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STATE PATROL

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DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE

Chapter 446-55
PRIVATE CARRIER REGULATIONS—QUALIFICATIONS OF DRIVERS

446-55-005 Promulgation. [Statutory Authority: RCW 46.73.010 and 46.73.020. 87-05-012 (Order 446-87-1), § 446-55-005, filed 2/11/87.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-010 Scope and interpretation of the rules in this chapter—Additional qualifications—Duties of private carrier-drivers. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-010, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-020 General exemptions. [Statutory Authority: RCW 46.73.010 and 46.73.020. 87-05-012 (Order 446-87-1), § 446-55-020, filed 2/11/87; 86-08-067 (Order 446-86-1), § 446-55-020, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-030 Definitions. [Statutory Authority: RCW 46.73.010 and 46.73.020. 87-05-012 (Order 446-87-1), § 446-55-030, filed 2/11/87; 86-08-067 (Order 446-86-1), § 446-55-030, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-040 Familiarity with rules. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-040, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-050 Aiding or abetting violations. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-050, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-060 Qualifications of drivers. [Statutory Authority: RCW 46.73.010 and 46.73.020. 87-05-012 (Order 446-87-1), § 446-55-060, filed 2/11/87; 86-08-067 (Order 446-86-1), § 446-55-060, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-070 Disqualification of drivers. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-070, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-080 Application for employment. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-080, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-090 Investigation and inquiries. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-090, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-100 Annual review of driving record. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-100, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-110 Record of violations. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-110, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-120 Road test. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-120, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-130 Equivalent of road test. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-130, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-140 Written examination. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-140, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-150 Examination format. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-150, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-160 Equivalent of written examination. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-160, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-165 Exemptions for single vehicle owner drivers. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-165, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-170 Physical qualifications for drivers. [Statutory Authority: RCW 46.73.010 and 46.73.020. 87-05-012 (Order 446-87-1), § 446-55-170, filed 2/11/87; 86-08-067 (Order 446-86-1), § 446-55-170, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-180 Medical examination—Certificate of physical examination. [Statutory Authority: RCW 46.73.010 and 46.73.020. 87-05-012 (Order 446-87-1), § 446-55-180, filed 2/11/87; 86-08-067 (Order 446-86-1), § 446-55-180, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-190 Persons who must be medically examined and certified. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-190, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-200 Resolution of conflicts of medical evaluation. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-200, filed 4/1/86.] Repealed by 87-05-012 (Order 446-87-1), filed 2/11/87. Statutory Authority: RCW 46.73.010 and 46.73.020.

446-55-210 Waiver of certain physical defects. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-210, filed 4/1/86.] Repealed by 87-05-012 (Order 446-87-1), filed 2/11/87. Statutory Authority: RCW 46.73.010 and 46.73.020.

446-55-220 Driver qualification files. [Statutory Authority: RCW 46.73.010 and 46.73.020. 87-05-012 (Order 446-87-1), § 446-55-220, filed 2/11/87; 86-08-067 (Order 446-86-1), § 446-55-220, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-230 Drivers who were regularly employed for a continuous three-year period prior to the effective date of this rule. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-230, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-240 Drivers of lightweight vehicles. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-240, filed 4/1/86.] Repealed by 87-05-012 (Order 446-87-1), filed 2/11/87. Statutory Authority: RCW 46.73.010 and 46.73.020.

446-55-250 Intermittent, casual, or occasional drivers. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-250, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-260 Drivers furnished by other motor carriers. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-260, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-270 Drivers of articulated (combination) farm vehicles. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-270, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-55-280 Intrastate drivers of vehicles transporting combustible liquids. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-55-280, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

Chapter 446-60
PRIVATE CARRIER REGULATIONS—HOURS OF SERVICE OF DRIVERS

446-60-005 Promulgation. [Statutory Authority: RCW 46.73.010 and 46.73.020. 87-05-012 (Order 446-87-1), § 446-60-005, filed 2/11/87.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-60-010 Compliance with, knowledge of, and interpretation of, the rules in this chapter. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-60-010, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-60-015 General exemptions. [Statutory Authority: RCW 46.73.010 and 46.73.020. 87-05-012 (Order 446-87-1), § 446-60-015, filed 2/11/87.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-60-020 Definitions. [Statutory Authority: RCW 46.73.010 and 46.73.020. 87-05-012 (Order 446-87-1), § 446-60-020, filed 2/11/87; 86-08-067 (Order 446-86-1), § 446-60-020, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-60-030 Maximum driving and on-duty time. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-60-030, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-60-040 Travel time. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-60-040, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-60-050 Driver's record of duty status. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-60-050, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-60-060 Adverse driving conditions. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-60-060, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-60-070 Emergency conditions. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-60-070, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-60-080 Relief from regulations. [Statutory Authority: RCW 46.73.010 and 46.73.020. 87-05-012 (Order 446-87-1), § 446-60-080, filed 2/11/87; 86-08-067 (Order 446-86-1), § 446-60-080, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

446-60-090 Drivers declared out of service. [Statutory Authority: RCW 46.73.010 and 46.73.020. 86-08-067 (Order 446-86-1), § 446-60-090, filed 4/1/86.] Repealed by 94-01-178, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.32.020.

Chapter 446-08 WAC
PRACTICE AND PROCEDURE

WAC

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WAC 446-08-005 Definitions. (1) "Board" wherever used in these rules shall mean the trial board constituted as provided in RCW 43.43.070.

(2) "Chief" wherever used in these rules shall mean the chief of the Washington state patrol.

(3) "Hearing officer" wherever used in these rules shall mean the chief of the Washington state patrol, whose duty it is to preside over such hearings as are conducted by the trial board, as in RCW 43.43.090 provided.

[Rule .04.010, filed 3/23/60.]

WAC 446-08-007 Agency defined. As used in this chapter, "agency" means the Washington state patrol.

[Order II, § 446-08-007, filed 11/22/74.]

WAC 446-08-010 Appearance and practice before a hearing officer or board—Who may appear. No person may appear in a representative capacity before a hearing officer or board other than the following:

(1) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington;

(2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law.

[Order II, § 446-08-010, filed 11/22/74; Rule .08.010, filed 3/23/60.]

WAC 446-08-030 Solicitation of business unethical. It shall be unethical for persons acting in a representative capacity before the agency to solicit business by circulars, advertisement or by personal communication or interviews not warranted by personal relations, provided that such representatives may publish or circulate business cards. It is equally unethical to procure business indirectly by solicitors of any kind.

[Order II, § 446-08-030, filed 11/22/74.]

WAC 446-08-040 Standards of ethical conduct. All persons appearing in proceedings before a hearing officer or board in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of Washington. If any such person does not conform to such standards, the hearing officer or board may decline to permit such person to appear in a representative capacity in any proceeding before the hearing officer or board.

[Order II, § 446-08-040, filed 11/22/74; Rule .08.040, filed 3/23/60.]

WAC 446-08-060 Former employee as expert witness. No former employee of the agency shall, at any time after severing his employment with the state of Washington appear, except with the written permission of the agency, as an expert witness on behalf of other parties in a formal proceeding wherein he previously took an active part in the investigation as a representative of the agency.

[Order II, § 446-08-060, filed 11/22/74.]

WAC 446-08-070 Computation of time. In computing any period of time prescribed or allowed by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

[Order II, § 446-08-070, filed 11/22/74; Rule .08.070, filed 3/23/60.]

WAC 446-08-080 Notice and opportunity for hearing in contested cases. In any contested case, all parties shall be served with a notice within the statutory time as required by statute governing the agency or proceeding and in the absence of a statutory requirement, then a reasonable time before the date set for hearing. The notice shall state the time, place, and issues involved.

[Order II, § 446-08-080, filed 11/22/74; Rule .08.080, filed 3/23/60.]

WAC 446-08-090 Service of process—By whom served. The agency shall cause to be served all orders, notices, and other papers issued by it, together with any other papers which it is required by law to serve. Every other paper shall be served by the party filing it.

[Order II, § 446-08-090, filed 11/22/74; Rule .08.090, filed 3/23/60.]

WAC 446-08-100 Upon whom served. All papers served by either the agency or any party shall be served upon all counsel of record at the time of such filing and upon parties not represented by counsel or upon their agents designated by them or by law. Any counsel entering an appearance subsequent to the initiation of the proceeding shall notify all other counsel then of record and all parties not represented by counsel of such fact.

[Order II, § 446-08-100, filed 11/22/74; Rule .08.100, filed 3/23/60.]

WAC 446-08-110 Service upon parties. The final order, and any other paper required to be served by the agency upon a party, shall be served upon such party or upon the agent designated by him or by law to receive service of such papers, and a copy shall be furnished to counsel of record.

[Order II, § 446-08-110, filed 11/22/74; Rule .08.110, filed 3/23/60.]

WAC 446-08-120 Method of service. Service of papers shall be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail, or by telegraph.

[Order II, § 446-08-120, filed 11/22/74; Rule .08.120, filed 3/23/60.]

WAC 446-08-130 When service complete. Service upon parties shall be regarded as complete: By mail, upon deposit in the United States mail properly stamped and addressed; by telegraph, when deposited with a telegraph company properly addressed and with charges prepaid.

[Order II, § 446-08-130, filed 11/22/74; Rule .08.130, filed 3/23/60.]

WAC 446-08-140 Filing with agency. Papers required to be filed with the agency shall be deemed filed upon actual receipt by the agency at the Washington state patrol headquarters accompanied by proof of service upon parties required to be served.

[Order II, § 446-08-140, filed 11/22/74; Rule .08.140, filed 3/23/60.]

WAC 446-08-150 Subpoenas—Where provided by law—Form. Every subpoena shall state the name of the agency and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents or things under his control at a specified time and place.

[Order II, § 446-08-150, filed 11/22/74.]

WAC 446-08-160 Issuance to parties. Upon application of counsel or other representative authorized to practice before the agency for any party to a contested case, there shall be issued to such party subpoenas requiring the attendance and testimony of witnesses or the production of evidence in such proceeding. The chief, Washington state patrol, may issue subpoenas to parties not so represented upon request or upon a showing of general relevance and reasonable scope of the testimony or evidence sought.

[Order II, § 446-08-160, filed 11/22/74.]

WAC 446-08-170 Service. Unless the service of a subpoena is acknowledged on its face by the person subpoenaed, service shall be made by delivering a copy of the subpoena to such person and by tendering him on demand the fees for one day's attendance and the mileage allowed by law.

[Order II, § 446-08-170, filed 11/22/74.]

WAC 446-08-180 Fees. Witnesses summoned before the agency shall be paid by the party at whose instance they appear the same fees and mileage that are paid to witnesses in the superior courts of the state of Washington.

[Order II, § 446-08-180, filed 11/22/74.]

WAC 446-08-190 Proof of service. The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit, or acknowledgement of service with the hearing officer or board or the officer before whom the witness is required to testify or produce evidence. If service is made by a person other than an officer of the agency and such service has not been acknowledged by the witness, such person shall make an affidavit of service. Failure to make proof of service does not affect the validity of the service.

[Order II, § 446-08-190, filed 11/22/74.]

WAC 446-08-200 Quashing. Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance, by the person to whom the subpoena is directed and upon notice to the party to whom the subpoena was issued, the board or the authorized agency officer may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion upon just and reasonable conditions.

[Order II, § 446-08-200, filed 11/22/74.]

