college facilities, including agreement signatories and individual organizations leaders, shall be liable for any damage to college property occurring or having apparently occurred during the time the facility was being used by the ((~~organization~~)) individual or group. The ((~~lessee~~)) individual or group also agrees to hold harmless and indemnify ((~~Highline Community~~)) the college, its agents, employees, officers, trustees, students and/or attorneys for any claim made against the college as a result of the ((~~lessee's~~)) individual's or group's use of college facilities. The college reserves the right to require ((~~using organizations to~~)) that any such individual or group purchase insurance, naming the college as the insured((~~, and~~)). The college may specify the amount of that insurance.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132I-140-130	Application procedures.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-160-010 Purpose. The purpose of these policies and procedures is to establish a standard set of admission and registration practices that are necessary and appropriate for the administration of Highline Community College. For admission information contact the Admission Office, Highline Community College, 2400 South 240th Street, P.O. Box 98000, Des Moines, Washington 98198-9800 or see the college web site. For registration information contact the registrar's office at the same address.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-160-020 Definitions. The following terms are defined below:

(1) Applicants: Persons seeking admission to Highline Community College.

(2) Students: Applicants granted admission to Highline Community College.

(3) Veterans: Applicants or students who are eligible to receive Department of Veterans' Affairs Educational Benefits.

(4) Vietnam veterans: Veterans who have documented service in Cambodia, Laos, Thailand, or Vietnam during the period of August 5, 1964, to April 11, 1975.

(5) International students: Applicants or students who are not United States citizens and who ((~~need F-1 or J-1 visas to~~)) attend Highline Community College on a student visa.

(6) Newly admitted students: Students who have not previously attended Highline Community College.

(7) Currently enrolled students: Students who are registered in credit courses in the current quarter ((~~who wish to register for the following quarter. Students may skip summer quarter and maintain this status~~)).

(8) Former students: Students who were registered in credit courses in a previous quarter but who are not currently enrolled in credit courses.

(9) Resident students: ((~~Resident~~)) Students ((~~are applicants who can prove they have lived in Washington state for the entire year before the start of the quarter in which they register. Resident status may also be extended under certain conditions to Washington state higher education employees, federal employees, military personnel, and some veterans. These rules may extend to spouses, minor children, and dependents under most circumstances. More detailed definition is available in~~)) who meet the definition according to RCW 28B.15.012. A copy of the Revised Code of Washington is available in the Highline Community College library.

(10) Nonresident students: Students who meet the definition according to RCW 28B.15.012(3). A copy of the Revised Code of Washington is available in the Highline Community College library.

(11) ((~~Not regularly admitted students: Students who are eighteen years old or older and who do not have a high school diploma or GED.~~

~~(12)~~)) Registration by appointment: The initial period of registration for each quarter. Currently enrolled students ((~~and applicants~~)) are assigned days and times to register based upon the number of credits earned at Highline Community College. ((~~Students and applicants who wish to register for evening, Saturday, or continuing education courses do not require registration appointments. Those students register on a first-come, first-served basis during open enrollment.~~

~~(13)~~)) (12) Late registration: ((~~The period of registration after registration by appointment. It continues through the end of the first week of the quarter. Few courses are available.~~

~~(14)~~)) Enrollment after the tenth class day.

(13) Open enrollment: Class registration for which no appointments are necessary. ((~~Registration occurs on a first-come first-serve basis. Open enrollment occurs any time during the registration period for applicants or students who wish to register for evening, Saturday, or continuing education courses. It occurs during late registration for applicants or students who wish to register for daytime credit courses.~~

~~(15)~~)) (14) GED: The General Educational Development test of the American Council on Education.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-160-033 Admission requirements. There are some ((~~requirements~~)) guidelines in addition to the general admission policy (WAC 132I-160-025). These are:

(1) Highline Community College recommends, but does not require ((~~specific~~)), that new students with less than forty-five transferable college-level credits take placement tests ((~~scores for admission to the college. However, assessment~~)) for advising, placement, and retention ((~~is required for all new students with less than forty-five transferable college-level credits and for entry into selected courses and programs. The college uses the ASSET system for this purpose. It is given at frequent intervals in the Highline Community College testing center~~)) purposes.

(2) ((~~The following~~)) Specific courses may require demonstration of proficiency by assessment test scores or previous college course work.

(3) Some programs have ((~~special~~)) selective admission requirements and procedures((~~: Dental Assistant, Diving Technician, Medical Assistant, Registered Nursing, Respiratory Care, GED, and High School. These programs have specific selection procedures~~)) due to limited space or ((~~special~~)) other requirements. ((~~The~~)) These requirements and procedures are updated annually and may differ for each program. ((~~They are updated annually.~~)) Contact the Highline Community College office of admissions, for specific information.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-160-035 Admission procedures. Applicants ((~~can~~)) become newly admitted students ((~~in two ways: Formal and informal. Both methods require applicants to meet the policy listed in WAC 132I-160-025 and the requirements listed in WAC 132I-160-033. The formal method is used for applicants who wish to register for daytime credit courses and who want the earliest possible registration appointment. The informal method is used by applicants who wish to register for evening or Saturday credit courses. The informal method is also used by all applicants during late registration. Persons granted admission by either process are newly admitted students.~~

~~(1) These are the formal application procedures:~~

~~(a) Complete and return either a state of Washington uniform community college application form or~~)) by completing and submitting a Highline Community College application form ((~~to the admission office. These forms are available at any community college and at most high schools. Contact the admission office at Highline Community College to request an application form. There is no admission fee.~~

~~(b) Highline does not require transcripts from other colleges or high schools for admission to the college. Admission to some special programs requires transcripts. Students who wish to transfer credit from other accredited institutions to Highline should have official transcripts mailed to the registration office. Students wishing transcript evaluations must also complete a transcript evaluation request form which is available from the registration office. The registration office will notify students in writing of the evaluation. Transcript~~

~~evaluation is a service and is not required for admission to the college.~~

~~(c) Falsification of documents for admission may result in disciplinary, civil, or criminal proceedings.~~

~~(2) These are the informal application procedures:~~

~~(a) Register for any credit course during open enrollment. No appointment is necessary during open enrollment. No application form is required. There is no admission fee.~~

~~(b) Highline does not require transcripts from other colleges or high schools for admission to the college. Admission to some special programs requires transcripts~~)), either on the web or in person. Students who wish to transfer credit from other accredited institutions to Highline Community College should have official transcripts mailed to the ((~~registration~~)) records office. ((~~Students wishing transcript evaluations must complete a transcript evaluation request form which is available from the registration office. The registration office will notify students in writing of the evaluation. Transcript evaluation is a service and is not required for admission to the college.~~

~~(c) Falsification of documents for admission may result in disciplinary, civil, or criminal proceedings.~~))

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-160-045 Admission requirements for applicants who are currently enrolled in a common school district or private high school. Applicants who are currently enrolled in a common school district or accredited private school and Highline Community College must ((~~meet the following requirements~~)):

(1) ((~~Applicants must~~)) Be currently enrolled as juniors or seniors in a common school district or accredited private school. Students enrolled in a home school are not eligible for admission((~~.~~));

(2) ((~~Applicants must~~)) Take the entire ((~~ASSET assessment process and score at college level~~)) placement test.

(3) ((~~Applicants must not be on academic or disciplinary warning, probation, suspension, or dismissal status in their high school.~~)) Demonstrate college level skills on the placement test;

(4) ((~~Applicants must~~)) Have permission from their high school principal; applicants under the age of eighteen must also have permission of a parent or legal guardian((~~.~~));

(5) Be in good standing at their high school (may not be on academic or disciplinary warning, probation, suspension, or dismissal status);

(6) Enroll for classes at the designated time; and

(7) Pay any outstanding charges such as, but not limited to, tuition, fees, books and supplies.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-160-060 Residency. Students who meet the definition of resident students according to RCW 28B.15.012(2) shall be classified as resident students. Students not eligible for residency classification will be classified as nonresident students. ((~~A copy of the Revised Code of Washington is available in the Highline Community College library.~~))

Students who have questions about their classification must complete a residency questionnaire and submit the necessary documentation to the ((~~registrar. This questionnaire is available in the registration~~)) admissions office. The ((~~registrar~~)) admissions director or his or her designee will review the questionnaire and ((~~will~~)) notify the student in writing of the decision ((~~within one week. Appeals of the decision of the registrar are referred by the registrar to the office of the attorney general. A written response is generally available to the student within thirty days~~)).

Students are responsible for registering under the proper residency classification. ((~~Students who are not sure of their residency status should fill out and then submit a completed residency questionnaire to the registrar.~~))

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-160-065 Registration procedures. There are two categories of registration procedures. One category applies ((~~only to daytime credit courses while the other category applies to evening and Saturday credit courses and all~~)) to matriculated students, the other to those enrolled in continuing education courses. In both cases, registration is not completed until the student ((~~completes and~~)) submits all required registration materials((~~,~~)) and pays ((~~in full for~~)) all tuition and fees((~~, and has all these items accepted by the registration office~~)) in full.

(1) ((~~Daytime credit courses.~~)) The college ((~~prints the~~)) provides a schedule of dates and times to register ((~~in "The Quarterly," which is Highline Community College's quarterly schedule of course offerings. One to two weeks before the start of registration, "The Quarterly" is available on campus in Building 6 and by mail. The registration office schedules currently enrolled, former, and newly admitted students, in that order, into three sets of registration appointments according to these rules:~~)).

(((~~a~~))) (2) Currently enrolled and returning students are assigned the first set of registration appointments based on ((~~the basis of~~)) the number of credits earned at Highline Community College. ((~~Students with the highest number of earned credits are assigned the first block of appointments. Subsequent blocks of appointments are assigned on the basis of descending number of credits. Appointments are by date and students may register at any time on or after that date. Appointment dates are only found in registration appointment books located in the registration area, faculty buildings, the library, the Federal Way center, and the advising resource center. Appointment dates are listed by name. These appointment books are available two weeks before registration begins.~~

~~(b) Former students are assigned a date to register after currently enrolled student appointments. This date is announced in "The Quarterly." Former students may register any time on or after this date.~~

~~(c)~~)) (3) Newly admitted students ((~~who complete the formal application process described in WAC 132I-160-030 are assigned the last set of appointments. The admissions~~

~~office will notify these students by mail of their specific appointment time and date. Newly admitted students may~~)) register ((~~at their scheduled date and time, may reschedule with the admissions office for a later appointment, or may register during late registration~~)) during open enrollment.

(((~~(d)~~))) (4) Late registration occurs after the ((~~period of appointments. It is a period of open enrollment. Fewer courses are available during this period. Students register without appointments. Any student eligible for admission (WAC 132I-160-030) may register during late registration. Mail in registration is accepted during this period. Forms for mail-in registration are in "The Quarterly." Telephone registration is accepted during specific time periods only. These time periods are listed in "The Quarterly."~~

~~(2) Evening and Saturday credit courses and continuing education courses. Any student and any applicant eligible for admission (WAC 132I-160-030) may register for evening, Saturday, and continuing education courses at any time during the registration period without an appointment. Mail-in registration is accepted during this period. Forms for mail-in registration are in "The Quarterly." Telephone registration is accepted during specific time periods only. These time periods are listed in "The Quarterly."~~)) tenth day of classes.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-160-090 Changes in registration. (1) Changes in schedule: Students may change their course schedule after initial registration. Deadlines for changes ((~~are announced in "The Quarterly." Submit the change of schedule (add/drop) form to the registration office. Instructors' signatures are required after the first week of the quarter. This form is available in the registration area and educational planning center. Students may wish to talk with an advisor first~~)) are available on-line and on campus.

(2) Dropping a course: Students may drop courses ((~~until the end of the ninth week of the quarter (except during summer). Instructors' signatures are required after the first week of the quarter~~)) as indicated in the registration calendar available on-line. Classes dropped during the first three weeks of the quarter will not appear on student transcripts. ((~~Instructors have the option of assigning either a withdrawal grade (W) or, if the student is performing failing work at the time of withdrawal, a failing grade (0.0) to students who withdraw from a course after the third week of the quarter. Students may wish to talk with an adviser first. Check "The Quarterly" for the deadline to drop (withdraw) from courses.~~

~~(3) Withdrawal from college: Students who wish to withdraw from Highline Community College use the same procedures as for dropping a course. The signature of the instructor of each course is required on the change of schedule (add/drop) form after the first week of the quarter. Students who do not officially withdraw and simply cease to attend courses may be assumed by the instructor to have not met minimum course requirements and therefore may be graded as having failed (0.0) the course.~~)) Classes dropped after the third week of the quarter will appear on the student transcript with the designation "W" for withdrawal.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-160-100 Fees. (1) Tuition and fees are based on residency requirements (WAC 132I-160-060) and upon chapter 28B.15 RCW, College and university fees. Tuition ((~~and fees are~~)) is set by the Washington state legislature and ((~~are~~)) is subject to change. The current tuition and fee schedule is available ((~~in "The Quarterly~~)) on-line.((~~"~~))

(2) Special quarterly fees:

(a) ((~~Parking:~~)) Students who park on-campus must pay a parking fee. ((~~On-campus parking rates vary according to the number of credit hours. Information about on-campus parking fees, traffic rules and regulations is available at the campus Security Office, Building 6, 878-3710, extension 218.~~))

(b) ((~~Some~~)) Courses may have additional fees as listed ((~~in~~)) on the ((~~official quarterly course schedule. These fees are established by the board of trustees and are listed as "special instructional fees." Further information is available through the registration office~~)) web site.

(c) Some testing services charge a fee. A list of these services and fees may be obtained from the testing center or on-line web site.

(((~~(d) Some laboratory courses may assess a breakage fee.~~

~~(e) Processing fees: No processing fee will be charged for registration changes initiated by the college or for students wishing to add credits. Changes resulting in a reduced number of credits will be charged a two-dollar processing fee. All changes after the end of the third week of the quarter will result in a two-dollar processing fee. There is no charge for a complete withdrawal.~~

~~(f) An explanation of fees may be obtained under the "Quarterly Tuition and Fee Schedule" section of the Highline Community College catalog.~~))

AMENDATORY SECTION (Amending WSR 95-15-026, filed 7/11/95, effective 8/11/95)

WAC 132I-160-110 Refunds. Refunds resulting from official withdrawal from courses will be computed as follows for state supported courses:

(1) One hundred percent. The refund will be one hundred percent of the amount paid if an official withdrawal form is received in the registration office ((~~or at the Highline College Federal Way Center~~)) before the sixth day of instruction of the quarter for which the fees have been paid. The deadlines vary for summer quarter courses, late-starting courses, or short courses. Deadlines are ((~~published in the quarterly class schedule~~)) available from the college web site.

(2) ((~~Cancelled~~)) Canceled courses. When Highline Community College cancels a course, ((~~Highline~~)) the college will refund the total amount paid for the course unless the student enrolls in a course to replace the ((~~cancelled~~)) canceled course. If the new course is for fewer credits, ((~~Highline~~)) the college will refund the difference.

(3) Forty percent. Highline Community College will refund forty percent of the total amount paid if an official withdrawal form is received in the registration office ((~~or at the Highline Community College Federal Way Center~~)) on or after the sixth day of instruction, provided such withdrawal

occurs within the first twenty calendar days following the beginning of instruction. The deadlines vary for summer quarter courses, late-starting courses, or short courses. Deadlines are published ((~~in the quarterly class schedule~~)) on the college web site.

(4) ((~~Summer quarter, late starting, and short courses. Refunds for these courses will be determined by the registrar.~~

~~(5)~~)) Continuing education classes. To obtain refunds for ((~~self-support~~)) continuing education courses, withdrawals must be received forty-eight hours before the first scheduled course meeting. Other refunds, except for course cancellation, will be made at the discretion of the continuation education director ((~~of continuing education~~)).

(((~~(6) There is no refund of the nonrefundable fall quarter registration deposit to students who did not pay the total amount of their tuition and fees before the deadline. This deadline is published in the quarterly class schedule.~~

~~(7) A processing fee will be withheld from all refunds issued, except when Highline Community College cancels a course, in accordance with chapter 131-28 WAC and under regular college fiscal processes.~~)) (5) Fees considered "nonrefundable" will be so designated in college materials and/or web sites.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-160-120 Appeals. Students have the right to appeal admission and registration deadlines and decisions. ((~~Students are entitled to two levels of appeal.~~)) All appeals must be in writing. Admission ((~~decisions are appealed at the first level to the director of admissions and at the second level to the dean of students. Registration decisions are appealed at the first level to the registrar and at the second level to the dean of administration. The student must initiate an appeal at the first level. If the student is not satisfied with the decision at the first level, the student may appeal at the second level. The results of a second level appeal are final. Students may expect a written response to an appeal within ten working days~~)) and registration appeals are submitted in writing to the registrar after the student has consulted with the admissions director. Students may expect a written response to an appeal within thirty business days. The registrar's decision is final.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132I-160-025	Admission policy.
WAC 132I-160-031	Admission policy for applicants who are not able to demonstrate they are competent to profit from the college's courses.
WAC 132I-160-047	Admission procedures for applicants who are currently enrolled in a common school district or private high school.

NEW SECTION

WAC 132I-276-017 Definitions. (1) "Public record" includes any written information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, e-mail, electronically maintained documents and every other means of recording any form of communication or representation, including letters, words, pictures, sounds or symbols, combination thereof and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, disks, drums and other documents.

(3) Highline Community College is an agency organized by statute pursuant to chapter 28B.50 RCW and shall hereinafter be referred to as the "college."

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-276-030 Request for documents—Procedure. (1) For purposes of compliance with chapter 1, Laws of 1973, a records officer shall be designated by the college president. The duties of the records officer may include, but are not limited to, the implementation of the college's rules and regulations regarding release of public records, coordinating college staff in this regard, and generally insuring compliance by the staff with the public records disclosure requirements.

(2) All documents which are public records as defined by chapter 42.17 RCW are presumptively available for public access, except as restricted by WAC 132I-276-050. Any person wishing to inspect a public record shall submit ((~~Form 1, described in WAC 132I-276-100. Each request must be presented to the records officer, or to his secretary during regular office hours of the college, as defined in WAC 132I-276-080.~~

~~(2)~~)) a written request to the public records officer. The request must include the following information:

(a) The name of the person requesting the record;

(b) The calendar date on which the request was made;

(c) The period of time for which information is requested;

(d) The nature and description of the request;

(e) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested.

(3) The records officer or her/his designee shall, ((~~by the close of that business day, if the request is presented before noon, or noon the following business day if the request is presented in the afternoon~~)) within five business days:

(a) Make the requested document available (with exempt information redacted, if necessary); or

(b) Provide an internet address and link on the college's web site to the specific records requested; or

(c) Acknowledge receipt of the request and provide a reasonable estimate as to when the college will be able to respond to the request; or

(d) State that such a document does not exist; or

(((~~(c)~~))) (e) Ask for clarification of the document requested; or

(((~~(d)~~))) (f) Deny access because the document is exempt from public inspection ((~~under WAC 132I-168-050.~~

~~The action taken shall be marked on Form 1 and returned to the person submitting the form.~~

~~(3) The registrar is hereby designated as the records officer~~)).

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-276-045 Review of denials of public records request. (1) Any person who objects to the denial of a request for a public record may petition, in writing, for prompt review of such decision ((~~by filing Form 2 (WAC 132I-276-110), together with Form 1 as returned~~)).

(2) The written request (((~~Forms 1 & 2~~))) by a person ((~~demanding prompt~~)) requesting review of a decision denying a public record shall be submitted to the president or his or her designee.

(3) Within ((~~two~~)) ten business days after receiving the written request ((~~by a person petitioning~~)) for ((~~prompt~~)) review of a decision denying a public record, the president or his or her designee, shall complete such review.

(4) During the course of the review the president or his or her designee shall consider the obligations of the district to fully comply with the intent of chapter ((~~42.17~~)) 42.56 RCW insofar which requires providing full public access to official records, but shall also consider both the exemptions provided in ((~~RCW 42.17.310~~)) chapter 42.56 RCW and the provisions of the statute which require the ((~~district~~)) college to protect public records from damage or disorganization, prevent excessive interference with essential functions of the agency, and prevent any unreasonable invasion of personal privacy by deleting identifying details.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-276-050 Exemptions. (1) ((~~Public access to documents exempt under RCW 42.17.310 or exempted from disclosure by other state or federal law shall not be granted, unless the records officer determines that disclosure would not affect any vital governmental interest. If the interest can be protected by deletion of person references, access shall be granted following deletion of such material, and a reasonable time shall be allowed for deleting the material.~~)) The college reserves the right to withhold documents or redact information that is exempt from disclosure under the provisions of chapter 42.56 RCW or any other applicable laws.

(2) ((~~Individual files on students of Highline Community College shall be available for inspection only as described by chapter 132I-280 WAC. The only information contained in the individual file of an employee shall be the name, status, salary, and teaching duties of the employee. The employee, however, shall have full access to his/her personnel file.~~)) The college reserves the right to redact information from public records in any case where such information is exempt from disclosure. A reasonable time shall be allowed for redacting the exempt information. Responses to requests for public records that contain redacted documents shall be accompanied by an exemption log that identifies the redacted document and contains a written statement describing the applicable exemption, the legal citation to the exemption, and a brief description of how the exemption applies to the redacted information.

(3) All denials of requests for public records, whether in part or in whole, must be accompanied by an exemption log containing a description of the document (including the type of record, the number of pages, its date and unless otherwise protected, the name of its author and recipient) a written statement describing the applicable exemption, the legal citation to the exemption, and a brief description of how the exemption applies to the record being withheld or redacted. Where use of any identifying features whatever would reveal protected content, records may be designated by a numbered sequence.

(4) The release or disclosure of student educational records is governed by federal regulation, Family Educational Rights and Privacy Act (FERPA). Separate and different standards and procedures may apply to requests for student educational records.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-276-060 Copying. ((~~Persons granted access to public records pursuant to Form 1 shall be allowed to copy such documents on a designated copier of Highline Community College on payment of fifty cents per copy. The registrar will designate the copier and inspect the copies and records after the copying is completed. Payment shall be made to a cashier of the college who will issue a receipt which must be presented to the person in charge of the copying machine. The charge of fifty cents per copy is the reasonable cost of paper and copying charges for Highline Community College.~~)) No fee shall be charged for the inspection of public records. The college will charge twenty-five cents per page for providing copies of public records. This charge applies to scanning documents into a pdf or other electronic formats, as well as paper copies. This charge is intended to reimburse the college for its actual costs arising from the copying or scanning of requested public records. If a particular request for copies requires an unusually large amount of time, or the use of any equipment not readily available, the college reserves the right to charge for copies at a rate sufficient to cover any additional costs. The college reserves the right to require a ten percent advance payment of estimated copy or scanning costs before commencing copying or scanning. The college reserves the right to produce copies of documents on a partial or installment basis and charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the college is not obligated to fulfill the balance of the request.

When electronic records are provided on electronic media such as CDs or DVDs, the college may recover the cost of producing the media.

The college may recover the cost of packaging and mailing requested records.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-276-080 Office hours. For purposes of this chapter, the regular office hours of Highline Community College ((~~shall be considered 9:00 a.m. through 4:00 p.m., Monday through Friday; except for legal holidays for state employees~~)) are available on the college web site.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132I-276-070	Protest.
WAC 132I-276-090	Sanctions.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-300-010 Statement of policy. ((~~It is the policy of Highline Community College not to discriminate on the basis of sex, disability, sexual orientation, race, color, national origin, or age in admission and access to, or treatment or employment in its programs or activities~~)) The college provides equal opportunity in education and employment and does not discriminate on the basis of race, color, national origin, age, disability, sex, sexual orientation, marital status, creed, religion, or status as a veteran of war as required by Title IX of the Educational Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, the Age ((~~Discriminating~~)) Discrimination Act of 1975, RCW 49.60.030 and their implementing regulations. Prohibited sex discrimination includes sexual harassment (unwelcome sexual conduct of various types).

Sexual harassment is a form of sex discrimination. It occurs in a variety of situations which share a common element: The inappropriate introduction of sexual activities or comments into the work or learning situation, the creation of relationships of unequal power and/or elements of coercion, such as requests for sexual favors as a criterion for granting work, study, or grading benefits. Sexual harassment may also involve relationships among peers of repeated sexual advances or demeaning verbal behavior resulting in a harmful effect on a person's ability to study or work in the academic setting. In addition, third parties may submit claims if a sexual relationship unfairly confers preferential treatment to participant(s) in the relationship.