WAC 446-08-210 Enforcement. Upon application and for good cause shown the agency will seek judicial enforcement of subpoenas issued to parties and which have not been quashed.

[Order II, § 446-08-210, filed 11/22/74.]

WAC 446-08-220 Geographical scope. Such attendance of witnesses and such production of evidence may be required from any place in the state of Washington, at any designated place of hearing.

[Order II, § 446-08-220, filed 11/22/74.]

WAC 446-08-230 Depositions and interrogatories in contested cases—Right to take. Except as may be otherwise provided, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the proceeding. The attendance of witnesses may be compelled by the use of a subpoena. Depositions shall be taken only in accordance with this rule and the rule on subpoenas.

[Order II, § 446-08-230, filed 11/22/74.]

WAC 446-08-240 Scope. Unless otherwise ordered, the deponent may be examined regarding any matter not privileged, which is relevant to the subject matter involved in the proceeding.

[Order II, § 446-08-240, filed 11/22/74.]

WAC 446-08-250 Officer before whom taken. Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the state of Washington or of the place where the examination is held; within a foreign country, depositions shall be taken before a secretary of an embassy or legation, consul general, vice consul or consular agent of the United States, or a person designated by the agency or agreed upon by the parties by stipulation in writing filed with the agency. Except by stipulation, no deposition shall be taken before a person who is a party or the privy of a party, or a privy of any counsel of a party, or who is financially interested in the proceeding.

[Order II, § 446-08-250, filed 11/22/74.]

WAC 446-08-260 Authorization. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than three days in writing to the agency and all parties. The notice shall state the time and

place for taking the deposition, the name and address of each person to be examined, if known, and if the name is not known a general description sufficient to identify him or the particular class or group to which he belongs. On motion of a party upon whom the notice is served, the hearing officer or board may for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

[Order II, § 446-08-260, filed 11/22/74.]

WAC 446-08-270 Protection of parties and deponents. After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the hearing officer or board may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed, the deposition shall be opened only by order of the hearing officer or board or that business secrets or secret processes, developments, or research need not be disclosed or that the parties shall simultaneously file specified documents, or information enclosed in sealed envelopes to be opened as directed by the hearing officer or board or the hearing officer or board may make any other order which justice requires to protect the party or witness from annoyance, embarrassment or oppression. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such a manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the hearing officer or board may order the officer conducting the examination to cease forthwith from taking the deposition as above provided. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the hearing officer or board. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

[Order II, § 446-08-270, filed 11/22/74.]

WAC 446-08-280 Oral examination and cross-examination. Examination and cross-examination shall proceed as at an oral hearing. In lieu of participating in the oral examination, any party served with notice of taking a deposition may transmit written cross interrogatories to the deposing officer who, without first disclosing them to any person, and after the direct testimony is complete, shall propound them seriatim to the deponent and record or cause the answers to be recorded verbatim.

[Order II, § 446-08-280, filed 11/22/74.]

WAC 446-08-290 Recordation. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally or by someone acting under his direction and in his presence, record the testimony by typewriter directly or by transcription from stenographic notes, tape or record recorders, which record shall separately and consecutively number each interrogatory. Objections to the notice, qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented or to the conduct of the deposing officer, or of any party, shall be noted by the officer upon the deposition. All objections by any party not so made are waived.

[Order II, § 446-08-290, filed 11/22/74.]

WAC 446-08-300 Signing attestation and return. (1) When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him. Unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress, the hearing officer or board holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(2) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the proceeding and marked "Deposition of (here insert name of witness)" and shall promptly send it by registered or certified mail to the hearing officer or board for filing. The party taking the deposition shall give prompt notice of its filing to all other parties. Upon payment of reasonable charges therefore, the officer shall furnish a copy of the deposition to any party or to the deponent.

[Order II, § 446-08-300, filed 11/22/74.]

WAC 446-08-310 Use and effect. Subject to rulings by the hearing officer or board upon objections, a deposition taken and filed as provided in this rule will not become a part of the record in the proceeding until received in evidence by the hearing officer upon his own motion or the motion of any party. Except by agreement of the parties or ruling of the hearing officer or board, a deposition will be received only in its entirety. A party does not make a party, or the privy of a party, or any hostile witness his witness by taking his deposition. Any party may rebut any relevant evidence contained in a deposition whether introduced by him or any other party.

[Order II, § 446-08-310, filed 11/22/74.]

WAC 446-08-320 Fees of officers and deponents. Deponents whose depositions are taken and the officers taking the same shall be entitled to the same fees as are paid for like services in the superior courts of the state of Washington,

which fees shall be paid by the party at whose instance the depositions are taken.

[Order II, § 446-08-320, filed 11/22/74.]

WAC 446-08-330 Depositions upon interrogatories—Submission of interrogatories. Where the deposition is taken upon written interrogatories, the party offering the testimony shall separately and consecutively number each interrogatory and file and serve them with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom they are to be taken. Within ten days thereafter a party so served may serve cross-interrogatories upon the party proposing to take the deposition. Within five days thereafter, the latter may serve redirect interrogatories upon the party who served cross-interrogatories.

[Order II, § 446-08-330, filed 11/22/74.]

WAC 446-08-340 Interrogation. Where the interrogatories are forwarded to an officer authorized to administer oaths as provided in WAC 446-08-250, the officer taking the same after duly swearing the deponent shall read to him seriatim, one interrogatory at a time and cause the same and the answer thereto to be recorded before the succeeding interrogatory is asked. No one except the deponent, the officer and the court reporter or stenographer recording and transcribing it shall be present during the interrogation.

[Order II, § 446-08-340, filed 11/22/74.]

WAC 446-08-350 Attestation and return. The officer before whom interrogatories are verified or answered shall (1) certify under his official signature and seal that the deponent was duly sworn by him, that the interrogatories and answers are a true record of the deponent's testimony, that no one except deponent, the officer and the stenographer were present during the taking, and that neither he nor the stenographer, to his knowledge, is a party, privy to a party, or interested in the event of the proceedings, and (2) promptly send by registered or certified mail the original copy of the deposition and exhibits with his attestation to the agency, or its designated hearing officer, one copy to the counsel who submitted the interrogatories and another copy to the deponent.

[Order II, § 446-08-350, filed 11/22/74.]

WAC 446-08-360 Provisions of deposition rule. In all other respects, depositions upon interrogatories shall be governed by the previous deposition rule.

[Order II, § 446-08-360, filed 11/22/74.]

WAC 446-08-370 Official notice—Matters of law. The hearing officer or board, upon request made before or during a hearing, will officially notice:

(1) **Federal law.** The Constitution; congressional acts, resolutions, records, journals and committee reports; decisions of federal courts and administrative agencies; executive orders and proclamations; and all rules, orders and notices published in the Federal Register;

(2) **State law.** The Constitution of the state of Washington, acts of the legislature, resolutions, records, journals and committee reports; decisions of administrative agencies of the state of Washington, executive orders and proclamations by the governor; and all rules, orders and notices filed with the code revisor.

(3) **Governmental organization.** Organization, territorial limitations, officers, departments, and general administration of the government of the state of Washington, the United States, and several states and foreign nations;

(4) **Agency organization.** The department, commission or board organization, administration, officers, personnel, official publications, and practitioners before its bar.

[Order II, § 446-08-370, filed 11/22/74; Rule .08.370, filed 3/23/60.]

WAC 446-08-380 Material facts. In the absence of controverting evidence, the hearing officer or board, upon request made before or during a hearing may officially notice:

(1) **Agency proceedings.** The pendency of, the issues and position of the parties therein, and the disposition of any proceeding then pending before or theretofore concluded by the agency;

(2) **Business customs.** General customs and practices followed in the transaction of business;

(3) **Notorious facts.** Facts so generally and widely known to all well-informed persons as not to be subject to reasonable dispute, or specific facts which are capable of immediate and accurate demonstration by resort to accessible sources of generally accepted authority, including but not exclusively, facts stated in any publication authorized or permitted by law to be made by any federal or state officer, department, or agency;

(4) **Technical knowledge.** Matters within the technical knowledge of the agency as a body of experts, within the scope or pertaining to the subject matter of its statutory duties, responsibilities or jurisdiction;

(5) **Request or suggestion.** Any party may request, or the hearing officer or board may suggest, that official notice be taken of a material fact, which shall be clearly and precisely stated, orally on the record, at any prehearing conference or oral hearing or argument, or may make such request or suggestion by written notice, any pleading, motion, memorandum or brief served upon all parties, at any time prior to a final decision;

(6) **Statement.** Where an initial or final decision of the hearing officer or board rests in whole or in part upon official notice of a material fact, such fact shall be clearly and precisely stated in such decision. In determining whether to take official notice of material facts, the hearing officer or board may consult any source of pertinent information, whether or not furnished as it may be, by any party and whether or not admissible under the rules of evidence;

(7) **Controversion.** Any party may controvert a request or a suggestion that official notice of a material fact be taken at the time the same is made if it be made orally, or by a pleading reply or brief in response to the pleading or brief or notice in which the same is made or suggested. If any decision is stated to rest in whole or in part upon official notice of a material fact which the parties have not had a prior opportunity to controvert, any party may controvert such fact by appropriate exceptions if such notice be taken in an initial or

intermediate decision or by a petition for reconsideration if notice of such fact be taken in a final report. Such controversion shall concisely and clearly set forth the sources, authority and other data relied upon to show the existence or nonexistence of the material fact assumed or denied in the decision;

(8) **Evaluation of evidence.** Nothing herein shall be construed to preclude the hearing officer or board from utilizing their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them.

[Order II, § 446-08-380, filed 11/22/74; Rule .08.380, filed 3/23/60.]

WAC 446-08-390 Presumptions. Upon proof of the predicate facts specified in the following six subdivisions hereof without substantial dispute and by direct, clear, and convincing evidence, the hearing officer or board, with or without prior request or notice, may make the following presumptions, where consistent with all surrounding facts and circumstances:

(1) **Continuity.** That a fact of a continuous nature, proved to exist at a particular time continues to exist as of the date of the presumption, if the fact is one which usually exists for at least that period of time;

(2) **Identity.** That persons and objects of the same name and description are identical;

(3) **Delivery.** That mail matter, or communications, properly addressed, and delivered to the post office, telegraph, or cable company, with all postage, and charges properly prepaid, is or has been delivered to the addressee in the ordinary course of business;

(4) **Ordinary course.** That a fact exists or does not exist, upon proof of the existence or nonexistence of another fact which in the ordinary and usual course of affairs, usually and regularly coexists with the fact presumed;

(5) **Acceptance of benefit.** That a person for whom an act is done or to whom a transfer is made has, does or will accept same where it is clearly in his own self-interest so to do;

(6) **Interference with remedy.** That evidence, with respect to a material fact which in bad faith is destroyed, eloigned, suppressed, or withheld by a party in control thereof, would if produced, corroborate the evidence of the adversary party with respect to such fact.

[Order II, § 446-08-390, filed 11/22/74; Rule .08.390, filed 3/23/60.]