AMENDATORY SECTION (Amending WSR 92-15-115, filed 7/21/92, effective 8/21/92)

WAC 132I-300-020 Discrimination and sexual harassments complaints—Procedure. (1) Any student or employee who believes that he or she has been the subject of discrimination or sexual harassment, should report the incident or incidents to ((~~one of the following college representatives: Title IX officer, coordinator of health services, director of the women's programs, director of continuing education~~)) the chief human resources officer, the administrator so designated by the college president, hereafter referred to as the CHRO. If the complaint is against that official, the complainant should report the matter to the president's office for referral to an alternate designee. The college encourages the timely reporting of any incident(s) of discrimination or sexual harassment.

(2) All reports of incident(s) will be forwarded to the ((~~Title IX officer~~)) CHRO for coordination and a determination on how to process the complaint.

(3) ((~~The Title IX officer shall be an employee designated as such by the president. The president shall communicate his or her designation of the Title IX officer to the community college as part of the president's statement as set forth in Section I, Part 1.~~

~~(4)~~)) The student or employee who files a complaint alleging discrimination or sexual harassment (the complainant) may submit a brief written statement of ((~~facts through one of the college representatives~~)) allegations to the ((~~Title IX officer~~)) CHRO. If the complainant does not submit a written statement, the ((~~Title IX officer~~)) CHRO shall prepare a statement of facts which is approved by the complainant. That statement will be forwarded as well to the subject of the complaint, who may choose to submit a response.

(((~~(5)~~))) (4) The ((~~Title IX officer~~)) CHRO shall appoint ((~~one of the college representatives~~)) a college employee to investigate the complaint. The ((~~Title IX officer~~)) CHRO shall inform the complainant and respondent(s) of the appointment.

(((~~(6)~~))) (5) The college representative shall conduct an investigation based upon the written statement submitted by the complainant and, if applicable, respondent(s). If the complainant did not file a written statement, the representative shall conduct an investigation based upon the statement prepared by the ((~~Title IX officer~~)) CHRO. ((~~The Title IX officer will notify the person who is alleged to have committed the discrimination, or the harassment (respondent) of the complaint.~~

~~(7)~~)) (6) The college representative shall conduct a thorough investigation. The investigation shall include, but is not limited to, providing the complainant and the respondent the opportunity to state their positions ((~~and interviewing witness~~)), interview witnesses, and review relevant documents. The investigation shall be concluded within a reasonable time, normally thirty days.

(((~~(8)~~))) (7) At the conclusion of the investigation the college representative shall set forth his or her findings and recommendations in writing. The representative shall send a copy of the findings and recommendations to ((~~the complainant, the respondent, and~~)) the ((~~Title IX officer~~)) CHRO.

(((~~(9)~~))) (8) The ((~~Title IX officer~~)) CHRO shall consider the findings and recommendations of the representative. The ((~~Title IX officer~~)) CHRO shall determine whether disciplinary action ((~~is~~)) may be appropriate. If the CHRO so recommends, he or she will consult with the respondent's appointing authority regarding possible personnel action. These options may include voluntary training/counseling, development of a remediation plan, or formal discipline. The ((~~Title IX officer~~)) CHRO shall advise the complainant and respondent of ((~~his or her~~)) the college's decision.

(((~~(10)~~))) (9) If the ((~~Title IX officer~~)) CHRO and respondent's appointing authority determine((~~s~~)) that disciplinary actions should be instituted against an employee the applicable provisions of employee rights and responsibilities shall be followed. These provisions include but are not limited to, state and federal constitutional and statutory provisions, rules of the ((~~higher education personnel board~~)) Washington office of financial management, collective bargaining agreements, and college policies.

(((~~(11)~~))) (10) If the ((~~Title IX officer~~)) CHRO determines that disciplinary action should be instituted against a student, the applicable provisions of the college student code shall be followed.

(((~~(12)~~))) (11) If the ((~~Title IX officer~~)) CHRO determines that disciplinary action is not appropriate and the complainant disagrees, the complainant may appeal, in writing, to the president.

(((~~(13)~~))) (12) The procedures regarding complaints of discrimination shall be published and distributed as determined by the ((~~Title IX officer~~)) president or president's designee. Any person who believes he or she has been subjected to sexual harassment will be provided a copy of this policy and procedure.

Chapter 132I-310 WAC

NONACADEMIC COMPLAINTS AGAINST COLLEGE EMPLOYEES

NEW SECTION

WAC 132I-310-010 Purpose and definition. The purpose of this procedure is to provide guidelines that promote constructive dialogue, understanding, and informal resolution of complaints and concerns that arise against college employees outside the instructional setting. This process also provides an avenue for formal procedures should an informal approach be ineffective. A complaint is hereby defined as a statement that expresses a complainant's dissatisfaction with the performance or action of a college employee, which the complainant believes to be unfair or inconsistent with college policy or procedures.

NEW SECTION

WAC 132I-310-015 Exclusions of complaint process. This procedure is not to be used where other procedures are required for the resolution of specific categories of complaints or appeals. Student concerns covered by existing college policy or procedures (e.g., complaints against faculty members section 807 of the HCEA/HCC collective bargaining agreement) are excluded from this complaint process and should be brought to the attention of the appropriate college official.

NEW SECTION

WAC 132I-310-020 Time limitations. Anyone wishing to express a complaint, as previously defined, should do so no later than ten business days from the time the complainant knew or reasonably should have known of the concern. Timely initiation of a complaint rests with the complainant.

NEW SECTION

WAC 132I-310-030 Complaint procedures. (1) Step 1: Discuss the complaint with the staff member. The complainant should discuss the complaint informally and thoroughly with the staff member to whom the complaint is directed. Both parties should openly discuss the complaint/concern and attempt to understand the other's perspectives, explore alternatives, and arrive at a satisfactory resolution to the complaint. If the complainant and staff member are unsuccessful at finding a resolution, if either of the parties is unwilling to meet, or if the complainant is dissatisfied with the complaint resolution, they should then move to step 2.

(2) Step 2: File the complaint in writing. Within ten business days of meeting or attempting to meet with the staff member, and the issue remains unresolved, the complainant shall draft a written complaint and forward the written complaint to the staff member and the staff member's immediate supervisor.

(3) Step 3: Supervisor conference. Upon receiving the complainant's written complaint, the staff member's immediate supervisor will ask the staff member for a written response. The supervisor may request supporting materials from either the staff member or complainant. At this step, the supervisor's primary goal is to facilitate a resolution of the matter between the parties. To that end, at his or her discretion, the supervisor may hold a conference with the involved parties, may meet with each individually, or may communicate a proposed resolution(s) in writing. Within fifteen business days of the date the written complaint was received, the supervisor shall provide a written copy of his/her decision to each involved party.

(4) Step 4: Executive conference. If the decision of the immediate supervisor does not resolve the complaint to the satisfaction of the complainant, the chief human resources officer (CHRO) or his or her designee shall, on request of the complainant, convene a conference of all affected supervisors within ten business days. All written statements and supporting materials from involved parties will be provided to the CHRO or his or her designee prior to the conference. The CHRO or his or her designee and the affected supervisors may opt to meet, individually or collectively, with the involved parties. Written materials will be retained in the human resources office. If after discussion, mediation, and review of materials at the conference, the involved parties are unable to find a mutually acceptable resolution, the CHRO or his or her designee shall within five business days render a written decision on the complaint and will provide copies to

all involved parties. The decision of the CHRO or his or her designee will be final.

NEW SECTION

WAC 132I-310-040 Complainant assistance. At any time during the complaint process, a complainant may request that the CHRO or his or her designee assign a college employee to provide the complainant with guidance and assistance with the complaint process.

WSR 12-09-086
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed April 18, 2012, 9:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-05-106.

Title of Rule and Other Identifying Information: Chapter 16-470 WAC, Quarantine—Agricultural pests, the department is proposing to modify the apple maggot quarantine boundaries by:

(1) Adding a portion of Chelan County to the quarantine; and

(2) Decreasing the size of the quarantine portion of Kittitas County.

Hearing Location(s): Washington State Department of Agriculture, Fruit and Vegetable Inspection, 270 9th Street N.E., Main Conference Room, East Wenatchee, WA 98802, on May 31, 2012, at 1:00 p.m.

Date of Intended Adoption: June 7, 2012.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales @agr.wa.gov, fax (360) 902-2094, by May 31, 2012.

Assistance for Persons with Disabilities: Contact Henri Gonzales by May 24, 2012, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to modify the boundary of the pest free area established in the apple maggot quarantine rule for Chelan and Kittitas counties. Changes to the existing rule may better prevent or minimize possible movement of apple maggot from infested areas into uninfested areas, secure access to international and interstate markets, and protect the commercial tree fruit industry from an economically significant pest by quarantine modification.

Reasons Supporting Proposal: The apple maggot is an invasive insect pest native to eastern North America. Its hosts include apples, crabapple, and native hawthorn. In its larval development stage it can cause extensive damage to fruit. It is economically significant to the Washington apple crop not only due to its ability to cause physical crop damage, but also because fruit from demonstrated apple maggot free areas or locations has greater market access for international shipments.

Data collected from the 2011 apple maggot survey provides evidence that the state's apple maggot population has altered its range. Modification of the existing quarantine is necessary in order to respond to this change.

Statutory Authority for Adoption: RCW 17.24.041 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 17.24 RCW.

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting: Mary Toohey, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1907; Implementation and Enforcement: Brad White, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-2071.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendments will not have a more than minor economic impact on the commercial tree fruit industry. This proposed change to the rule would add one business - a commercial fruit orchard which is part of a small business - to the hundred plus orchards in the already existing quarantine area. Based on information obtained from the business' web site, it appears that the crop from this single orchard is locally processed and/or sold within the proposed quarantine area. The proposed amendments would have a minimal additional economic impact on this business, as the rule change would not trigger additional inspection requirements for it at this time. In addition, neglecting to change the existing rule may result in loss of markets and potential exports for the Washington apple crop.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

April 18, 2012
Mary A. Martin Toohey
Assistant Director

AMENDATORY SECTION (Amending WSR 09-18-086, filed 9/1/09, effective 10/2/09)

WAC 16-470-105 Area under order for apple maggot—Pest free area—Quarantine areas. (1) A pest free area for apple maggot is declared for the following portions of Washington state:

(a) Counties of Adams, Asotin, Benton, ((~~Chelan,~~)) Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Lincoln, Okanogan, Pend Oreille, Stevens, Walla Walla, and Whitman.

(b) The portion of Kittitas County designated as follows: Beginning at the point where Interstate Highway No. 90 crosses longitude 120°31' W; thence southerly to the Kittitas-Yakima County line; thence easterly along the county line ((~~to the Yakima River; thence northerly along the Yakima River to its confluence with Lmuma Creek; thence easterly along Lmuma Creek to Interstate Highway No. 82; thence southerly along Interstate Highway No. 82 to the Kittitas-Yakima County line; thence east~~)) to the Columbia River; thence northerly along the Columbia River to Interstate Highway No. 90; thence westerly along Interstate Highway No. 90 to the point of beginning.

(c) Yakima County, except for the area designated in subsection (2)(c) of this section.

(d) Chelan County, except for the area designated in subsection (2)(d) of this section.

(2) A quarantine for apple maggot is declared for the following portions of Washington state:

(a) Counties of Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Klickitat, Lewis, Mason, Pacific, Pierce, Snohomish, Spokane, Skagit, Skamania, Thurston, Wahkiakum, and Whatcom.

(b) Kittitas County, except for the area designated in subsection (1)(b) of this section.

(c) The portion of Yakima County designated as follows: Beginning at the northeastern corner of Yakima County on the west bank of the Columbia River; thence southerly along the Columbia River to the Yakima-Benton County line; thence southerly along the county line to latitude N46°30'; thence west to longitude W120°20'; thence north to latitude N46°30.48'; thence west to longitude W120°25'; thence north to latitude N46°31.47'; thence west to longitude W120°28'; thence north to latitude N46°32'; thence west to longitude W120°36'; thence south to latitude N46°30'; thence west to longitude W120°48'; thence southerly to the Klickitat-Yakima County line; thence westerly along the county line to the Yakima-Skamania County line; thence northerly along the county line to the Lewis-Yakima County line; thence easterly and northerly along the county line to the Pierce-Yakima County line; thence northerly and easterly along the county line to the Kittitas-Yakima County line; thence easterly and southerly along the county line to the west bank of the Columbia River and the point of beginning.

(d) The portion of Chelan County designated as follows: Beginning at the point where the northern boundary of the county crosses longitude N120°43.02' following the longitudinal line due south to the fork of Highway 207 and Chiwawa Loop Road; thence south following the eastern edge of Highway 207 which becomes Beaver Valley Road and then Chumstick Highway; thence southeast along the eastern edge of Highway 2 to the point where the northern ridgeline of Boundary Butte drops to meet Highway 2; thence southerly, following the ridgeline of Boundary Butte gaining in elevation into the Stuart Range to the highest point of McClellan Peak; thence due south from McClellan Peak to the southern boundary of the county; thence following the county line west, then north, and then east to the beginning point.

(3) A quarantine for apple maggot is declared for all states or foreign countries where apple maggot is established. The area under quarantine includes, but is not limited to, the states of Idaho, Oregon, Utah, and California, and, in the eastern United States, all states and districts east of and including North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas, and any other areas where apple maggot is established.

WSR 12-09-087
PROPOSED RULES
HEALTH CARE AUTHORITY
(Medicaid Program)

[Filed April 18, 2012, 10:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-19-005.

Title of Rule and Other Identifying Information: Amending WAC 182-531-0050 Physician-related services definitions and 182-530-7000 Reimbursement; and new WAC 182-531-1625 Outpatient hemophilia treatment requirements—Center of excellence.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room (106A), 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://maa.dshs.wa.gov/pdf/CherryStreet DirectionsNMap.pdf or directions can be obtained by calling (360) 725-1000), on May 22, 2012, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 23, 2012.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on May 22, 2012.

Assistance for Persons with Disabilities: Contact Kelly Richters by May 15, 2012, TTY/TDD (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These revisions establish rules for hemophilia centers of excellence (COE) including requirements for qualifying for and maintaining hemophilia COE status. The rules specify that for fee-for-service clients, the agency pays only qualified hemophilia treatment COE for providing outpatient hemophilia related products and supplies. The agency also made housekeeping fixes within the text by changing "department" to "agency" - to align with the recent departure of medicaid from the department of social and health services and merger with HCA.

Reasons Supporting Proposal: To improve care oversight and link hemophilia product management to the comprehensive hemophilia diagnostic and treatment centers operating under the national hemophilia program and providing services that meet or exceed standards recommended by the National Hemophilia Foundation's Medical and Scientific Advisory Committee.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: RCW 41.05.021.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, HCA, P.O. Box 45504, Olympia, WA, (360) 725-1306; Implementation and Enforcement: Myra Davis, HCA, P.O. Box 45510, Olympia, WA, (360) 725-1847.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has ana-

lyzed the proposed rules and concludes that they do not impose more than minor costs for affected small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

April 18, 2012
Kevin M. Sullivan
Rules Coordinator

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

WAC 182-530-7000 Reimbursement. (1) The ((~~department's~~)) agency'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 nonmedicaid population.

(2) The ((~~department~~)) agency selects the sources for pricing information used to set EAC and MAC.

(3) The ((~~department~~)) agency 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~~)) agency 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~~)) agency 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 nonmedicaid customer, the provider must similarly reduce its charge to the ((~~department~~)) agency 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~~)) agency.

(7) The ((~~department~~)) agency does not reimburse for:

(a) Prescriptions written on presigned 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~~)) agency's hospice program when the drugs are related to the client's terminal illness and related condition.

(f) Products for treatment of hemophilia and von Willebrand disorders unless provided by an outpatient hemophilia treatment center of excellence (COE) as defined in WAC 182-531-1625.

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

WAC 182-531-0050 Physician-related services definitions. The following definitions and abbreviations and those found in ((~~WAC 388-500-0005~~)) chapter 182-500 WAC, apply to this chapter. ((~~Defined words and phrases are bolded the first time they are used in the text.~~))

"Acquisition cost" ((~~means~~)) - The cost of an item excluding shipping, handling, and any applicable taxes.

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

"Acute physical medicine and rehabilitation (PM&R)" ((~~means~~)) - A comprehensive inpatient and rehabilitative program coordinated by a multidisciplinary team at ((~~a department-approved~~)) an agency-approved rehabilitation facility. The program provides twenty-four hour specialized nursing services and an intense level of specialized therapy (speech, physical, and occupational) for a diagnostic category for which the client shows significant potential for functional improvement (see WAC ((~~388-550-2501~~)) 182-550-2501).

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

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

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

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

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

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

"Bariatric surgery" ((~~means~~)) - Any surgical procedure, whether open or by laparoscope, which reduces the size of the stomach with or without bypassing a portion of the

small intestine and whose primary purpose is the reduction of body weight in an obese individual.

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

"Bundled services" ((~~means~~)) - Services integral to the major procedure that are included in the fee for the major procedure. Bundled services are not reimbursed separately.

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

"By report (BR)," ((~~means a method of reimbursement in which the department determines the amount it will pay for a service that is not included in the department's published fee schedules. The department may request the provider to submit a "report" describing the nature, extent, time, effort, and/or equipment necessary to deliver the service~~)) see WAC 182-500-0015.

"Call" ((~~means~~)) - A face-to-face encounter between the client and the provider resulting in the provision of services to the client.

"Cast material maximum allowable fee" ((~~means~~)) - A reimbursement amount based on the average cost among suppliers for one roll of cast material.

"Center of excellence (COE)" - A hospital, medical center, or other health care provider that meets or exceeds standards set by the agency for specific treatments or specialty care.

"Centers for Medicare and Medicaid Services (CMS)," ((~~means the agency within the federal Department of Health and Human Services (DHHS) with oversight responsibility for medicare and medicaid programs~~)) see WAC 182-500-0020.

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

"Children's health insurance plan (CHIP)," see chapter ((~~388-542~~)) 182-542 WAC.

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

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

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

"CPT," see "current procedural terminology."

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

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

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

"Emergency medical condition(s)," ((~~means a medical condition(s) that manifests itself by acute symptoms of sufficient severity so that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part~~)) see WAC 182-500-0030.

"Emergency services" ((~~means~~)) - Medical services required by and provided to a patient experiencing an emergency medical condition.

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

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

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

"Experimental" ((~~means~~)) - A term to describe a procedure, or course of treatment, which lacks sufficient scientific evidence of safety and effectiveness. See WAC ((~~388-531-0550~~)) 182-531-0550. A service is not "experimental" if the service:

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

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

"Federally approved hemophilia treatment center" - A hemophilia treatment center (HTC) which:

(1) Receives funding from the U.S. Department of Health and Human Services, Maternal and Child Health Bureau National Hemophilia Program;

(2) Is qualified to participate in 340B discount purchasing as an HTC;

(3) Has a U.S. Center for Disease Control (CDC) and prevention surveillance site identification number and is listed in the HTC directory on the CDC web site;

(4) Is recognized by the Federal Regional Hemophilia Network that includes Washington state; and

(5) Is a direct care provider offering comprehensive hemophilia care consistent with treatment recommendations set by the Medical and Scientific Advisory Council (MASAC) of the National Hemophilia Foundation in their standards and criteria for the care of persons with congenital bleeding disorders.

"Fee-for-service," ((~~means the general payment method the department uses to reimburse providers for covered medical services provided to medical assistance clients when those services are not covered under the department's healthy options program or children's health insurance program (CHIP) programs~~)) see WAC 182-500-0035.

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

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

"Global surgery reimbursement," see WAC ((~~388-531-1700~~)) 182-531-1700.

"HCPCS Level II" ((~~means~~)) - Health care common procedure coding system, a coding system established by Centers for Medicare and Medicaid Services (CMS) (((~~formerly known as the Health Care Financing Administration~~))) to define services and procedures not included in CPT.

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

"Health care team" ((~~means~~)) - A group of health care providers involved in the care of a client.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Limitation extension," ((~~means a process for requesting and approving reimbursement for covered services whose proposed quantity, frequency, or intensity exceeds that which the department routinely reimburses. Limitation extensions require prior authorization~~)) see WAC 182-501-0169.

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

"Medically necessary," see WAC ((~~388-500-0005~~)) 182-500-0070.

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

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

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

"Mentally incompetent" ((~~means~~)) - A client who has been declared mentally incompetent by a federal, state, or local court.

"Modifier" ((~~means~~)) - A two-digit alphabetic and/or numeric identifier that is added to the procedure code to indicate the type of service performed. The modifier provides the

means by which the reporting physician can describe or indicate that a performed service or procedure has been altered by some specific circumstance but not changed in its definition or code. The modifier can affect payment or be used for information only. Modifiers are listed in fee schedules.

"Outpatient," ((~~means a client who is receiving medical services in other than an inpatient hospital setting~~)) see WAC 182-500-0080.

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

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

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

"Physician's current procedural terminology," see "((~~CPT,~~)) current procedural terminology (CPT)."

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

"Podiatric service" ((~~means~~)) - The diagnosis and medical, surgical, mechanical, manipulative, and electrical treatments of ailments of the foot and ankle.

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

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

"Prior authorization," ((~~means a process by which clients or providers must request and receive the department approval for certain medical services, equipment, or supplies, based on medical necessity, before the services are provided to clients, as a precondition for provider reimbursement. Expedited prior authorization and limitation extension are forms of prior authorization~~)) see WAC 182-500-0085.

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

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

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

"Provider," see WAC ((~~388-500-0005~~)) 182-500-0085.

"Radioallergosorbent test" or **"RAST"** ((~~means~~)) - A blood test for specific allergies.

"RBRVS," see resource based relative value scale.

((~~**"RVU,"** see relative value unit.~~))

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

"Reimbursement" ((~~means~~)) - Payment to a provider or other ((~~department-approved~~)) agency-approved entity who bills according to the provisions in WAC ((~~388-502-0100~~)) 182-502-0100.

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

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

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

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

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

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

"RVU," see relative value unit.

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

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

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

"Technical component" ((~~means~~)) - The part of a procedure or service that relates to the equipment set-up and

technician's time, or the part of the procedure and service reimbursement that recognizes the equipment cost and technician time.

NEW SECTION

WAC 182-531-1625 Outpatient hemophilia treatment requirements—Center of excellence. A hemophilia treatment center of excellence (COE) uses a comprehensive care model to provide care for persons with bleeding disorders. The comprehensive care model includes specialized prevention, diagnostic, and treatment programs designed to provide family-centered education, state-of-the-art treatment, research, and support services for individuals and families living with bleeding disorders.

(1) The agency pays only qualified hemophilia treatment COEs for providing outpatient hemophilia and von Willebrand related products and supplies to eligible agency clients.

(2) To become a qualified hemophilia treatment COE, a hemophilia center must meet all of the following:

(a) Have a current core provider agreement in accordance with WAC 182-502-0005;

(b) Be a federally approved hemophilia treatment center (HTC) as defined in WAC 182-531-0050 and meet or exceed all Medical and Scientific Advisory Council (MASAC) standards of care and delivery of services;

(c) Participate in the public health service 340B provider drug discount program and be listed in the medicaid exclusion files maintained by the federal Health Resources and Services Administration (HRSA) Office of Pharmacy Affairs (OPA);

(d) Submit a written request to the agency to be a qualified hemophilia treatment center of excellence and include proof of the following:

(i) U.S. Center for Disease Control (CDC) and prevention surveillance site identification number; and

(ii) Listing in the hemophilia treatment center (HTC) directory.

(e) Receive written approval including conditions of payment and billing procedures from the agency.

(3) To continue as a qualified hemophilia treatment COE, the HTC must annually submit to the agency:

(a) Copies of grant documents and reports submitted to the maternal and child health bureau/human resources and services administration/department of health and human services or to their designated subcontractors; and

(b) Proof of continued federal funding by the National Hemophilia Program and listing with the regional hemophilia network and the CDC.

(4) Services rendered by a hemophilia treatment COE may be subject to the agency's limitations and authorization requirements.

WSR 12-09-088
PROPOSED RULES
LIQUOR CONTROL BOARD

[Filed April 18, 2012, 10:28 a.m.]

Supplemental Notice to WSR 12-07-040.

Preproposal statement of inquiry was filed as WSR 11-24-098.