WAC 446-08-400 Stipulations and admissions of record. The existence or nonexistence of a material fact, as made or agreed in a stipulation or in an admission of record, will be conclusively presumed against any party bound thereby, and no other evidence with respect thereto will be received upon behalf of such party, provided:

(1) **Upon whom binding.** Such a stipulation or admission is binding upon the parties by whom it is made, their privies and upon all other parties to the proceeding who do not expressly and unequivocally deny the existence or nonexistence of the material fact so admitted or stipulated, upon the making thereof, if made on the record at a prehearing conference, oral hearing, oral argument or by a writing filed and served upon all parties within five days after a copy of such stipulation or admission has been served upon them;

(2) **Withdrawal.** Any party bound by a stipulation or admission of record at any time prior to final decision may be permitted to withdraw the same in whole or in part by showing to the satisfaction of the hearing officer or board such a stipulation or admission was made inadvertently or under a bona fide mistake of fact and that its withdrawal at the time proposed will not unjustly prejudice the rights of other parties to the proceeding.

[Order II, § 446-08-400, filed 11/22/74; Rule .08.400, filed 3/23/60.]

WAC 446-08-410 Form and content of agency decisions in contested cases. Every decision, order, or recommendation shall:

(1) Be correctly captioned as to name of agency and name of proceeding;

(2) Designate all parties and counsel to the proceeding;

(3) Include a concise statement of the nature and background of the proceeding;

(4) Be accompanied by appropriate numbered findings of fact and conclusions of law;

(5) Whenever practical, the conclusions of law shall include the reason for the particular action taken;

(6) Whenever practical, the conclusions, recommendations, and/or order shall be referenced to specific provisions of the law and/or regulations appropriate thereto, together with reasons and precedents relied upon to support the same.

[Order II, § 446-08-410, filed 11/22/74; Rule .08.410, filed 3/23/60.]

WAC 446-08-420 Definition of issues before hearing. In all proceedings the issues to be adjudicated shall be made initially as precise as possible, in order that the hearing officer or board may proceed promptly to conduct the hearing on relevant and material matter only.

[Order II, § 446-08-420, filed 11/22/74; Rule .08.420, filed 3/23/60.]

WAC 446-08-430 Prehearing conference rule—Authorized. In any proceeding the hearing officer or board upon its own motion, or upon the motion of one of the parties or their qualified representatives, may in its discretion direct the parties of their qualified representatives to appear at a specified time and place for a conference to consider:

(1) The simplification of issues;

(2) The necessity of amendments to the pleading;

(3) The possibility of obtaining stipulations, admissions of facts and of documents;

(4) The limitation of the number of expert witnesses;

(5) Such other matters as may aid in the disposition of the proceeding.

[Order II, § 446-08-430, filed 11/22/74; Rule .08.430, filed 3/23/60.]

WAC 446-08-440 Record of conference action. The hearing officer or board shall make an order or statement which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties or their qualified representatives as to any of the matters considered, including the settlement or simplification of issues, and which limits the issues for hearing to those not disposed of by admissions or agreements; and such order or statement shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

[Order II, § 446-08-440, filed 11/22/74; Rule .08.440, filed 3/23/60.]

WAC 446-08-450 Submission of documentary evidence in advance. Where practicable, the hearing officer or board may require:

(1) That all documentary evidence which is to be offered during the taking of evidence be submitted to the hearing officer or board and to the other parties to the proceeding sufficiently in advance of such taking of evidence to permit study and preparation of cross-examination and rebuttal evidence;

(2) That documentary evidence not submitted in advance, as may be required by subsection (1), be not received in evidence in the absence of a clear showing that the offering party had good cause for his failure to produce the evidence sooner;

(3) That the authenticity of all documents submitted in advance in a proceeding in which such submission is required, be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

[Order II, § 446-08-450, filed 11/22/74; Rule .08.450, filed 3/23/60.]

WAC 446-08-460 Excerpts from documentary evidence. When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered to the hearing officer or board and to the other parties. Only the excerpts, so prepared and submitted, shall be received in the record. However, the whole of the original document shall be made available for examination and for use by all parties to the proceeding.

[Order II, § 446-08-460, filed 11/22/74; Rule .08.460, filed 3/23/60.]

WAC 446-08-470 Expert or opinion testimony and testimony based on economic and statistical data—Number and qualifications of witnesses. That the hearing officer or board in all classes of cases where practicable make an effort to have the interested parties agree upon the witness or witnesses who are to give expert or opinion testimony, either by selecting one or more to speak for all parties or by limiting the number for each party; and, if the interest parties cannot agree, require them to submit to the hearing officer or board and to the other parties written statements containing the names, addresses and qualifications of their respective opinion or expert witnesses, by a date determined by the board and fixed sufficiently in advance of the hearing to permit the other interested parties to investigate such qualifications.

[Order II, § 446-08-470, filed 11/22/74.]

WAC 446-08-480 Written sworn statements. That the hearing officer or board in all classes of cases in which it is practicable and permissible, make every effort to bring about by voluntary submission, that all direct opinion or expert testimony and all direct testimony based on economic or statistical data be reduced to written sworn statements, and, together with the exhibits upon which such statements are based, be submitted to the hearing officer or board and to the other parties to the proceeding by a date determined by the hearing officer or board and fixed a reasonable time in advance of the hearing; and that such sworn statements be acceptable as evidence upon formal offer at the hearing, subject to objection on any ground except that such sworn statements shall not be subject to challenge because the testimony is not presented orally, and provided that witnesses making such statements shall not be subject to cross-examination unless a request is made sufficiently in advance of the hearing to insure the presence of the witnesses.

[Order II, § 446-08-480, filed 11/22/74.]

WAC 446-08-490 Supporting data. That the hearing officer or board, in its discretion but consistent with the rights of the parties, shall cause the parties to make available for inspection in advance of the hearing, and for purposes of cross-examination at the hearing, the data underlying statements and exhibits submitted in accordance with WAC 446-08-480, but wherever practicable that he restrict to a minimum the placing of such data in the record.

[Order II, § 446-08-490, filed 11/22/74.]

WAC 446-08-500 Effect of noncompliance with WAC 446-08-470 or 446-08-480. Whenever the manner of introduction of opinion or expert testimony or testimony based on economic or statistical data is governed by requirements fixed under the provisions of WAC 3-08-470 or 3-08-480 [WAC 446-08-470 or 446-08-480], such testimony not submitted in accordance with the relevant requirements shall not be received in evidence in the absence of a clear showing that the offering party had good cause for his failure to conform to such requirements.

[Order II, § 446-08-500, filed 11/22/74.]

WAC 446-08-510 Continuances. Any party who desires a continuance shall, immediately upon receipt of notice of a hearing, or as soon thereafter as facts requiring such continuance come to his knowledge, notify the hearing officer or board of said desire, stating in detail the reasons why such continuance is necessary. The hearing officer or board, in passing upon a request for continuance, shall consider whether such request was promptly and timely made. For good cause shown, the hearing officer or board may grant such a continuance and may at any time order a continuance upon its or his own motion. During a hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the hearing officer or board may, in its discretion, continue the hearing and fix the date for introduction of additional evidence or presentation of argument. Such oral notice shall constitute final notice of such continued hearing.

[Order II, § 446-08-510, filed 11/22/74; Rule .08.510, filed 3/23/60.]

WAC 446-08-520 Rules of evidence—Admissibility criteria. Subject to the other provisions of these rules, all relevant evidence is admissible which, in the opinion of the hearing officer or board, is the best evidence reasonably obtainable, having due regard for its necessity, availability, and trustworthiness. In passing upon the admissibility of evi-

dence, the officer conducting the hearing shall give consideration to, but shall not be bound to follow the rules of evidence governing civil proceedings, in matters not involving trial by jury, in the superior court of the state of Washington.

[Order II, § 446-08-520, filed 11/22/74; Rule .08.520, filed 3/23/60.]

WAC 446-08-530 Tentative admission—Exclusion—Discontinuance—Objections. When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The hearing officer or board may, in its discretion, either with or without object, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered.

[Order II, § 446-08-530, filed 11/22/74; Rule .08.530, filed 3/23/60.]

WAC 446-08-540 When not applicable. These rules and provisions shall not apply to actions of the chief of the Washington state patrol taken pursuant to RCW 43.43.060.

[Order II, § 446-08-540, filed 11/22/74.]

Chapter 446-10 WAC
PUBLIC RECORDS

WAC

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WAC 446-10-010 Purpose. The purpose of this chapter shall be to ensure compliance by the Washington state patrol with the provisions of chapter 1, Laws of 1973 (Initiative 276) [chapter 42.17 RCW], Disclosure—Campaign finances—Lobbying—Records; and in particular with subsections 25-32 of that act, dealing with public records.

[Statutory Authority: RCW 42.17.250. 79-04-037 (Order 79-2), § 446-10-010, filed 3/23/79.]

WAC 446-10-020 Definitions. (1) 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 - means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, symbols, or combinations thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

(3) Washington state patrol - is the department increased by the legislature pursuant to chapter 43.43 RCW. The Washington state patrol shall hereinafter be referred to as the department. Where appropriate, the term department also refers to the staff and employees of the Washington state patrol.

[Statutory Authority: RCW 42.17.250. 79-04-037 (Order 79-2), § 446-10-020, filed 3/23/79.]

WAC 446-10-030 Description of central and field organizations of the Washington state patrol. The Washington state patrol is a law enforcement agency and service. The administrative offices of the department and its staff are located in the General Administration Building, Olympia, Washington 98504. The department has eight district headquarters with working addresses as follows:

District	I	-	2502 112th Street East, Tacoma 98445-5104
District	II	-	2803 - 156th Avenue S. E., Bellevue 98007
District	III	-	2715 Rudkin Road, Union Gap 98903
District	IV	-	West 6403 Rowand Road, Spokane 99204-5300
District	V	-	605 East Evergreen Boulevard, Vancouver 98661-3812
District	VI	-	2822 Euclid Avenue, Wenatchee 98801-5916
District	VII	-	2700 116th Street NE, Marysville 98271-9425
District	VIII	-	4811 Werner Road, Bremerton 98312-3333

[Statutory Authority: RCW 42.17.250. 95-24-041, § 446-10-030, filed 11/30/95, effective 12/31/95; 79-04-037 (Order 79-2), § 446-10-030, filed 3/23/79.]

WAC 446-10-040 Operations and procedures. The department has and exercises throughout the states such police powers and duties as are vested in sheriffs and peace officers generally, and such other powers and duties as are presented by chapter 43.43 RCW and other applicable RCW chapters. The members of the department enforce, throughout the state, laws having statewide application. The individual officer assumes his law enforcement role after a period of rigorous training, and is vested with certain discretion in his contact with alleged law violators in the same degree as are sheriffs and other peace officers. His role also encompasses providing nonlaw enforcement assistance to members of the public within his competence and training, including first aid, traffic direction, aid to stranded motorists, etc.

[Statutory Authority: RCW 42.17.250. 79-04-037 (Order 79-2), § 446-10-040, filed 3/23/79.]

WAC 446-10-050 Public records available. All public records of the department, as defined in WAC 446-10-020(1), 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 446-10-100.

[Statutory Authority: RCW 42.17.250. 79-04-037 (Order 79-2), § 446-10-050, filed 3/23/79.]

WAC 446-10-060 Public records officer. The department's public records shall be in custody 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.

[Statutory Authority: RCW 42.17.250. 79-04-037 (Order 79-2), § 446-10-060, filed 3/23/79.]

WAC 446-10-070 Office hours. Public records shall be available for inspection and copying during the customary office hours of the department. For the purpose of this chapter, the customary office hours shall be from 9 a.m. to noon, and from 1 p.m. to 4 p.m. Monday through Friday, excluding legal holidays.

[Statutory Authority: RCW 42.17.250. 79-04-037 (Order 79-2), § 446-10-070, filed 3/23/79.]

WAC 446-10-080 Requests for public records. In accordance with requirements of chapter 1, Laws of 1973 [chapter 42.17 RCW], 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) If, after access to the departmental index, a particular record is desired and that record is not an item routinely available as a matter of public service, 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 staff if the public records officer is not available at the administrative office of the department during customary office hours. The request shall include the following information:

(a) The name and address of the person requesting the record;

(b) The time of day and calendar date on which the request was made;

(c) The nature of the request;

(d) If the matter requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index;

(e) If the requested matter is not identifiable by reference to the department's current index, an appropriate description of the record requested.

(2) 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 an appropriately identifying the public record requested.

[Statutory Authority: RCW 42.17.250. 79-04-037 (Order 79-2), § 446-10-080, filed 3/23/79.]

WAC 446-10-090 Charge for public records. No fee shall be charged for the inspection of public records. The department shall charge a fee of fifteen cents per page of copy for providing copies of written public records and for use of the department copy and duplicating equipment, and actual costs for postage, mailing and shipping services. The department may charge the actual cost for providing copies of public records, including duplications of photographs, audio tapes, video tapes, diagrams and/or drawings of collision scenes. These charges are the amounts necessary to reimburse the department for its actual costs incident to such copying and mailing.

Payment for the copying of public records may be required by the department prior to the release of the documents to the requester. Only company checks, money orders, or personal checks will be accepted as payment. No cash shall be allowed.

[Statutory Authority: RCW 42.17.250 and 42.17.300. 97-01-018, § 446-10-090, filed 12/9/96, effective 1/9/97. Statutory Authority: RCW 42.17.250. 90-10-097, § 446-10-090, filed 5/2/90, effective 6/2/90; 79-04-037 (Order 79-2), § 446-10-090, filed 3/23/79.]

WAC 446-10-100 Exemptions. (1) The department reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 446-10-080 is exempt under the provisions of section 31, chapter 1, Laws of 1973 [chapter 42.17 RCW].

(2) In addition, pursuant to section 26, chapter 1, Laws of 1973 [chapter 42.17 RCW], the department reserves the right to delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosures of such details would be an invasion of personal privacy protected by chapter 1, Laws of 1973 [chapter 42.17 RCW]. The public records officer will fully justify such deletion in writing.

(3) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

[Statutory Authority: RCW 42.17.250. 79-04-037 (Order 79-2), § 446-10-100, filed 3/23/79.]

WAC 446-10-110 Review of denials of public records requests. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the chief of the department. The chief shall immediately consider the matter and either affirm or reverse such denial or call a special meeting of the department as

soon as legally possible to review the denial. In any case, the request shall be returned with a final decision within two business days following the original denial.

(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 the denial of inspection, whichever occurs first.

[Statutory Authority: RCW 42.17.250. 79-04-037 (Order 79-2), § 446-10-110, filed 3/23/79.]

WAC 446-10-120 Protection of public records. Requests for public records shall be made to the Washington State Patrol, General Administration Building, AX-12, Olympia, Washington 98504. Public records and facility for their inspection and/or copying will be provided by the public records officer of the department. Such records or documents shall not be removed from the place designated for their inspection and all records will be reviewed under the supervision of the public records officer or his designee.

[Statutory Authority: RCW 42.17.250. 79-04-037 (Order 79-2), § 446-10-120, filed 3/23/79.]

WAC 446-10-130 Records index. The Washington state patrol has nine locations in the state of Washington (see WAC 446-10-030) where the general public will have access to the departmental filing index. The indexes made available will be the total filing structure which is identical in all locations. The index can be read at the central filing division in Olympia or at the various district patrol offices including Spokane, Wenatchee, Yakima, Everett, Bellevue, Tacoma, Bremerton, and Vancouver.

[Statutory Authority: RCW 42.17.250. 79-04-037 (Order 79-2), § 446-10-130, filed 3/23/79.]

WAC 446-10-140 Request for information. All communications with the department, including but not limited to the submission of materials pertaining to its operations and/or the administration or enforcement of chapter 1, Laws of 1973 [chapter 42.17 RCW], and these rules, requests for copies of the department's decisions, and other matters, shall be addressed as follows: Washington State Patrol, c/o Public Records Officer, General Administration Building, AX-12, Olympia, Washington 98504.

[Statutory Authority: RCW 42.17.250. 79-04-037 (Order 79-2), § 446-10-140, filed 3/23/79.]

WAC 446-10-150 Adoption of form. The department hereby adopts for use by all persons requesting inspection and/or copying, or copies of its records, the following form entitled, "Request for public record":

REQUEST FOR PUBLIC RECORD

Date . . . . . Time . . . . . .
Name . . . . . .
Address . . . . . .
Nature or Description of Record (see index):
. . . . . .
. . . . . .
. . . . . .
. . . . . .

I certify that the information obtained through this request for public record will not be used for commercial purposes.

. . . . . .
Signature

[Statutory Authority: RCW 42.17.250. 79-04-037 (Order 79-2), § 446-10-150, filed 3/23/79.]

Chapter 446-16 WAC
WASHINGTON STATE IDENTIFICATION SECTION

WAC

446-16-010 Definitions.
446-16-020 Scope of the rules.
446-16-025 Expungement of arrest records.
446-16-030 Inspection by the subject of their record.
446-16-060 Disposition reports—When required.
446-16-070 Report contents—General.
446-16-080 Report time limitations.
446-16-090 Law enforcement agencies—Reporting responsibilities.
446-16-100 Prosecutorial agencies—Reporting responsibilities.
446-16-110 Courts—Reporting responsibilities.
446-16-120 Audit of reporting compliance.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

446-16-040 Reporting of persons detained in custody. [Order 1, § 446-16-040, filed 2/11/74.] Repealed by 97-05-048, filed 2/18/97, effective 3/21/97. Statutory Authority: Chapters 10.97 and 43.43 RCW.

446-16-050 Report by social and health services on change of parole status—Other changes—Requirements. [Order 1, § 446-16-050, filed 2/11/74.] Repealed by 97-05-048, filed 2/18/97, effective 3/21/97. Statutory Authority: Chapters 10.97 and 43.43 RCW.

WAC 446-16-010 Definitions. For the purposes of these rules, the following words and phrases shall have the following meanings:

(1) "Criminal history record information" includes, and shall be restricted to identifying data and public record information recorded as the result of an arrest or other initiation of criminal proceedings and the consequent proceedings related thereto. "Criminal history record information" shall not include intelligence, analytical or investigative reports and files.

(2) "Criminal justice agencies" are those public agencies within or outside the state which perform, as a principal function, activities directly relating to the apprehension, prosecution, adjudication or rehabilitation of criminal offenders.

(3) "Disposition" shall mean that result which is reached at a determination of criminal proceedings against an individual at any stage in the criminal justice system and resulting in the culmination or final disposal of the criminal charge.

(4) "Section" shall mean the section on identification of the Washington state patrol established in RCW 43.43.700, et seq.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. 97-05-048, § 446-16-010, filed 2/18/97, effective 3/21/97; Order 1, § 446-16-010, filed 2/11/74.]

WAC 446-16-020 Scope of the rules. Criminal offender record information shall not be released or inspected except in accordance with RCW 43.43.700 et seq. and these rules.

[Order 1, § 446-16-020, filed 2/11/74.]

WAC 446-16-025 Expungement of arrest records. (1) A person desiring the destruction of his fingerprints and/or other identifying data, pursuant to RCW 43.43.730, shall make his request therefor on a form furnished by the Washington state patrol identification and criminal history section.

(2) The request shall be completed, signed by the person whose record is sought to be expunged and his signature witnessed. It shall include the address of the applicant, the printed name and the address of the witness to the applicant's signature and such other information requested on the application as identifies the applicant and the offense for which the request of expungement is made.

(3) The request shall include reasonable proof that the person making the request for expungement is the same person whose fingerprints or other identifying data are sought to be expunged. Such proof shall include fingerprints of the applicant if requested by the section.

(4) The request shall include reasonable proof that the person making the request has no prior criminal record and that he has been found not guilty of the offense for which the fingerprints and/or other identifying data were taken or was finally released without a conviction for such offense having been obtained or has other lawful grounds for expungement. Such proof shall include the furnishing of all details pertaining to the finding of not guilty or release without conviction of such criminal charges. Where the finding or release is based on an order of a court, the applicant shall furnish a certified or xeroxed copy of the court order.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. 97-05-048, § 446-16-025, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 10.97.080 and 10.97.090. 92-15-014, § 446-16-025, filed 7/6/92, effective 8/6/92; Order 1, § 446-16-025, filed 2/11/74.]

WAC 446-16-030 Inspection by the subject of their record. (1) Any person desiring to inspect criminal history record information which refers to themself may do so at the central office of the Washington state patrol identification and criminal history section, between the hours of 8 a.m. and 5 p.m., Monday through Friday, excepting legal holidays.

(2) Any person desiring to inspect criminal history record information pertaining to themself shall first permit their fingerprints to be taken by the section for identification purposes if requested to do so. The section, in their discretion, may accept other identification in lieu of fingerprints.

(3) A reasonable period of time, not to exceed thirty minutes, shall be allowed each individual to examine criminal history record information pertaining to themselves.

(4) No person shall be allowed to retain or reproduce any criminal history record information pertaining to themselves except for the purpose of challenge or correction of entries of arrests by submitting law enforcement agencies of the state of Washington. Visual examination only shall be permitted of such information unless the individual asserts their belief that criminal history record information from a submitting law enforcement agency of the state of Washington concerning them is inaccurate, incomplete or maintained in violation of the law; and unless they request correction or completion of the information on a form furnished by the section, or requests expungement pursuant to WAC 446-16-025.

(5) If any person who desires to examine criminal history record information pertaining to themself is unable to read or is otherwise unable to examine same because of a physical disability, they may designate another person of their own choice to assist them. The person about whom the information pertains shall execute, with their mark, a form provided by the section consenting to the inspection of criminal history record information pertaining to themself by another person for the purpose of it being read or otherwise described to them. Such designated person shall then be permitted to read or otherwise describe or translate the criminal history record information to the person about whom it pertains.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. 01-20-039, § 446-16-030, filed 9/26/01, effective 10/27/01; 97-05-048, § 446-16-030, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 10.97.080 and 10.97.090. 92-15-014, § 446-16-030, filed 7/6/92, effective 8/6/92; Order 1, § 446-16-030, filed 2/11/74.]

WAC 446-16-060 Disposition reports—When required. In every case where a fingerprint record or other report of the arrest of an individual on criminal charges has been submitted to the section, the agency which makes the final determination of such criminal charges or in whose jurisdiction the final determination is made shall report the disposition of such charges to the section.

[Order 1, § 446-16-060, filed 2/11/74.]

WAC 446-16-070 Report contents—General. The report of disposition shall be made on forms provided by the section or shall be transferred electronically on forms approved by the section. The disposition report shall include all arrest details as they appeared on the fingerprint card or arrest record previously forwarded to the section. The state identification number and process control number (PCN) should be indicated on the disposition report if known.

[Statutory Authority: Chapter 10.98 RCW as amended by SSB 6535, 1998 regular session. 99-07-051, § 446-16-070, filed 3/15/99, effective 4/15/99. Statutory Authority: Chapters 10.97 and 43.43 RCW. 97-05-048, § 446-16-070, filed 2/18/97, effective 3/21/97; Order 1, § 446-16-070, filed 2/11/74.]