Title of Rule and Other Identifying Information: New sections in chapter 314-02 WAC, Requirements for retail liquor licensees; create new chapter 314-23 WAC, Spirits distributors and spirits certificate of approval licenses; and revising chapter 314-28 WAC, Distilleries.

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Lacey, WA 98504, on May 23, 2012, at 10:00 a.m.

Date of Intended Adoption: May 30, 2012.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504-3080, e-mail rules@liq.wa.gov, fax (360) 664-9689, by May 23, 2012.

Assistance for Persons with Disabilities: Contact Karen McCall by May 23, 2012, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New permanent rules are needed to implement Initiative 1183 that passed on November 8, 2011. Parts of the initiative became effective on December 8, 2011. New license types were created and the state of Washington changed from a controlled liquor system to a privatized liquor system. Emergency rules were adopted on December 7, 2011, and on April 4, 2012, to clarify the language in the new laws created in Initiative 1183. Permanent rules are needed to replace the emergency rules and further clarify the new laws.

Statutory Authority for Adoption: RCW 66.08.030, 66.24.055, 66.24.160, 66.24.630, 66.24.640.

Statute Being Implemented: RCW 66.24.055, 66.24.160, 66.24.630, 66.24.640.

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

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

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal has a positive impact on businesses or individuals who wish to sell spirits in the state of Washington.

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

April 18, 2012
Sharon Foster
Chairman

NEW SECTION

WAC 314-02-103 What is a wine retailer reseller endorsement? (1) A wine retailer reseller endorsement is issued to the holder of a grocery store liquor license to allow the sale of wine at retail to on-premises liquor licensees.

(2) No single sale to an on-premises liquor licensee may exceed twenty-four liters. Single sales to an on-premises licensee are limited to one per day.

(3) A grocery store licensee with a wine retailer reseller endorsement may accept delivery at its licensed premises or at one or more warehouse facilities registered with the board.

(4) The holder of a wine retailer reseller endorsement may also deliver wine to its own licensed premises from the registered warehouse; may deliver wine to on-premises licensees, or to other warehouse facilities registered with the board. A grocery store licensee wishing to obtain a wine retailer reseller endorsement that permits sales to another retailer must possess and submit a copy of their federal basic permit to purchase wine at wholesale for resale under the Federal Alcohol Administration Act. A federal basic permit is required for each location from which the grocery store licensee holding a wine retailer reseller endorsement plans to sell wine to another retailer.

(5) The annual fee for the wine retailer reseller endorsement is one hundred sixty-six dollars.

NEW SECTION

WAC 314-02-104 Central warehousing. (1) Each retail liquor licensee having a warehouse facility where they intend to receive wine and/or spirits must register their warehouse facility with the board and include the following information:

(a) Documentation that shows the licensee has a right to the warehouse property;

(b) If a warehouse facility is to be shared by more than one licensee, each licensee must demonstrate to the board that a recordkeeping system is utilized that will account for all wine and/or spirits entering and leaving the warehouse for each license holder. The system must also account for product loss;

(c) Licensees in a shared warehouse may consolidate their commitment for the amount of product they plan to order, but their orders must be placed separately and paid for by each licensee; and

(d) Alternatively, if the warehouse does not have a recordkeeping system that provides the required information, wine and/or spirits for each licensee in a shared warehouse must be separated by a physical barrier. Where physical separation is utilized, a sketch of the interior of the warehouse facility must be submitted indicating the designated area the licensee will be storing product. (Example: If ABC Grocery and My Grocery, each licensed to a different ownership entity, both lease space in a warehouse facility, the wine and/or spirits must be in separate areas separated by a physical barrier.)

(2) Upon the request of the board, the licensee must provide any of the required records for review. Retail liquor licensees must keep the following records for three years:

(a) Purchase invoices and supporting documents for wine and/or spirits purchased;

(b) Invoices showing incoming and outgoing wine and/or spirits (product transfers);

(c) Documentation of the recordkeeping system in a shared warehouse as referenced in subsection (1)(b) of this section; and

(d) A copy of records for liquor stored in the shared warehouse.

(3) Each licensee must allow the board access to the warehouse for audit and review of records.

(4) If the wine and/or spirits for each licensee in a shared warehouse is not kept separate, and a violation is found, each licensee that has registered the warehouse with the board may be held accountable for the violation.

NEW SECTION

WAC 314-02-106 What is a spirits retailer license? (1) A spirits retailer licensee may not sell spirits under this license until June 1, 2012. A spirits retailer is a retail license. The holder of a spirits retailer license is allowed to:

(a) Sell spirits in original containers to consumers for off-premises consumption;

(b) Sell spirits in original containers to permit holders (see chapter 66.20 RCW);

(c) Sell spirits in original containers to on-premises liquor retailers, for resale at their licensed premises, although no single sale may exceed twenty-four liters, and single sales to an on-premises licensee are limited to one per day; and

(d) Export spirits in original containers.

(2) A spirits retailer licensee that intends to sell to another retailer must possess a basic permit under the Federal Alcohol Administration Act. This permit must provide for purchasing distilled spirits for resale at wholesale. A copy of the federal basic permit must be submitted to the board. A federal basic permit is required for each location from which the spirits retailer licensee plans to sell to another retailer.

(3) A sale by a spirits retailer licensee is a retail sale only if not for resale to an on-premises spirits retailer. On-premises retail licensees that purchase spirits from a spirits retail licensee must abide by RCW 66.24.630.

(4) A spirits retail licensee must pay to the board seventeen percent of all spirits sales. The first payment is due to the board October 1, 2012, for sales from June 1, 2012, to June 30, 2012 (see WAC 314-02-109 for quarterly reporting requirements).

Reporting of spirits sales and payment of fees must be submitted on forms provided by the board.

(5) The annual fee for a spirits retail license is one hundred sixty-six dollars.

NEW SECTION

WAC 314-02-107 What are the requirements for a spirits retail license? (1) The requirements for a spirits retail license are as follows:

(a) Submit a signed acknowledgment form indicating the square footage of the premises. The premises must be at least ten thousand square feet of fully enclosed retail space within a single structure, including store rooms and other interior

areas. This does not include any area encumbered by a lease or rental agreement (floor plans one-eighth inch to one foot scale may be required by the board); and

(b) Submit a signed acknowledgment form indicating the licensee has a security plan which addresses:

(i) Inventory management;

(ii) Employee training and supervision; and

(iii) Physical security of spirits product with respect to preventing sales to underage or apparently intoxicated persons and theft of product.

(2) A grocery store licensee or a specialty shop licensee may add a spirits retail liquor license to their current license if they meet the requirements for the spirits retail license.

(3) The board may not deny a spirits retail license to qualified applicants where the premises is less than ten thousand square feet if:

(a) The application is for a former contract liquor store location;

(b) The application is for the holder of a former state liquor store operating rights sold at auction; or

(c) There is no spirits retail license holder in the trade area that the applicant proposes to serve; and

(i) The applicant meets the operational requirements in WAC 314-02-107 (1)(b); and

(ii) If a current liquor licensee, has not committed more than one public safety violation within the last three years.

NEW SECTION

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

The required reports must be:

(a) On a form furnished by the board;

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

(c) Submitted, with payment due, to the board on or before the twenty-fifth day following the tax quarter (e.g., Quarter 1 (Jan., Feb., Mar.) report is due April 20th). When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. postal service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

(2) **What if a spirits retailer licensee fails to report or pay, or reports or pays late?** If a spirits retailer licensee does not submit its quarterly reports and payment to the board as required in subsection (1) of this section, the licensee is subject to penalties.

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

Chapter 314-23 WAC

SPIRITS DISTRIBUTORS, SPIRITS CERTIFICATE OF APPROVAL LICENSES, AND SPIRITS IMPORTERS

NEW SECTION

WAC 314-23-001 What does a spirits distributor license allow? (1) A spirits distributor licensee may not commence sales until March 1, 2012. A spirits distributor licensee is allowed to:

(a) Sell spirits purchased from manufacturers, distillers, importers, or spirits certificate of approval holders;

(b) Sell spirits to any liquor licensee allowed to sell spirits;

(c) Sell spirits to other spirits distributors; and

(d) Export spirits from the state of Washington.

(2) The price of spirits sold to retailers may not be below acquisition cost.

NEW SECTION

WAC 314-23-005 What are the fees for a spirits distributor license? (1) The holder of a spirits distributor license must pay to the board a monthly license fee as follows:

(a) Ten percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the first two years of licensure; and

(b) Five percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the third year of licensure and every year thereafter.

(c) The license fee is only calculated on sales of items which the licensee was the first spirits distributor in the state to have received:

(i) In the case of spirits manufactured in the state, from the distiller; or

(ii) In the case of spirits manufactured outside the state, from a spirits certificate of approval holder.

(d) Reporting of sales and payment must be submitted on forms provided by the board.

(2) The annual fee for a spirits distributor license is one thousand three hundred twenty dollars.

NEW SECTION

WAC 314-23-020 What are the requirements for a spirits distributor license? (1) In addition to any application requirements in chapter 314-07 WAC, applicants applying for a spirits distributor license must submit:

(a) A copy of all permits required by the federal government;

(b) Documentation showing the applicant has the right to the property;

(c) An acknowledgment form certifying the applicant has a security plan which addresses:

(i) Inventory management; and

(ii) Physical security of spirits product with respect to preventing theft.

(2) Spirits distributors must sell and deliver product from their licensed premises.

NEW SECTION

WAC 314-23-021 What are the monthly reporting and payment requirements for a spirits distributor license? (1) A **spirits distributor** must submit monthly reports and payments to the board.

(2) The required monthly reports must be:

(a) On a form furnished by the board;

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

NEW SECTION

WAC 314-23-022 What if a distributor licensee fails to report or pay, or reports or pays late? (1) If a spirits distributor licensee does not submit its monthly reports and payment to the board as required in WAC 314-23-021(1), the licensee is subject to penalties.

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

NEW SECTION

WAC 314-23-030 What does a spirits certificate of approval license allow? (1) A spirits certificate of approval licensee may not commence sales until March 1, 2012. A spirits certificate of approval license may be issued to spirits manufacturers located outside of the state of Washington but within the United States.

(2) A holder of a spirits certificate of approval may act as a distributor of spirits they are entitled to import into the state by selling directly to distributors or importers licensed in Washington state. The fee for a certificate of approval is two hundred dollars per year.

(3) A certificate of approval holder must obtain an endorsement to the certificate of approval that allows the shipment of spirits the holder is entitled to import into the state directly to licensed liquor retailers. The fee for this endorsement is one hundred dollars per year and is in addition to the fee for the certificate of approval license. The holder of a certificate of approval license that sells directly to licensed liquor retailers must:

(a) Report to the board monthly, on forms provided by the board, the amount of all sales of spirits to licensed retailers.

(b) Pay to the board a fee of ten percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the first two years of licensure.

(c) Pay to the board five percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the third year of licensure and every year thereafter.

(4) An authorized representative out-of-state spirits importer or brand owner for spirits produced in the United States but outside of Washington state may obtain an authorized representative certificate of approval license which allows the holder to ship spirits to spirits distributors, or spirits importers located in Washington state. The fee for an authorized representative certificate of approval for spirits is two hundred dollars per year.

(5) An authorized representative out-of-state spirits importer or brand owner for spirits produced outside of the United States may ship spirits to licensed spirits distributors, or spirits importers located in Washington state. The fee for an authorized representative certificate of approval for foreign spirits is two hundred dollars per year.

NEW SECTION

WAC 314-23-040 What are the requirements for a certificate of approval license? The following documents are required to obtain a certificate of approval license:

(1) Copies of all permits required by the federal government;

(2) Copies of all state licenses and permits required by the state in which your operation is located; and

(3) Licensing documents as determined by the board.

NEW SECTION

WAC 314-23-041 What are the monthly reporting and payment requirements for a spirits certificate of approval licensee? (1) A spirits certificate of approval licensee must submit monthly reports and payments to the board.

(2) The required monthly reports must be:

(a) On a form furnished by the board;

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

NEW SECTION

WAC 314-23-042 What if a certificate of approval licensee fails to report or pay, or reports or pays late? (1) If a spirits certificate of approval licensee does not submit its monthly reports and payment to the board as required by this subsection (1), the licensee is subject to penalties.