WAC 446-16-080 Report time limitations. All of the information requested on the disposition report shall be completed and the report mailed or electronically transferred to the Washington state patrol identification and criminal history section, within 10 days of the date that a disposition becomes effective.

[Statutory Authority: Chapter 10.98 RCW as amended by SSB 6535, 1998 regular session. 99-07-051, § 446-16-080, filed 3/15/99, effective 4/15/99. Statutory Authority: Chapters 10.97 and 43.43 RCW. 97-05-048, § 446-16-080, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 10.97.080 and 10.97.090. 92-15-014, § 446-16-080, filed 7/6/92, effective 8/6/92. Statutory Authority: RCW 10.97.090. 91-22-055 (Order 91-007), § 446-16-080, filed 11/1/91, effective 12/2/91; Order 1, § 446-16-080, filed 2/11/74.]

WAC 446-16-090 Law enforcement agencies—Reporting responsibilities. (1) If the disposition of criminal charges is made by the arresting agency, as where the individual is released without charge, the arresting agency shall fill in and complete the disposition report and mail same to the section. If the disposition is known at the time and arrest record or fingerprint card is submitted to the section, this information should be noted thereon. In this case, it shall be unnecessary to forward a disposition report.

(2) In all cases where the arresting agency does not make the final disposition, it shall initiate the preparation of a disposition report by recording the name of the individual arrested, the charges on which he was arrested, the name of the contributor of the arrest or fingerprint record, the arrest number and any other information that may identify the individual. At this stage the disposition of charges shall be left blank, but the agency shall note the action that it has taken, e.g., referred to the prosecutor, etc. The partially completed disposition report shall then be included as part of the individual's case file and shall be forwarded with other information concerning the charges against the individual to the prosecutor or other agency to which the arresting agency forwards the case.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 92-15-014, § 446-16-090, filed 7/6/92, effective 8/6/92; Order 1, § 446-16-090, filed 2/11/74.]

WAC 446-16-100 Prosecutorial agencies—Reporting responsibilities. (1) The prosecutor or county clerk shall promptly transmit the completed disposition information to the section if the prosecutor determines not to file charges or the case is not otherwise acted upon by a judicial body. In such cases, the prosecutor or county clerk shall mail or transfer the completed disposition report to the section within 10 days from the date that it is determined no further judicial action will be taken on the charges.

[Statutory Authority: Chapter 10.98 RCW as amended by SSB 6535, 1998 regular session. 99-07-051, § 446-16-100, filed 3/15/99, effective 4/15/99. Statutory Authority: Chapters 10.97 and 43.43 RCW. 97-05-048, § 446-16-100, filed 2/18/97, effective 3/21/97; Order 1, § 446-16-100, filed 2/11/74.]

WAC 446-16-110 Courts—Reporting responsibilities. Where the disposition of criminal charges occurs as a result of action taken by or within the jurisdiction of any court in the state of Washington, the disposition of such charges shall be reported to the identification and criminal history section pursuant to rules of the supreme court of the state of Washington on forms approved by the supreme court and supplied by the section. However, in a county where the judicial information system or other secure method of electronic transfer of information has been implemented between the court and the section, the court may electronically provide the disposition information to the section.

[Statutory Authority: Chapter 10.98 RCW as amended by SSB 6535, 1998 regular session. 99-07-051, § 446-16-110, filed 3/15/99, effective 4/15/99. Statutory Authority: Chapters 10.97 and 43.43 RCW. 97-05-048, § 446-16-110, filed 2/18/97, effective 3/21/97; Order 1, § 446-16-110, filed 2/11/74.]

WAC 446-16-120 Audit of reporting compliance. The identification and criminal history section shall administer a compliance audit procedure at least once annually to insure that all disposition reports have been received and added to the criminal history record information. The identification and criminal history section shall prepare listings of all criminal history record information for which no disposition report has been received and has been outstanding for more than 9 months since the date of arrest. Each criminal justice agency shall be furnished with a list of outstanding disposition reports for criminal history record information of persons who were arrested or against whom charges were filed by that agency. Within 30 days of receipt of such list, each criminal justice agency shall provide the identification and criminal history section with a current disposition report or status report for each person for whom a disposition report is overdue.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. 97-05-048, § 446-16-120, filed 2/18/97, effective 3/21/97; Order 1, § 446-16-120, filed 2/11/74.]

Chapter 446-20 WAC
EMPLOYMENT—CONVICTION RECORDS

WAC

446-20-010 General applicability.
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446-20-050 Criminal justice agencies.
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446-20-080 Inspection—Forms to be made available.
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446-20-210 Protection from accidental loss or injury.
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446-20-420 Model agreement for research, evaluative or statistical purposes.
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446-20-510 History retention.
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446-20-600 Fees.
446-20-610 Superintendent of public instruction—Prospective educational employees—Fees.
446-20-630 Department of social and health services—Child care licensing—Fees.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

446-20-110 Deletion—Notification. [Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-110, filed 7/1/80.] Repealed by 97-05-048, filed 2/18/97, effective 3/21/97. Statutory Authority: Chapters 10.97 and 43.43 RCW.

446-20-290 Fees. [Statutory Authority: RCW 43.43.760, 43.43.815 and 43.43.838. 92-15-015, § 446-20-290, filed 7/6/92, effective 8/6/92. Statutory Authority: RCW 10.97.090. 91-24-099 (Order 91-004), § 446-20-290, filed 12/4/91, effective 1/4/92. Statutory Authority: 1990 c 3. 90-20-003 (Order 90-003), § 446-20-290, filed 9/20/90, effective 10/21/90. Statutory Authority: RCW 43.43.838 and

1987 c 486 § 5. 88-07-066 (Order 88-03-A), § 446-20-290, filed 3/17/88. Statutory Authority: 1982 c 202 § 1(7). 82-22-006 (Order 82-5), § 446-20-290, filed 10/22/82.] Repealed by 96-18-017, filed 8/26/96, effective 9/26/96. Statutory Authority: RCW 43.43.830 - [43.43.]845, chapters 10.97, 28A.400 and 74.15 RCW.

446-20-620 Superintendent of public instruction—Current educational employees hired prior to June 11, 1992. [Statutory Authority: RCW 43.43.830 - [43.43.]845, chapters 10.97, 28A.400 and 74.15 RCW. 96-18-017, § 446-20-620, filed 8/26/96, effective 9/26/96.] Repealed by 98-19-041, filed 9/11/98, effective 10/12/98. Statutory Authority: RCW 43.43.830.

WAC 446-20-010 General applicability. The regulations in this chapter shall apply to state and local criminal justice agencies in the state of Washington that collect and maintain or disseminate criminal history record information. The regulations shall also apply to criminal justice or other agencies outside the jurisdiction of the state of Washington for the purpose of the dissemination of criminal history record information to other agencies by state of Washington criminal justice agencies. The provisions of chapter 10.97 RCW do not generally apply to the courts and court record keeping agencies. The courts and court record keeping agencies have the right to request and receive criminal history record information from criminal justice agencies. The regulations are intended to cover all criminal justice records systems that contain criminal history record information, whether the systems are manual or automated. Chapter 10.97 RCW defines the rights and privileges relating to criminal history record information and should not be interpreted to redefine or amend rights or privileges relevant to any other kinds of records or information.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-010, filed 7/1/80.]

WAC 446-20-020 Definitions. (1) The definitions in RCW 10.97.030 shall apply to these regulations.

(2) "Nonconviction data" has the meaning set forth in RCW 10.97.030(2), but shall not include dismissals following a period of probation, or suspension, or deferral of sentence.

(3) "The administration of criminal justice" has the meaning set forth in RCW 10.97.030(6), but does not include crime prevention activities (if that is the sole function of the program or agency) or criminal defense activities.

(4) The definitions as enumerated in RCW 43.43.830 through 43.43.845, and as amended by chapter 9A.44 RCW, "An act relating to child and adult abuse information," shall apply whenever applicable in these regulations.

[Statutory Authority: RCW 10.97.090. 91-24-099 (Order 91-004), § 446-20-020, filed 12/4/91, effective 1/4/92. Statutory Authority: 1990 c 3. 90-20-003 (Order 90-003), § 446-20-020, filed 9/20/90, effective 10/21/90. Statutory Authority: RCW 43.43.838 and 1987 c 486 § 5. 88-07-066 (Order 88-03-A), § 446-20-020, filed 3/17/88. Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-020, filed 7/1/80.]

WAC 446-20-030 Convictions under appeal or review. A conviction followed by an appeal or other court review may be treated as conviction information or as information pertaining to an incident for which a subject is currently being processed by the criminal justice system until such time as the conviction is reversed, vacated, or otherwise overturned by a court; but, notations of pending appeals or other court review shall be included as a part of a person's criminal record if the agency disseminating the record has received written confirmation of such proceedings from the court.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-030, filed 7/1/80.]

WAC 446-20-040 Deferred prosecutions. A deferred prosecution of an alleged offender does not become nonconviction data until there is a final decision to dismiss charges or not to prosecute.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-040, filed 7/1/80.]

WAC 446-20-050 Criminal justice agencies. (1) The following agencies shall be considered criminal justice agencies for the purpose of chapter 10.97 RCW and these regulations.

(a) The Washington state patrol, including the state identification section;

(b) Foreign, federal, state, and local governmental law enforcement agencies;

(c) The adult corrections division of the department of social and health services or the department of corrections as specified in chapter 72.02 RCW, including institutions as specified in chapter 72.01 RCW and probation and parole services as specified in chapter 72.04A RCW;

(d) The board of prison terms and paroles;

(e) Courts at any level, if they exercise criminal jurisdiction, for the administration of criminal justice.

(2) Only that subunit of the following agencies which detects, prosecutes, or that work under the direction of the courts shall be considered criminal justice agencies for the purpose of chapter 10.97 RCW and these regulations:

(a) Federal, state and local prosecutorial, correctional programs, agencies or departments;

(b) The liquor control board as specified in RCW 66.44.010 (enforcement division);

(c) The department of labor and industries as specified in chapter 7.68 RCW (victims of crime compensation);

(d) The state fire marshal as specified in RCW 48.48.060(2);

(e) An agency or portion thereof that has been certified as a criminal justice agency pursuant to WAC 446-20-060.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. 97-05-048, § 446-20-050, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-050, filed 7/1/80.]

WAC 446-20-060 Certification of agencies. (1) An agency that asserts a right to receive criminal history record information based on its status as a criminal justice agency shall show satisfactory evidence of its certification as a criminal justice agency prior to receiving such information. The Washington state patrol shall certify such an agency, based on a showing that the agency devotes a substantial portion of its annual budget to, and has as a primary function, the administration of criminal justice. Agencies which assert their right to be certified as a criminal justice agency shall submit a written request for certification to the Washington state patrol on the form provided under WAC 446-20-430.

(2) A noncriminal justice agency that asserts a right to receive nonconviction criminal history record information shall show satisfactory evidence of certification to receive such information. Certification by the Washington state patrol will be granted based upon statute, ordinance, executive order, or a court rule, decision, or order which expressly refers to nonconviction criminal history record information, and which authorizes or directs that it be available or accessible for a specific purpose.

(3) The application shall include documentary evidence which establishes eligibility for access to criminal history record information.

(4) The Washington state patrol shall make a finding in writing on the eligibility or noneligibility of the applicant. The written finding, together with reasons for the decisions, shall be sent to the applicant.

(5) The Washington state patrol shall keep a current list of all agencies that have been certified to receive criminal history record information.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-060, filed 7/1/80.]

WAC 446-20-070 Inspection—Individual's right to review record. Every criminal justice agency shall permit an individual who is, or believes he may be, the subject of a criminal record maintained by that agency to come to the central records keeping office of that agency during its normal business hours and request to inspect said criminal history record.

To the extent that CHRI exists (which includes and shall be limited to identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any dispositions arising therefrom, including sentences, correctional supervision and release) is interfiled with other records of the department the agency may extract the CHRI for review.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-070, filed 7/1/80.]

WAC 446-20-080 Inspection—Forms to be made available. The criminal justice agency shall make available a request form to be completed by the person who is, or believes he may be, the subject of a criminal record maintained by that agency. The form shall be substantially equivalent to that set forth in WAC 446-20-400.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-080, filed 7/1/80.]

WAC 446-20-090 Inspection of record by the subject of record. (1) Any person desiring to inspect criminal history record information which pertains to himself may do so at the central records keeping office of any criminal justice agency or at the Washington state patrol identification and criminal history section, during normal business hours, Monday through Friday, excepting legal holidays.

(2) Any person desiring to inspect criminal history record information pertaining to himself shall first permit his fingerprints to be taken by the criminal justice agency for identification purposes, if requested to do so. The criminal justice agency in its discretion may accept other identification in lieu of fingerprints.

(3) A reasonable period of time, not to exceed thirty minutes, shall be allowed each individual to examine criminal history record information pertaining to himself.

(4) Visual examination only shall be permitted of such information unless the individual asserts his belief that criminal history record information concerning him is inaccurate, or incomplete; and unless he requests correction or completion of the information on a form furnished by the criminal justice agency, or requests expungement pursuant to RCW 10.97.060. Retention or reproduction of nonconviction data is authorized only when it is the subject of challenge.

(5) If any person who desires to examine criminal history record information pertaining to himself is unable to read or is otherwise unable to examine same because of a physical disability, he may designate another person of his own choice to assist him. The person about whom the information pertains shall execute, with his mark, a form provided by the criminal justice agency consenting to the inspection of criminal history information pertaining to himself by another person for the purpose of it being read or otherwise described to him. Such designated person shall then be permitted to read or otherwise describe or translate the criminal history record information to the person about whom it pertains.

(6) Each criminal justice agency shall develop procedures to ensure that no individual improperly retains or mechanically reproduces nonconviction data during the process of inspection.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. 97-05-048, § 446-20-090, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-090, filed 7/1/80.]

WAC 446-20-100 Inspection—Timeliness and manner of agency response. (1) A criminal justice agency not maintaining criminal history record information of the individual requesting inspection shall not be obligated to further processing of inspection request.

(2) A criminal justice agency maintaining criminal history record information of the individual requesting inspection shall respond in the manner following and as soon as administratively convenient, but in no event later than ten business days from the date of the receipt of the request.

(a) If the criminal history record information concerns offenses for which fingerprints were not submitted to the Washington state patrol identification and criminal history section, the agency shall respond by disclosing the identifiable descriptions and notations of arrests, charges, and dispositions that are contained in the files of the agency.

(b) If the criminal history record information concerns offenses for which fingerprints were submitted to the identification section, the agency upon request of the subject of the record, shall forward the request to the Washington state patrol identification and criminal history section for processing.

(c) At the Washington state patrol identification and criminal history section the request shall cause a copy of all Washington state criminal history record information in the files of the Washington state patrol identification and criminal history section relating to the individual requester to be

forwarded to the criminal justice agency submitting the request.

(d) Upon receipt by the criminal justice agency of the requester's criminal history record information from the Washington state patrol identification and criminal history section, the agency shall notify the requester at his designated address or telephone number that the requested information is available for inspection. The subject of the criminal history record information must appear at the agency during its normal business hours for purpose of inspecting the record.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. 97-05-048, § 446-20-100, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-100, filed 7/1/80.]

WAC 446-20-120 Challenge—Individual's right to challenge. A subject seeking to challenge the accuracy or completeness of any part of the criminal history record information pertaining to himself shall do so in writing, clearly identifying that information which he asserts to be inaccurate or incomplete. This includes only records generated by Washington state criminal justice agencies.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-120, filed 7/1/80.]

WAC 446-20-130 Challenge—Forms to be made available. Every criminal justice agency which authorizes individuals to use its facilities for the purpose of inspecting their criminal history record information shall provide an appropriate challenge form and the address of the agency whose record entry is being challenged. Such forms shall be substantially equivalent to that set forth in WAC 446-20-450.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-130, filed 7/1/80.]

WAC 446-20-140 Challenge—Agency to make determination. The agency which initiated the criminal history record information being challenged shall:

(1) Not later than ten business days after receiving the written challenge, acknowledge receipt of the challenge in writing; and

(2) Promptly, but in no event later than ten business days after acknowledging receipt of the challenge, either:

(a) Make any correction of any portion of the criminal history record information which the person challenging such information has designated as being inaccurate or incomplete.

(b) Inform the person challenging the criminal history record information, in writing, of the refusal to amend the criminal history record information, the reason for the refusal, and the procedures for review of that refusal.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-140, filed 7/1/80.]

WAC 446-20-150 Correction of erroneous information. (1) The originating agency must send information correcting the previously incorrect information to all agencies and persons to which the previously incorrect information was disseminated by the originating agency. This obligation shall be limited to disseminations made within one year of the date on which the challenge was initiated.

(2) Any criminal justice agency maintaining criminal history record information within the state shall adopt a procedure which, when significant information in a criminal history record maintained on an individual is determined to be inaccurate, leads to the dissemination of corrected information to every agency and person(s) to which the prior erroneous information was disseminated within the preceding one year.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-150, filed 7/1/80.]

WAC 446-20-160 Review of refusal to alter record. A person who is the subject of a criminal record and who disagrees with the refusal of the agency maintaining or submitting the record to correct, complete, or delete the record, may request a review of the refusal within twenty business days of the date of receipt of such refusal. The request for review shall be in writing, and shall be made by the completion of a form substantially equivalent to that set forth in WAC 446-20-410. If review is requested in the time allowed, the head of the agency whose record or submission has been challenged shall complete the review within thirty days and make a final determination of the challenge. The head of the agency may extend the thirty-day period for an additional period not to exceed thirty business days. If the head of the agency determines that the challenge should not be allowed, he shall state his reasons in a written decision, a copy of which shall be provided to the subject of the record. Denial by the agency head shall constitute a final decision under RCW 34.04.130.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-160, filed 7/1/80.]

WAC 446-20-170 Secondary dissemination. (1) Criminal justice agencies that receive state criminal history record information from the identification section of the Washington state patrol may disseminate them further, "but only to the same extent to which the identification section itself would be authorized to make a dissemination in the first instance." Nonconviction data based on an incident that arose in the jurisdiction of that agency about to make the dissemination is not subject to this restriction, if the agency is otherwise authorized to disseminate such information.

(2) Noncriminal justice agencies certified to receive criminal history record information from whatever source may use it only for the specific purpose for which the agency is certified and shall not disseminate it further.

(3) Use of criminal history record information contrary to chapter 10.97 RCW or chapter 446-20 WAC may result in suspension or cancellation of certification.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. 97-05-048, § 446-20-170, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-170, filed 7/1/80.]

WAC 446-20-180 Dissemination pursuant to contract for services. (1) Criminal history record information which includes nonconviction data may be disseminated pursuant to a contract to provide services, as set forth in RCW 10.97.050(5). The contract must contain provisions giving notice to the individual or agency to which the information is to be disseminated that the use of such information is subject to the provisions of chapter 10.97 RCW and these regula-

tions, and federal statutes and regulations, which shall be cited with express reference to the penalties provided for a violation thereof.

(2) When a criminal justice agency uses an information system containing criminal history record information that is controlled and managed by a noncriminal justice agency, the noncriminal justice agency may disseminate criminal history record information only as authorized by the criminal justice agency. Authorization shall be established in a contract between the criminal justice agency and the noncriminal justice agency providing the management service or support. Any criminal justice agency entering a contract with a noncriminal justice agency shall require that the noncriminal justice agency and personnel who utilize criminal history record information, meet the same physical security and personnel standards as set forth by the Washington state patrol under RCW 10.97.090.

All programs, tapes, source documents, listings, and other developmental or related data processing information containing or permitting any person to gain access to criminal history record information, and all personnel involved in the development, maintenance, or operation of an automated information system containing criminal history record information, are subject to the requirements of RCW 10.97.050(5) and these regulations. A statement to this effect shall be included in the contract.

The contract for support services shall be substantially similar to that set forth in WAC 446-20-440.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-180, filed 7/1/80.]

WAC 446-20-190 Dissemination—Research purposes. Criminal history record information which includes nonconviction data may be disseminated for research purposes according to the provisions of RCW 10.97.050(6). The transfer agreement provided for by that section shall be substantially similar to that set forth in WAC 446-20-420 (model transfer provisions).

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-190, filed 7/1/80.]

WAC 446-20-200 Disclosure to assist victim. A criminal justice agency may, but need not, disclose investigative information to "persons who have suffered physical loss, property damage, or injury compensable through civil action" as contemplated by RCW 10.97.070. Disclosure may be made to the apparent victim; an attorney, parent or guardian acting for the victim or an executor or administrator of an estate of a decedent victim; an authorized agent of the victim; another law enforcement or criminal justice agency making inquiry on behalf of the victim; and/or, upon an appropriate showing, an indemnitor, assignee, insurer, or subrogee of the victim. Written capacity to act on behalf of the victim may be required by the agency. Investigative information which ". . . may be of assistance to the victim in obtaining civil redress" may include but is not limited to:

(1) The name, address, and other location information about a suspect, witness, and in the event of a juvenile, the suspect's parent or guardian;

(2) Copies of the incident report; and in person review of documents, photographs, statements, and other materials collected in the course of an investigation;

(3) The location of, and identity of receivers and custodians of stolen property and of property recovered as lost and found property;

(4) The progress of proceedings arising from the incident and the disposition of any prosecution or other action.

An agency making a disclosure is not expected to evaluate the merits of a victim's claim for civil relief. Disclosure merely indicates the information has been received and the agency reasonably believes the information may be useful to the recipient in seeking civil redress. Disclosure does not constitute an opinion or comment upon the existence or merits of a claim and it does *not* vouch for the accuracy or completeness of the information.

Disclosures made to victims under the authority of RCW 10.97.070 shall be considered in conjunction with RCW 42.17.310, The Public Disclosure Act (exemptions), chapter 46.52 RCW (Confidentiality of accident reports and statements), civil and criminal court rules governing discovery and other state and federal laws.

Criminal justice agencies are advised to consult with their own legal counsel in implementing the dissemination authorization of RCW 10.97.070.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-200, filed 7/1/80.]

WAC 446-20-210 Protection from accidental loss or injury. Criminal justice agencies (hereinafter, agency(s)) and noncriminal justice contractors, (hereinafter, contractor(s)) which collect, retrieve, and/or store and disseminate criminal history record information in manual and automated systems, shall institute procedures for the protection of criminal history record information from environmental hazards, including fire, flood, power failure, or other natural or man-made disasters, or in accordance with local fire, safety, and building codes.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-210, filed 7/1/80.]