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

NEW SECTION

WAC 314-23-050 What does a spirits importer license allow? (1) A spirits importer license is issued to an in-state spirits importer. A spirits importer is allowed to:

(a) Import spirits into the state of Washington;

(b) Store spirits in the state of Washington;

(c) Sell spirits to spirits distributors; and

(d) Export spirits in original containers.

(2) An out-of-state spirits importer is required to obtain an authorized representative certificate of approval license as referenced in WAC 314-23-030.

AMENDATORY SECTION (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

WAC 314-28-010 Records. (1) All distilleries licensed under RCW 66.24.140 and 66.24.145, including craft, fruit, and laboratory distillers must:

(a) ((~~Must~~)) Keep records ((~~concerning~~)) regarding any spirits, whether produced or purchased, for three years after each sale. A distiller ((~~may be~~)) is required to report on forms approved by the board;

(b) ((~~Must,~~)) In the case of spirits exported or sold, preserve all bills of lading and other evidence of shipment; ((~~and~~))

(c) ((~~Must~~)) Submit duplicate copies of transcripts, notices, or other data that ((~~are~~)) is required by the federal government to the board if requested, within thirty days of the notice of such request. A distiller shall also furnish copies of the bills of lading, covering all shipments of the products of the licensee, to the board within thirty days of notice of such request;

(d) Preserve all sales records to spirits retail licensees, sales to spirits distributors, and exports from the state; and

(e) Submit copies of its monthly records to the board upon request.

(2) In addition to the above, a craft distiller must:

(a) Preserve all sales records((~~, in the case~~)) of retail sales to consumers; and

(b) Submit ((~~duplicate copies of~~)) its monthly ((~~returns~~)) records to the board upon request.

NEW SECTION

WAC 314-28-030 Changes to the distiller and craft distiller license. (1) Beginning March 1, 2012, all distilleries licensed under RCW 66.24.140 and 66.24.145 may sell spirits of their own production directly to a licensed spirits distributor in the state of Washington and to a licensed spirits retailer in the state of Washington.

(2) Beginning June 1, 2012, a distiller may sell spirits of its own production to a customer for off-premises consumption, provided that the sale occurs when the customer is physically present at the licensed premises.

AMENDATORY SECTION (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

WAC 314-28-050 What does a craft distillery license allow? (1) A craft distillery license allows a licensee to:

(a) Produce sixty thousand proof gallons or less of spirits per calendar year. A "proof gallon" is one liquid gallon of spirits that is fifty percent alcohol at sixty degrees Fahrenheit;

(b) Sell spirits of its own production directly to a customer for off-premises consumption, provided that the sale occurs when the customer is physically present on the licensed premises. A licensee may sell no more than two liters per customer per day. A craft distiller may not sell liquor products of someone else's production;

(c) ((~~Sell spirits of its own production to the board provided that the product is "listed" by the board, or is special ordered by an individual Washington state liquor store~~)) For sales on or after March 1, 2012, sell spirits of its own production to a licensed spirits distributor;

(d) For sales on or after March 1, 2012, sell spirits of its own production to a licensed spirits retailer in the state of Washington;

(((~~d~~))) (e) Sell to out-of-state entities;

(((~~e~~))) (f) Provide, free of charge, samples of spirits of its own production to persons on the distillery premises. Each sample must be one-half ounce or less, with no more than two ounces of samples provided per person per day. Samples must be unaltered, and anyone involved in the serving of such samples must have a valid Class 12 alcohol server permit. Samples must be in compliance with RCW 66.28.040;

(((~~f~~))) (g) Provide, free of charge, samples of spirits of its own production to retailers. Samples must be unaltered, and in compliance with RCW 66.28.040, 66.24.310 and WAC 314-64-08001. Samples are considered sales and are subject to taxes;

(((~~g~~))) (h) Contract ((~~produced~~)) produce spirits for holders of a distiller or manufacturer license.

(2) A craft distillery licensee may not sell directly to in-state retailers or in-state distributors until March 1, 2012.

AMENDATORY SECTION (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

WAC 314-28-060 What are the general requirements for a craft distillery license? Per RCW 66.24.140 and 66.24.145, a craft distillery licensee is required to:

(1) Submit copies of all permits required by the federal government;

(2) Submit other licensing documents as determined by the board;

(3) Ensure a minimum of fifty percent of all raw materials (including any neutral grain spirits and the raw materials that go into making mash, wort or wash) used in the production of the spirits product are grown in the state of Washington. Water is not considered a raw material grown in the state of Washington((~~,~~

~~(4) Purchase any spirits sold at the distillery premises for off-premises consumption from the board, at the price set by the board;~~

~~(5) Purchase any spirits used for sampling at the distillery premises from the board; and~~

~~(6) Purchase any spirits used for samples provided to retailers from the board~~)).

AMENDATORY SECTION (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

WAC 314-28-070 What are the monthly reporting and payment requirements for a distillery and craft distillery license? (1) A distiller or craft distiller must submit monthly reports and payments to the board.

The required monthly reports must be:

(a) On a form furnished by the board ((~~or in a format approved by the board~~));

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. postal service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

(2) For reporting purposes, production is the distillation of spirits from mash, wort, wash or any other distilling material. After the production process is completed, a production gauge shall be made to establish the quantity and proof of the spirits produced. The designation as to the kind of spirits shall also be made at the time of the production gauge. A record of the production gauge shall be maintained by the distiller. The completion of the production process is when the product is packaged for distribution. Production quantities are reportable within thirty days of the completion of the production process.

(3) ((~~Payments to the board. A distillery must pay the difference between the cost of the alcohol purchased by the board and the sale of alcohol at the established retail price, less the established commission rate during the preceding calendar month, including samples at no charge.~~)) On sales on or after March 1, 2012, a distillery or craft distillery must pay ten percent of their gross spirits revenue to the board on sales to a licensee allowed to sell spirits for on- or off-premises consumption during the first two years of licensure and five percent of their gross spirits revenues to the board in year three and thereafter.

(a) ((~~Any on-premises sale or sample provided to a customer is considered a sale reportable to the board.~~)) On sales after June 1, 2012, a distillery or craft distillery must pay seventeen percent of their gross spirits revenue to the board on sales to customers for off-premises consumption.

(b) ((~~Samples provided to retailers are considered sales reportable to the board.~~

~~(c)~~)) Payments must be submitted, with monthly reports, to the board on or before the twentieth day of each month, for the previous month. (For example, payment for a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, payment must be postmarked by the U.S. postal service no later than the next postal business day.

AMENDATORY SECTION (Amending WSR 09-02-011, filed 12/29/08, effective 1/29/09)

WAC 314-28-080 What if a distillery or craft distillery licensee fails to report or pay, or reports or pays late? If a distillery or craft distiller ((~~fails to~~)) does not submit its monthly reports ((~~or~~)) and payment to the board((~~, or submits late, then~~)) as required in WAC 314-28-070(1), the licensee is subject to penalties ((~~and surety bonds~~)).

(((~~(1)~~))) Penalties. A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. postal service no later than the next postal business day.

(((~~(2) Surety bonds. A "surety bond" is a type of insurance policy that guarantees payment to the state, and is executed by a surety company authorized to do business in the state of Washington. Surety bond requirements are as follows:~~

~~(a) Must be on a surety bond form and in an amount acceptable to the board;~~

~~(b) Payable to the "Washington state liquor control board"; and~~

~~(c) Conditioned that the licensee will pay the taxes and penalties levied by RCW 66.28.040 and by all applicable WACs.~~

~~(3) The board may require a craft distillery to obtain a surety bond or assignment of savings account, within twenty-one days after a notification by mail, if any of the following occur:~~

~~(a) A report or payment is missing more than thirty days past the required filing date, for two or more consecutive months;~~

~~(b) A report or payment is missing more than thirty days past the required filing date, for two or more times within a two-year period; or~~

~~(c) Return of payment for nonsufficient funds.~~

~~(4) As an option to obtaining a surety bond, a licensee may create an assignment of savings account for the board in the same amount as required for a surety bond. Requests for this option must be submitted in writing to the board's financial division.~~

~~(5) The amount of a surety bond or savings account required by this chapter must be either three thousand dollars, or the total of the highest four months' worth of liability for the previous twelve month period, whichever is greater. The licensee must maintain the bond for at least two years.~~

~~(6) Surety bond and savings account amounts may be reviewed annually and compared to the last twelve months' tax liability of the licensee. If the current bond or savings account amount does not meet the requirements outlined in this section, the licensee will be required to increase the bond amount or amount on deposit within twenty-one days.~~

~~(7) If a licensee holds a surety bond or savings account, the board will immediately start the process to collect overdue payments from the surety company or assigned account. If the exact amount of payment due is not known because of missing reports, the board will estimate the payment due based on previous production, receipts, and/or sales.~~))

AMENDATORY SECTION (Amending WSR 10-19-066, filed 9/15/10, effective 10/16/10)

WAC 314-28-090 Distilleries or craft distilleries((~~—Selling in-state, retail pricing and product listing~~))—Selling out-of-state((~~—Special orders~~)). (((~~(1) What steps must a craft distillery licensee take to sell a spirits product in the state of Washington?~~

~~(a) There are two ways to sell a spirits product at a state liquor store:~~

~~(i) Through the special order process; and~~

~~(ii) Through product listing.~~

~~(b) If a craft distillery licensee wants the board to regularly stock its product on the shelf at a state liquor store, a licensee must request the board to list its product. If the board agrees to list the product, a licensee must then sell its product to the board and transport its product to the board's distribution center.~~

~~(c) Before a craft distillery licensee may sell its product to a customer (twenty-one years old or older) at its distillery premises, a licensee must;~~

~~(i) Obtain a retail price from the board;~~

~~(ii) Sell its product to the board; and~~

~~(iii) Purchase its product back from the board. Product that a licensee produces and sells at its distillery premises is not transported to the board's distribution center.~~

~~(d) *Listing a product*. A craft distillery licensee must submit a formal request to the board to have the board regularly stock its product at a state liquor store. The board's purchasing division administers the listing process.~~

~~(i) A licensee must submit the following documents and information: A completed standard price quotation form, a listing request profile, bottle dimensions, an electronic color photograph of the product, a copy of the federal certificate of label approval, and a signed "tied house" statement.~~

~~(ii) The purchasing division shall apply the same consideration to all listing requests.~~

~~(iii) A craft distillery licensee is not required to submit a formal request for product listing if a licensee sells its product in-state only by special order (see chapter 314-74 WAC).~~

~~(e) *Obtaining a retail price*. A craft distillery licensee must submit a pricing quote to the board forty-five days prior to the first day of the effective pricing month. A pricing quote submittal includes a completed standard price quotation form, and the product's federal certificate of label approval. The board will then set the retail price.~~

~~(i) Pricing may not be changed within a calendar month.~~

~~(ii) A craft distillery licensee is required to sell to its on-premises customers at the same retail price as set by the board. If and when the board offers a temporary price reduction for a period of time, a licensee may also sell its product at the reduced price, but only during that same period of time.~~

~~(2)~~))) **What are the requirements for a craft distillery licensee to sell its spirits product outside the state of Washington?**

(((~~(a)~~))) (1) A distillery or craft distillery licensee shall include, in its monthly report to the board, information on the product it produces in-state and sells out-of-state. Information includes, but is not limited to, the amount of proof gallons sold, and for a craft distillery, the composition of raw materials used in production of the product.

(((~~(b)~~))) (2) Product produced in-state and sold out-of-state counts toward a craft distillery licensee's sixty thousand proof gallons per calendar year production limit (see WAC 314-28-050).

(((~~(c)~~))) (3) Product produced in-state and sold out-of-state is subject to the fifty percent Washington grown raw materials requirement for a craft distillery.

(((~~(d) Product sold out-of-state is not subject to retail pricing by the board.~~

~~(e)~~))) (4) A distillery or craft distillery licensee is not subject to Washington state liquor taxes on any product the licensee sells out-of-state.

WSR 12-09-090
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE

[Filed April 18, 2012, 10:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-04-068.

Title of Rule and Other Identifying Information: The subject of this proposed rule making is updating the Washington department of fish and wildlife's (WDFW) public records rules. Several rules from chapters 220-80 and 232-12 WAC are involved in this rule making.