WAC 446-20-220 Protection against unauthorized access. Criminal history record systems, whether dedicated to criminal justice purposes, or shared, will be designed and operated in accordance with procedures which will assure that:

(1) Access to criminal history record information facilities and system operating areas (whether for computerized or manual systems) and the content of data files and systems documentation, will be restricted to authorized personnel. These procedures may include use of guards, keys, badges, passwords, sign-in logs, or similar safeguards.

(2) All facilities which house criminal history record information shall be designed and constructed so as to reduce the possibility of physical damage to the information resulting from unauthorized access.

(3) Criminal history record information is stored in such a manner that will prevent modification, destruction, access, change, purging, or overlay of criminal history record information by unauthorized personnel.

(4) Operational programs are used in computerized systems that will prohibit inquiry, record updates, or destruction of records from any terminal other than those authorized to perform criminal history record information functions.

(5) The purging or destruction of records is limited to personnel authorized by the criminal justice agency or through contract with the noncriminal justice agency as required under WAC 446-20-180, and consistent with WAC 446-20-230.

(6) Refuse from the criminal history record information system installations is transferred and destroyed under such reasonably secure conditions as will effectively guard against unauthorized availability.

(7) Operational procedures are used in computerized systems to detect and store unauthorized attempts to penetrate any criminal history record information system, program or file, and that such information is made available only to criminal justice agency employees with responsibility for system security, or as authorized by WAC 446-20-180.

(8) The procedures developed to meet standards of subsections (4) and (7) of this section, are known only to authorized employees responsible for criminal history records information system control.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-220, filed 7/1/80.]

WAC 446-20-230 Personnel security. (1) Agencies and contractors which collect and retrieve, or are authorized to maintain or modify, criminal history record information shall: Identify those positions which are of such a sensitive nature that fingerprints of employees will be required and used to conduct a criminal record background investigation. Such background investigations will be the responsibility of the criminal justice agency and may consider the date, the disposition, number, and seriousness of any previous arrests or convictions. Decisions concerning employment will be the responsibility of the employing agency or contractor.

(2) When agency or contractor personnel violate the provisions of chapter 10.97 RCW or other security requirements established through administrative code for the collection, storage and dissemination of such information, agencies or contractors, as defined by subsection (1) of this section, shall initiate, or cause to be initiated, action that will ensure the integrity of records containing criminal history record information.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-230, filed 7/1/80.]

WAC 446-20-240 Personnel training. (1) Criminal justice agencies shall be required directly, or in cooperation with the criminal justice training commission to familiarize their employees and those of the contractors, with all federal, state, and local legislation, executive orders, rules, and regulations, applicable to such a system.

(2) Training to be provided shall include not only initial training, but continuing training, designed to maintain among criminal history record information system personnel current knowledge and operational proficiency with respect to security and privacy law and regulations.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-240, filed 7/1/80.]

WAC 446-20-250 Contractor personnel clearances. (1) No personnel of a noncriminal justice agency shall be granted access to criminal history record information without appropriate security clearance by the contracting agency or agencies.

(2) To provide evidence of the person's security clearance, the grantor of such clearance may provide an authenticated card or certificate. Responsibility for control of the issuance, or revocation of such clearances shall rest with the grantor.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-250, filed 7/1/80.]

WAC 446-20-260 Auditing of criminal history record information systems. (1) Every criminal justice agency, including contractors authorized to collect, retrieve, maintain, and disseminate criminal history record information pursuant to WAC 446-20-180, shall make its records available under RCW 10.97.090(3) to determine the extent of compliance with the following:

(a) Dissemination records as required under RCW 10.97.050(7);

(b) Security procedures as required by RCW 10.97.090 (1); and

(c) Personnel standards as required by RCW 10.97.090 (2).

(2) Personnel engaged in the auditing function shall be subject to the same personnel security requirement as required under WAC 446-20-230, 446-20-240, and 446-20-250, as employees who are responsible for the management and operation of criminal history record information systems.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-260, filed 7/1/80.]

WAC 446-20-270 Establishment of procedures. Every criminal justice agency which collects, retrieves, maintains, and/or disseminates criminal history record information shall establish written rules and regulations setting forth security and personnel procedures for authorized access to criminal history record information files or adopt administrative regulations promulgated by the Washington state patrol.

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-270, filed 7/1/80.]

WAC 446-20-280 Employment—Conviction records. (1) A conviction record will be furnished consistent with the provisions of RCW 43.43.815, upon the submission of a written or electronic request of any employer, accompanied by fingerprints and other identifying data of the employee or prospective employee.

(2) Fingerprints shall be submitted on cards of the type specified by the Washington state patrol identification and criminal history section, and shall contain a certification by the employer that the information is being disseminated to and will be available only to persons involved in the hiring, background investigation, or job assignment of the person whose record is disseminated, that the record will be used only as necessary for the purposes enumerated in this section, and that the request for conviction data is for one of the following purposes:

(a) Securing a bond required for any employment;

(b) Conducting preemployment and postemployment evaluations of employees and prospective employees who, in the course of employment, may have access to information affecting national security, trade secrets, confidential or proprietary business information, money, or items of value; or

(c) Assisting an investigation of suspected employee misconduct where such misconduct may also constitute a penal offense under the laws of the United States or any state.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. 97-05-048, § 446-20-280, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 10.97.090. 91-24-099 (Order 91-004), § 446-20-280, filed 12/4/91, effective 1/4/92. Statutory Authority: 1982 c 202 § 1(7). 82-22-006 (Order 82-5), § 446-20-280, filed 10/22/82.]

WAC 446-20-285 Employment—Conviction records—Child and adult abuse information. After January 1, 1988, certain child and adult abuse conviction information will be furnished by the state patrol upon written or electronic request of any applicant, business or organization, the state board of education, or the department of social and health services. This information will consist of the following:

(1) Convictions of crimes against children or other persons as defined in RCW 43.43.830(6), and as amended by chapter 9A.44 RCW;

(2) Department of health disciplinary authority final decisions of specific findings of physical or sexual abuse or exploitation of a child and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary authority final decision; for the businesses and professions defined in chapter 9A.44 RCW; and

(3) Civil adjudications of child abuse, as amended by chapter 9A.44 RCW.

Criminal history information will be furnished from the Washington state patrol, consistent with the provisions of RCW 43.43.830 through 43.43.840, upon receipt of a written or electronic request.

School districts, the superintendent of public instruction, educational service districts and their contractors will also receive conviction information under RCW 10.97.030 and 10.97.050 pursuant to chapter 159, Laws of 1992.

The state patrol shall also furnish any similar records maintained by the Federal Bureau of Investigation or records in custody of the National Crime Information Center, if available, subject to their policies and procedures regarding such dissemination.

(a) The business or organization making such request shall not make an inquiry to the Washington state patrol or an equivalent inquiry to a federal law enforcement agency unless the business or organization has notified the applicant who has been offered a position as an employee or volunteer that an inquiry may be made.

(b) For positive identification, the request for criminal history information form may be accompanied by fingerprint cards of a type specified by the Washington state patrol identification and criminal history section, and shall contain a certification by the business or organization; the state board of education; or the department of social and health services, that the information is being requested and will be used only for the purposes as enumerated in RCW 43.43.830 through 43.43.845.

(c) In the absence of fingerprint cards, the applicant may provide a right thumb fingerprint impression in the area provided on the request for criminal history information form. In the event of a possible match to the applicant's name and date of birth, the right thumb fingerprint impression will be used for identification verification purposes only.

(d) After processing a properly completed request for criminal history information form, if the conviction record, disciplinary authority final decision, adjudication record, or equivalent response from a federal law enforcement agency shows no evidence of crimes against persons, an identification declaring the showing of no evidence shall be issued to the business or organization by the Washington state patrol identification and criminal history section within fourteen working days of receipt of the request. Possession of such identification shall satisfy future record check requirements for the applicant for a two-year period.

(e) The business or organization shall notify the applicant of the state patrol's response within ten calendar days after receipt by the business or organization. The employer shall provide a copy of the response to the applicant and shall notify the applicant of such availability.

(f) The business or organization shall be immune from civil liability for failure to request background information on a prospective employee or volunteer unless the failure to do so constitutes gross negligence.

[Statutory Authority: RCW 10.97.030 and 43.830-845 [43.43.830-43.43.-845]. 03-05-007, § 446-20-285, filed 2/7/03, effective 3/10/03. Statutory Authority: Chapters 10.97 and 43.43 RCW. 97-05-048, § 446-20-285, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 43.43.760, 43.43.815 and 43.43.838. 92-15-015, § 446-20-285, filed 7/6/92, effective 8/6/92. Statutory Authority: RCW 10.97.090. 91-24-099 (Order 91-004), § 446-20-285, filed 12/4/91, effective 1/4/92. Statutory Authority: 1990 c 3. 90-20-003 (Order 90-003), § 446-20-285, filed 9/20/90, effective 10/21/90. Statutory Authority: RCW 43.43.838. 89-23-017, § 446-20-285, filed 11/6/89, effective 12/7/89. Statutory Authority: RCW 43.43.838 and 1987 c 486 § 5. 88-07-066 (Order 88-03-A), § 446-20-285, filed 3/17/88.]

WAC 446-20-300 Privacy—Security. (1) All employers or prospective employers receiving conviction records pursuant to RCW 43.43.815, shall comply with the provisions of WAC 446-20-210 through 446-20-250 relating to privacy and security of the records.

(2) Businesses or organizations, the state board of education, and the department of social and health services receiving conviction records of crimes against persons, disciplinary board final decision information, or a civil adjudication record pursuant to RCW 43.43.815 and 43.43.830 through 43.43.845, shall comply with the provisions of WAC 446-20-220 (1) and (3) relating to privacy and security of the records.

(a) The business or organization shall use this record only in making the initial employment or engagement decision. Further dissemination or use of the record is prohibited. A business or organization violating this prohibition is subject to a civil action for damages.

(b) No employee of the state, employee of a business or organization, or the organization is liable for defamation, invasion of privacy, negligence, or any other claim in connection with any lawful dissemination of information under RCW 43.43.830 through 43.43.840 or 43.43.760.

[Statutory Authority: RCW 43.43.760, 43.43.815 and 43.43.838. 92-15-015, § 446-20-300, filed 7/6/92, effective 8/6/92. Statutory Authority: RCW 43.43.838 and 1987 c 486 § 5. 88-07-066 (Order 88-03-A), § 446-20-300,

filed 3/17/88. Statutory Authority: 1982 c 202 § 1(7). 82-22-006 (Order 82-5), § 446-20-300, filed 10/22/82.]

WAC 446-20-310 Audits. (1) All employers or prospective employers receiving conviction records pursuant to RCW 43.43.815, shall comply with the provisions of WAC 446-20-260 through 446-20-270 relating to audit of the record keeping system.

(2) Businesses or organizations, the state board of education and the department of social and health services receiving conviction records of crimes against persons, disciplinary board final decision information or civil adjudication records pursuant to RCW 43.43.830 through 43.43.845, may be subject to periodic audits by Washington state patrol personnel to determine compliance with the provisions of WAC 446-20-300(2).

[Statutory Authority: RCW 10.97.090. 91-24-099 (Order 91-004), § 446-20-310, filed 12/4/91, effective 1/4/92. Statutory Authority: RCW 43.43.838 and 1987 c 486 § 5. 88-07-066 (Order 88-03-A), § 446-20-310, filed 3/17/88. Statutory Authority: 1982 c 202 § 1(7). 82-22-006 (Order 82-5), § 446-20-310, filed 10/22/82.]