The following rules are amended: WAC 220-80-010 Purpose, 220-80-020 Definitions, 220-80-030 Description of organization of the department of fisheries, 220-80-040 Operations and procedures, 220-80-050 Public records available, 220-80-060 Public records officer, 220-80-080 Requests for public records, 220-80-090 Copying, 220-80-100 Exemptions, and 220-80-110 Review of denials of public records requests.

The following rules are repealed: WAC 220-80-070 Office hours, 220-80-120 Protection of public records, 220-80-130 Records index, 220-80-140 Address for request, 220-80-150 Use of record request form, 232-12-800 Purpose, 232-12-804 Description of central and field organization of the department of game, 232-12-807 Operations and procedures, 232-12-810 Public records officer, 232-12-813 Copying, 232-12-814 Requests for public records, 232-12-820 Review of denials of public records requests, and 232-12-824 Records index.

Hearing Location(s): Natural Resources Building, First Floor, Room 172, 1111 Washington Street S.E., Olympia, WA 98501, on June 1, 2012, at 8:30 a.m.

Date of Intended Adoption: On or after June 19, 2012.

Submit Written Comments to: Joanna Eide, Enforcement Program, Natural Resources Building, 600 Capitol Way North, Olympia, WA 98501, e-mail Joanna.Eide@dfw.wa.gov, fax (360) 902-2155, by May 22, 2012.

Assistance for Persons with Disabilities: Contact Tami Lininger by May 22, 2012, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The subject of this proposed rule making is updating WDFW's public records rules. These changes are necessary because the rules are mandated by the Public Records Act (chapter 42.56 RCW), and specifically RCW 42.56.040. This proposed rule making updates WDFW's rules to bring them into compliance with the Public Records Act and repeals outdated and inapplicable rules. The attorney general's office (AGO) has provided model rules for agencies regarding public records. This proposed rule making integrates department policies with the AGO's model rules. Many changes are made to existing rules in order to bring them into compliance with current statutory requirements. Anticipated effects should be minimal; this is merely codifying department policies and statutory requirements already in existence. See above for a list of rules amended and repealed as part of this proposal.

Reasons Supporting Proposal: These changes are required under the Public Records Act, chapter 42.56 RCW. Additionally, WDFW is currently involved in a project to streamline, update, and reorganize its administrative code and these changes will certainly contribute to those efforts.

Statutory Authority for Adoption: Chapter 42.56 RCW, RCW 42.56.040, 77.04.013, and 77.12.047.

Statute Being Implemented: Chapter 42.56 RCW, RCW 42.56.040, 77.04.013, and 77.12.047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Joanna Eide, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2403; Implementation: Carol Turcotte, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2253; and Enforcement: Chief Bruce Bjork, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business economic impact statement was prepared as it was determined it was unnecessary to prepare one for this rule-making activity under chapter 19.85 RCW. This determination was based on the fact that this proposed rule making will have only a minor economic impact on a business, if there is any impact at all.

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

April 18, 2012
Joanna M. Eide
Administrative Regulations Analyst

AMENDATORY SECTION (Amending Order 1104, filed 11/26/73)

WAC 220-80-010 ((~~Purpose.~~)) Public records—Generally. The purpose of this chapter ((~~shall be to ensure compliance by the department of fisheries with the provisions of chapter 1, Laws of 1973 (Initiative 276), Disclosure—Campaign finances—Lobbying—Records; and in particular with sections 25-32 of that act, dealing with public records~~)) is to provide public records rules and procedures as required by the Public Records Act, chapter 42.56 RCW. The rules in this chapter provide information to persons wishing to request access to public records of the department, and the rules establish processes for both requestors and department staff that are designed to best assist members of the public in obtaining such access.

AMENDATORY SECTION (Amending Order 1104, filed 11/26/73)

WAC 220-80-020 ((~~Definitions.~~)) Department description and authority. (1) ((~~Public records. "Public record" includes any writing containing information relating to the conduct of governmental or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.~~

~~(2) Writing. "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.~~

~~(3) Department of fisheries. The department of fisheries is the agency delegated by the legislature to preserve, protect, perpetuate and manage the food fish and shellfish in the waters of the state and the offshore waters thereof. The department of fisheries shall hereinafter be referred to as the "department." Where appropriate, the term "department" also refers to the staff and employees of the department of fisheries.~~)) Throughout this chapter, the department of fish and wildlife will be referred to as the "department." The term department may also include the staff and employees of the department of fish and wildlife, where indicated by context.

(2) The department of fish and wildlife is the agency to which the legislature has delegated responsibility for preserving, protecting, perpetuating, and managing fish and wildlife in the lands and waters of the state, including offshore waters.

AMENDATORY SECTION (Amending Order 1104, filed 11/26/73)

WAC 220-80-030 Description of department organization ((~~of the department of fisheries~~)). ((~~Department. The department is a line staff agency. The administrative office of the department and its staff are located at Room 115, General Administration Building, Olympia, Washington 98504.~~)) The department's central office is located at 1111 Washington Street S.E., Olympia, WA 98501-1091. The mailing address of the department's central office is P.O. Box 43200, Olympia, WA 98504-3200. The department's telephone number is 360-902-2200. The fax number is 360-902-2156.

The department has other offices, including six regional offices, as follows:

Eastern Washington - Region 1 Office
2315 North Discovery Place
Spokane Valley, WA 99216-1566
Telephone: 509-892-1001
Fax: 509-921-2440

North Central Washington - Region 2 Office
1550 Alder Street N.W.
Ephrata, WA 98823-9699
Telephone: 509-754-4624
Fax: 509-754-5257

South Central Washington - Region 3 Office
1701 South 24th Avenue
Yakima, WA 98902-5720
Telephone: 509-575-2740
Fax: 509-575-2474

North Puget Sound - Region 4 Office
16018 Mill Creek Boulevard
Mill Creek, WA 98012-1541
Telephone: 425-775-1311
Fax: 425-338-1066

Southwest Washington - Region 5 Office
2108 Grand Boulevard
Vancouver, WA 98661
Telephone: 360-696-6211
Fax: 360-906-6776

Coastal Washington - Region 6 Office
48 Devonshire Road
Montesano, WA 98563
Telephone: 360-249-4628
Fax: 360-664-0689

Current contact information is also available at the department's web site at http://wdfw.wa.gov.

AMENDATORY SECTION (Amending Order 77-14, filed 4/15/77)

WAC 220-80-040 ((~~Operations and procedures.~~)) Public records officer. ((~~The department is operated with a director as its head assisted by a deputy director. The department is divided into four operational programs. Each program is supervised by an assistant director.~~

~~The department handles numerous functions affecting the public, as described in RCW 75.08.012 and 75.08.080.~~

~~To accomplish these goals the director formulates regulations as provided for by the Administrative Procedure Act (chapter 34.04 RCW).~~)) (1) The department's public records officer:

(a) Receives all public records requests made to the department;

(b) Provides assistance to persons seeking department public records;

(c) Oversees the department's compliance with the Public Records Act, including locating, processing, and releasing records responsive to public records requests;

(d) Creates and maintains an index of certain department public records, to the extent required by RCW 42.56.070(5); and

(e) Prevents the fulfillment of public records requests from causing excessive interference with essential functions of the department.

(2) The public records officer can be contacted at:

Public Records Officer
Department of Fish and Wildlife
Office Location:
Natural Resources Building, 5th Floor
1111 Washington Street S.E.
Olympia, WA 98501-1091
Mailing Address:
P.O. Box 43200
Olympia, WA 98504-3200

Current contact information is also available at the department's web site at http://wdfw.wa.gov.

(3) The public records officer may designate one or more department staff to carry out the responsibilities set forth in subsection (1) of this section; and other staff may process public records requests. Therefore, use of the term public records officer in this chapter may include the public records officer's designee(s) and/or any other staff assisting in processing public records requests, where indicated by context.

AMENDATORY SECTION (Amending Order 1104, filed 11/26/73)

WAC 220-80-050 Public records available. ((~~All public records of the department, as defined in WAC 220-80-020, are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by section 31, chapter 1, Laws of 1973 and WAC 220-80-100.~~)) (1) Some records may be available on the department's web site at http://wdfw.wa.gov. Requestors are encouraged to search for and view records on the department's web site in lieu of or prior to making a public records request.

(2) Public records are available for inspection and copying from 9:00 a.m. to noon and from 1:00 p.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Based on other demands on the agency and/or the nature of the requested records, the public records officer may limit the hours during which particular public records are available for inspection and copying.

(3) Records must be inspected at the offices of the department and may not be removed from department offices. The majority of public records are located at the department's central office, although some may be located in other locations, including the regional offices.

(4) Requestors should contact the public records officer to determine the location and availability of records.

AMENDATORY SECTION (Amending Order 1104, filed 11/26/73)

WAC 220-80-060 Requests for public records ((~~officer~~)). ((~~The department's public records shall be the responsibility of the public records officer designated by the department. The person so designated shall be located in the administrative office of the department. The public records officer shall be responsible for the following: The implementation~~

~~of the department's rules and regulations regarding release of public records, coordinating the staff of the department in this regard, and generally ensuring compliance by the staff with the public records disclosure requirements of chapter 1, Laws of 1973.~~)) (1) Any person wishing to inspect or copy public records of the department must make the request in writing on the department's request form, or by letter, fax, or e-mail. The written request must be addressed and sent to the public records officer and include the following information:

(a) Name of the requestor;

(b) Address of the requestor;

(c) Other contact information, including telephone number and e-mail address;

(d) Identification of the public records sought, in a form or description that is adequate for the public records officer to identify and locate the records; and

(e) The date and time of day of the request.

(2) If the requestor wishes to have copies of the records made, whether hard copy or electronic, instead of inspecting them, he or she must so indicate in the request and must either make a deposit for the cost of copying the records or make arrangements to pay for copies of the records.

(3) A public records request form is available to requestors at the office of the public records officer and at the department's web site at http://wdfw.wa.gov.

AMENDATORY SECTION (Amending Order 1104, filed 11/26/73)

WAC 220-80-080 Processing requests for public records. ((~~In accordance with requirements of chapter 1, Laws of 1973 that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained by members of the public, upon compliance with the following procedures:~~

~~(1) A request shall be made in writing upon a form prescribed by the department which shall be available at its administrative office. The form shall be presented to the public records officer or to any member of the department's administrative office staff if the public records officer is not available, at the administrative office of the department during customary office hours as described in WAC 220-80-070. The request shall include the following information:~~

~~(a) The name of the person requesting the record;~~

~~(b) The time of day and calendar date on which the request was made;~~

~~(c) The nature and purpose of the request;~~

~~(d) A reference to the requested record as it is described within the current index maintained by the records officer; or an appropriate description of the record requested, if the requested matter is not identifiable by reference to the department's current index;~~

~~(2) It shall be the obligation of the public records officer or staff member to whom the request is referred to assist the member of the public in appropriately identifying the public record requested.~~)) (1) **Order of processing public records requests.** The public records officer will process requests in the order allowing the greatest number of requests to be processed in the most efficient manner.

(2) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer will do one or more of the following:

(a) Make the records available for inspection or copying;

(b) Send the copies to the requestor if copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon;

(c) Provide a reasonable estimate of when records will be available;

(d) Request clarification from the requestor if the request is unclear or does not sufficiently identify the requested records. Such clarification may be requested and provided by telephone. The public records officer may revise the estimate of when records will be available if an estimate was given; or

(e) Deny the request.

(3) **If no response is received.** If the public records officer does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to ensure that the department received the request.

(4) **Protecting the rights of others.** In the event that the requested public records contain information that may affect rights of others and may, therefore, be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request or, if necessary, seek a court order to prevent or limit the disclosure. The notice to the affected persons may include a copy of the request.

(5) **Records exemption from disclosure.** Some records are exempt from disclosure, in whole or in part, as provided in chapter 42.56 RCW and in other statutes. If the department believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the records or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(6) **Inspections of records.**

(a) Consistent with other demands, the department will promptly provide space to inspect public records it has assembled in response to a properly submitted public records request. No member of the public may remove a document from the viewing area or disassemble or alter any document. If, after inspecting a record or records, the requestor wishes to receive a copy of a particular record or records, he or she should so indicate to the public records officer. Copies will be provided pursuant to subsection (7) of this section.

(b) The requestor must inspect the assembled records within thirty days of the department's notification to him or her that the records are available for inspection or copying. The department will notify the requestor in writing of this requirement and inform the requestor that he or she should

contact the department to make arrangements to inspect the records. If the requestor fails to inspect the records within the thirty-day period or make other arrangements, the department may close the request and refile the assembled records. If the requestor subsequently files the same or a substantially similar request, that subsequent request will be considered a new request and will be processed in the order allowing the greatest number of requests to be processed in the most efficient manner.

(7) **Providing copies of records.**

(a) Upon request, the department will provide copies of requested records. Copies may be provided in either hard copy or electronic format, as requested. The cost for copies is set forth in WAC 220-80-090. If a requestor wishes to obtain a copy of a particular record or records after inspecting records, he or she should so indicate to the public records officer, who will make the requested copies or arrange for copying.

(b) Copies may be mailed or e-mailed to the requestor, or made available for pickup at the department's offices. If the copies are available for pickup at the department's offices, the requestor must pay for the copies within thirty days of the department's notification to him or her that the copies are available for pickup. The department will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the department to make arrangements to pay for and pick up the copies. If the requestor fails to pay for or pick up the copies within the thirty-day period, or fails to make other arrangements, the department may close the request. If the requestor subsequently files the same or a substantially similar request, that subsequent request will be considered a new request and will be processed in the order allowing the greatest number of requests to be processed in the most efficient manner.

(8) **Electronic records.** The process for requesting electronic public records is the same as for requesting paper public records. When a person requests records in an electronic format, the public records officer will provide the nonexempt records, or portions of such records that are reasonably locatable, in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record.

(9) **Providing records in installments.** When the request is for a large number of records, the public records officer may make the records available for inspection, or provide copies of the records in installments if he or she reasonably determines it would be practical to provide the records in that manner. The requestor must inspect the installment of assembled records, or pay for and pick up records if copies of the records are made available for pick up at the department's offices, within thirty days of the department's notification to him or her that records are available for inspection or are ready for pickup. If the requestor fails to inspect the installment of copies within the thirty-day period, fails to pay for and pick up the installment of copies within the thirty-day period, or fails to make other arrangements, the public records officer may stop searching for the remaining records and close the request.

(10) **Closing a withdrawn or abandoned request.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will indicate that the department has completed a diligent search for the requested records and has made any located, nonexempt records available for inspection. Then the public records officer will close the request.

(11) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer will indicate that the department has completed a diligent search for the requested records and has made any located, nonexempt records available for inspection. Thereafter, the public records officer may close the request.

(12) **Later discovered documents.** If, after the department informs the requestor that it has provided all available records, the department becomes aware of additional responsive documents that existed at the time of the request, the department will promptly inform the requestor of the additional documents and make them available for inspection or provide copies on an expedited basis.

AMENDATORY SECTION (Amending Order 1104, filed 11/26/73)

WAC 220-80-090 ((~~Copying.~~)) Costs of providing public records. (1) There is no fee ((~~shall be charged~~)) for ((~~the inspection of~~)) inspecting public records.

(2) The department ((~~shall charge a fee per page of copy for providing copies of public records as follows:~~

~~Loose leaf material up to 11" x 18" (Xerox copy)~~	~~$0.10 per sheet~~
~~Bound material (Xerox copy)~~	~~0.15 per sheet~~
~~Blueprints and material over 11" x 18" (Bruning)~~	~~1.00 per sheet~~
~~Microfilm or microfiche (paper copies)~~	~~0.10 per sheet~~

~~These charges are the approximate amounts necessary to reimburse the department for its actual costs.~~)) charges fifteen cents per sheet for paper copies of documents up to paper size 11" x 18". The department will not charge sales tax when it makes copies of public records.

(3) The department may charge costs for providing copies of records in electronic format based on the department's actual costs and/or based on outside vendor rates for copying the same or similar records. The department incurs actual costs in scanning a paper-only record into an electronic format and may charge ten cents per page for electronic copies of scanned paper-only records.

(4) **Deposits and payments for copies and installments of copies.** Before beginning to make copies of requested records, the public records officer may require a deposit of up to ten percent of the estimated costs of copying. The public records officer may also require the payment of any outstanding balance of copying costs prior to providing

the copies, or the payment of any outstanding balance of the copying costs for an installment of copies before providing the installment. If payment for an installment of copies is not received within thirty days of the department's notification to the requestor that the copies are available, the public records officer may stop searching for the remaining records and close the request.

(5) **Costs of mailing.** The department may also charge the actual costs of mailing, including the cost of the shipping container.

(6) **Payment.** Payment may be made by cash, check, or money order to the Washington department of fish and wildlife.

AMENDATORY SECTION (Amending Order 1104, filed 11/26/73)

WAC 220-80-100 Exemptions. (1) ((~~The department reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 220-80-080 is exempt under the provisions of section 31, chapter 1, Laws of 1973.~~

~~(2) The following records are exempt:~~

~~(a) Personal information in files maintained for the department's members of the extent that disclosure would violate their rights to privacy.~~

~~(b) Specific intelligence information and specific investigative files compiled by the department, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.~~

~~(c) Information revealing the identity of persons who file complaints with the department, except as the complainant may authorize.~~

~~(d) Test questions, scoring keys, and other examination data.~~

~~(e) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition of property, until the project is abandoned or until such time as all of the property has been acquired; but in no event shall disclosure be denied for more than three years after the appraisal.~~

~~(f) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies not be exempt when publicly cited by an agency in connection with any agency action.~~

~~(g) Records which are relevant to a controversy to which the department is, or could reasonably expect to be, a party, but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.~~

~~(h) Lists or records of purchasers of licenses issued by the department: Provided, That such may be made available for bona fide noncommercial purposes if the person requesting such lists or records provides a sworn affidavit containing an outline of the usage of such list, the identity of the sponsor, and an affirmation that such lists or records will be adequately safeguarded so as to prevent their use for any commercial purpose.~~

~~(i) All catch, tax or fiscal records where release of such information will conflict with any individual or company's right to privacy.~~

~~(j) Valuable formulae, designs, drawings and research data obtained by department within five years of the request for disclosure when disclosure would produce private gain and public loss.~~

~~(k) Any other information which is exempt from public inspection under any provision of Initiative 276 or any other applicable law.~~

~~(3) In addition, pursuant to section 26, chapter 1, Laws of 1973, the department reserves the right to delete identifying details when it makes available or publishes any public record when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 1, Laws of 1973. The public records officer will fully justify such deletion in writing.~~

~~(4) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.~~)) The Public Records Act exempts a number of types of records from public disclosure (see chapter 42.56 RCW).

(2) Records are also exempt from disclosure if any other statute exempts or prohibits disclosure. Requestors should be aware of the following exemptions outside the Public Records Act, which restrict the availability of some records held by the department:

(a) Privileged communication under RCW 5.60.060; and

(b) Criminal records history under chapter 10.97 RCW.

(3) The department is prohibited by statute from disclosing lists of individuals for commercial purposes.

AMENDATORY SECTION (Amending Order 1104, filed 11/26/73)

WAC 220-80-110 Review of denials of public records requests. (1) **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a records request ((~~for a public record~~)) may petition ((~~for prompt review of such decision by tendering a written request for review~~)) in writing (including e-mail) to the public records officer for a review of that decision. The ((~~written request shall specifically refer to~~)) petition must include a copy of the written statement by the public records officer ((~~or other staff member which constituted or accompanied the denial~~)) denying the request.

(2) ((~~Immediately after receiving a written request for review of a decision denying a public record,~~)) **Consideration of petition for review.** The public records officer ((~~or other staff member denying the request shall refer it~~)) will promptly provide the petition and any other relevant information to the director of the department. The director or ((~~his~~)) designee ((~~shall~~)) will immediately consider the ((~~matter~~)) petition and either affirm or reverse ((~~such~~)) the denial((~~. The request shall be returned with a final decision~~)) within two business days following the ((~~original denial~~)) department's receipt of the petition, or within such other time as the department and the requestor mutually agree to.

(3) ((~~Administrative remedies shall not be considered exhausted until the department has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.~~)) **Review by the attorney general's office.** Pursuant to RCW 42.56.530, if the department denies a requestor access to public records because it claims the record is exempt, in whole or in part, from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules for such requests in WAC 44-06-160.

(4) **Judicial review.** Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial, regardless of any internal administrative appeal.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-80-070	Office hours.
WAC 220-80-120	Protection of public records.
WAC 220-80-130	Records index.
WAC 220-80-140	Address for request.
WAC 220-80-150	Use of record request form.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 232-12-800	Purpose.
WAC 232-12-804	Description of central and field organization of the department of game.
WAC 232-12-807	Operations and procedures.
WAC 232-12-810	Public records officer.
WAC 232-12-813	Copying.
WAC 232-12-814	Requests for public records.
WAC 232-12-820	Review of denials of public records requests.
WAC 232-12-824	Records index.

WSR 12-09-092
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed April 18, 2012, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-05-087.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-310-0200 WorkFirst—Activities.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html or by calling (360) 664-6094), on May 22, 2012, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 23, 2012.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 22, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by May 8, 2012, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 388-310-0200 to restore WorkFirst (WF) participation requirements beginning July 1, 2012, for adults suspended from participation by ESSB 5921. Adults currently taking the WF suspension will be reengaged in WF participation in a priority order, beginning with those recipients closest to reaching the TANF time limit.

Reasons Supporting Proposal: The proposed amendment is necessary to comply with ESSB 5921, section 2, chapter 42, Laws of 2011 1st sp. sess.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.120.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.120, and 74.08A.260.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Leslie Kozak, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4589.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not have an economic impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to … rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

April 12, 2012
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-22-062, filed 10/29/10, effective 12/1/10)

WAC 388-310-0200 WorkFirst—Activities. (1) **Who is required to participate in WorkFirst activities?**

(a) You are required to participate in the WorkFirst activities in your individual responsibility plan, and become what is called a "mandatory participant," if you:

(i) Are receiving TANF or SFA cash assistance because you are pregnant or the parent or adult in the home; and

(ii) Are not exempt. For exemptions see WAC 388-310-0300 and 388-310-0350.

(b) Participation is voluntary for all other WorkFirst participants (those who no longer receive or have never received TANF or SFA cash assistance).

(c) If you are a mandatory participant who was suspended from WorkFirst participation under RCW 74.08A.260 (8)(a), the department will restore your participation requirements between July 1, 2012 and June 30, 2013 in a priority order, beginning with participants who are closest to reaching their TANF time limit.

(2) **What activities do I participate in when I enter the WorkFirst program?**

When you enter the WorkFirst program, you will participate in one or more of the following activities (which are described in more detail in other sections of this chapter):

(a) Paid employment (see WAC 388-310-0400 (2)(a) and 388-310-1500);

(b) Self employment (see WAC 388-310-1700);

(c) Job search (see WAC 388-310-0600);

(d) Community jobs (see WAC 388-310-1300)

(e) Work experience (see WAC 388-310-1100);

(f) On-the-job training (see WAC 388-310-1200);

(g) Vocational educational training (see WAC 388-310-1000);

(h) Basic education activities (see WAC 388-310-0900);

(i) Job skills training (see WAC 388-310-1050);

(j) Community service (see WAC 388-310-1400);

(k) Activities provided by tribal governments for tribal members and other American Indians (see WAC 388-310-1400(1) and 388-310-1900);

(l) Other activities identified by your case manager on your individual responsibility plan that will help you with situations such as drug and/or alcohol abuse, homelessness, or mental health issues; and/or

(m) Activities identified by your case manager on your individual responsibility plan to help you cope with family violence as defined in WAC 388-61-001; and/or

(n) Up to ten hours of financial literacy activities to help you become self-sufficient and financially stable.

(3) **If I am a mandatory participant, how much time must I spend doing WorkFirst activities?**

If you are a mandatory participant, you will be required to participate in the activities in your individual responsibility plan, and may be required to participate full time, working, looking for work or preparing for work. You might be required to participate in more than one part-time activity at the same time that adds up to full time participation. You will have an individual responsibility plan (described in WAC 388-310-0500) that includes the specific activities and requirements of your participation.

(4) **What activities do I participate in after I get a job?**

You may be required to participate in other activities, such as job search or training once you are working twenty hours or more a week in a paid unsubsidized job, to bring your participation up to full time.

You may also engage in activities if you are working full time and want to get a better job.