WAC 446-20-400 Form of request to inspect record.

INSPECTION OF RECORD REQUEST
(RCW 10.97.080/WAC 446-20-070)

Agency . . . . . .
Agency No . . . . . .
Date . . . . . .
Time . . . . . .
I, ... , request to inspect such criminal history record information pertaining to myself and maintained in the files of the above named agency.
I was born (Date of Birth), in (Place of Birth), and to ensure positive identification as the person in question, I am willing to submit my fingerprints in the space provided below, if required or requested.
(Fill in and check applicable box)
Because I am unable to read ❑; I do not understand English ❑; otherwise need assistance in reviewing my record ❑; I designate and consent that (Print Name), whose address is . . . . . , assist me in examining the criminal history record information concerning myself.

. . . . . .
. . . . . .

Prints of right four fingers taken simultaneously

(Signature or mark of Applicant)
. . . . . .
(Address)
. . . . . .
. . . . . .
(Signature of Designee)

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-400, filed 7/1/80.]

WAC 446-20-410 Form of request to review refusal to modify record.

REQUEST FOR REVIEW OF REFUSAL TO MODIFY RECORD
(RCW 10.97.080/WAC 446-20-160)

Date. . . . . .

I, (Print Name), request the head of (Agency Name), to review and make a final determination of my challenge to the accuracy or completeness of criminal history record information pertaining to myself and maintained by (Agency Name).

My challenge, a copy of which is attached, was made on (Date of Challenge), and was refused on (Date of Refusal). I request that my challenge be allowed and my record be modified in accordance with such challenge.

. . . . . .
(Signature of Applicant)
. . . . . .
(Address of Applicant)
. . . . . .

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-410, filed 7/1/80.]

WAC 446-20-420 Model agreement for research, evaluative or statistical purposes.

AGREEMENT made this . . . . day of . . . . . , 199_, between . . . . . , (hereinafter referred to as "RESEARCHER") and . . . . . , (hereinafter referred to as "CRIMINAL JUSTICE AGENCY")*

WHEREAS the RESEARCHER had made a written request to the CRIMINAL JUSTICE AGENCY dated. . . . . , a copy of which is annexed hereto and made a part hereof, and

WHEREAS the CRIMINAL JUSTICE AGENCY has reviewed said written request and determined that it clearly specifies (1) the criminal history record information sought, and (2) the research, evaluative or statistical purpose for which the said information is sought,** and

WHEREAS the RESEARCHER represents that (he) (she) (it) is in receipt of, and is familiar with, the provisions of chapter 10.97 RCW, 28 CFR Part 22, including provisions for sanctions at Parts 22.24(c) and 22.29 thereof,

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. The CRIMINAL JUSTICE AGENCY will supply the following items of information to the RESEARCHER:

(Describe in detail)***

. . . . . .
. . . . . .
. . . . . .
. . . . . .

2. The RESEARCHER will:

(a) Use the said information only for the research, evaluative, or statistical purposes described in the above mentioned written request dated. . . . . , and for no other purpose;

(b) Limit access to said information to the RESEARCHER and those of the RESEARCHER'S employees whose responsibilities cannot be accomplished without such access, and who have been advised of, and agreed to comply

with, the provisions of this agreement, and of 28 CFR Part 22;****

(c) Store all said information received pursuant to this agreement in secure, locked containers;

(d) So far as possible, replace the name and address of any record subject with an alpha-numeric or other appropriate code;

(e) Immediately notify the CRIMINAL JUSTICE AGENCY in writing of any proposed material changes in the purposes or objectives of its research, or in the manner in which said information will be used.

3. The RESEARCHER will not:

(a) Disclose any of the said information in a form which is identifiable to an individual, in any project report or in any manner whatsoever, except pursuant to 28 CFR Part 22.24 (b)(1)(2).

(b) Make copies of any of the said information, except as clearly necessary for use by employees or contractors to accomplish the purposes of the research. (To the extent reasonably possible, copies shall not be made of criminal history record information, but information derived therefrom which is not identifiable to specific individuals shall be used for research tasks. Where this is not possible, every reasonable effort shall be made to utilize coded identification data as an alternative to names when producing copies of criminal history record information for working purposes.)

(c) Utilize any of the said information for purposes or objectives or in a manner subject to the requirement for notice set forth in 2.(e) until specific written authorization therefor is received from the CRIMINAL JUSTICE AGENCY.

4. In the event the RESEARCHER deems it necessary, for the purposes of the research, to disclose said information to any subcontractor, (he) (she) (it) shall secure the written agreement of said subcontractor to comply with all the terms of this agreement as if (he) (she) (it) were the RESEARCHER named herein.****

5. The RESEARCHER further agrees that:

(a) The CRIMINAL JUSTICE AGENCY shall have the right, at any time, to monitor, audit, and review the activities and policies of the RESEARCHER or its subcontractors in implementing this agreement in order to assure compliance therewith; and

(b) Upon completion, termination or suspension of the researcher, it will return all said information, and any copies thereof made by the RESEARCHER, to the CRIMINAL JUSTICE AGENCY, unless the CRIMINAL JUSTICE AGENCY gives its written consent to destruction, obliteration or other alternative disposition.

6. In the event the RESEARCHER fails to comply with any term of this Agreement the CRIMINAL JUSTICE AGENCY shall have the right to take such action as it deems appropriate, including termination of this Agreement. If the CRIMINAL JUSTICE AGENCY so terminates this Agreement, the RESEARCHER and any subcontractors shall forthwith return all the said information, and all copies made thereof, to the CRIMINAL JUSTICE AGENCY or make such alternative disposition thereof, as is directed by the CRIMINAL JUSTICE AGENCY. The exercise of remedies pursuant to this paragraph shall be in addition to all sanctions provided by law, and to legal remedies available to parties injured by disclosures.

7. INDEMNIFICATION. The RESEARCHER agrees to indemnify and hold harmless (CRIMINAL JUSTICE AGENCY) and its officers, agents and employees from and against any and all loss, damages, injury, liability suits and proceedings however caused, arising directly or indirectly out of any action or conduct of the (RESEARCHER) in the exercise or enjoyment of this agreement. Such indemnification shall include all costs of defending any such suit, including attorney fees.

IN WITNESS WHEREOF the parties have signed their names hereto this . . . . day of . . . . . , 199. . .

. . . . . (CRIMINAL JUSTICE AGENCY)

by. . . . . .

(Name)

Title: . . . . . .

. . . . . (RESEARCHERS)

by. . . . . .

(Name)

Title: . . . . . .

COMPLIANCE AGREEMENT of employee, consultant or subcontractor.

(I) (We), employee(s) of, consultant to, (and) (or) subcontractor of the RESEARCHER, acknowledge familiarity with the terms and conditions of the foregoing agreement between the CRIMINAL JUSTICE AGENCY and RESEARCHER, and agree to comply with the terms and conditions thereof in (my) (our) use and protection of the criminal history record information obtained pursuant to the foregoing agreement.

. . . . .	. . . . .
(date)	(signature)
. . . . .	. . . . .
(date)	(signature)

[Statutory Authority: RCW 43.43.760, 43.43.815 and 43.43.838. 92-15-015, § 446-20-420, filed 7/6/92, effective 8/6/92. Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-420, filed 7/1/80.]

WAC 446-20-430 Certification request.

INSTRUCTIONS

This form is for agencies requesting certification for access to Criminal History Record Information (hereinafter referred to as "CHRI").

REQUEST FOR CERTIFICATION

1. Agency making request:
   a. Name: . . . . . .
   b. Address: . . . . . .
   Street City State Zip
   c. Telephone Number: (. . . . .). . . . . .
   Area Code
   d. Official or employee who should be contacted concerning the application.
   1) Name: . . . . . .
   Last First Middle Title
   2) Address: . . . . . .
   Street City State Zip
   3) Telephone Number: (. . . . .). . . . . .
   Area Code
2. Cite specifically the statutory or regulatory provisions which establish your agency as a governmental agency, and the provisions which indicate your agency's need for CHRI.
   . . . . . .
   State/Federal Statute | Chapter/Title Number | Section Number | Paragraph Number
3. Attach a copy of the above provision(s) to this application and indicate, by marking, the specific language upon which you base your request.
4. State your agency's need for access to CHRI relative to the above cited provisions.

I hereby affirm that all facts and representations made in this document are true and accurate to the best of my knowledge, information and belief.

. . . . . .
Signature of person filling out form

. . . . . .
Title

. . . . . .
Date

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-430, filed 7/1/80.]

WAC 446-20-440 Contract for support services model agreement under WAC 446-20-180. (Some provisions may not be applicable in all cases and are noted accordingly.)

I. **General Provisions**

A. Parties: This agreement is made and entered into this. . . . . day of . . . . . , 199. . . , by and between ((head of agency)), Administrator of ((criminal justice agency)) and ((head of agency)) of (Support Services Agency of "User").

B. Purpose of Agreement: This agreement authorizes (user) to collect, retrieve, maintain and/or disseminate criminal history record information (hereinafter, CHRI) pursuant to RCW10.97.050(5), WAC 446-20-180, and the terms of this contract. In addition, it provides for the security and privacy of information in that dissemination to criminal justice agencies shall be limited for the purposes of the administration of justice and criminal justice agency employment. Dissemination to other individuals and agencies shall be limited to those individuals and agencies authorized by either the Washington state patrol, under chapter 10.97 RCW or local ordinance, as specified by the terms of this contract, and shall be limited to the purposes for which it was given and may not be disseminated further.

II. **Duties of Criminal Justice Agency**

A. In accordance with federal and state regulations, (criminal justice agency) agrees to furnish complete and accurate criminal history information to user, pursuant to RCW 10.97.040.

B. (Criminal justice agency) shall specify and approve those individuals or agencies authorized to obtain CHRI, which includes nonconviction data, pursuant to RCW 10.97.050(4) or by local ordinance.

III. **Duties of User**

A. (User) will collect, retrieve, maintain and/or disseminate all information covered by the terms of this agreement in strict compliance with all present and future federal and state laws and regulations. In addition, all programs, tapes, source documents, listings, and other developmental or related data processing information containing or permitting any person to gain access to CHRI and all personnel involved in the development, maintenance, or operation of an automated information system containing CHRI are subject to the requirements of RCW 10.97.050(5) and WAC 446-20-180.

B. (User) will obtain the assistance of the (criminal justice agency) to familiarize its personnel with and fully adhere to section 524(b) of the Crime Control Act 1973 (42 USC 3771(b)), 28 CFR Part 20, chapter 10.97 RCW and chapter 446-20 WAC, promulgated by the Washington state patrol.

C. (User) will disseminate CHRI only as authorized by chapter 10.97 RCW and as specified by (criminal justice agency) in this agreement.

D. (User) agrees to fully comply with all rules and regulations promulgated by the Washington state patrol, pursuant to RCW 10.97.090(2), regarding standards for the physical security, protection against unauthorized access and personnel procedures and safeguards.

E. (User) agrees to permit access to its records system for the purposes of an audit, as specified under RCW 10.97.090(3).

IV. **Suspension of Service**

(Criminal justice agency) reserves the right to immediately suspend furnishing information covered by the terms of this agreement to (User), when any terms of this agreement are violated. (Criminal justice agency) shall resume furnishing information upon receipt of satisfactory assurances that such violations have been fully corrected or eliminated.

V. **Cancellation**

Either (criminal justice agency) or (user) may cancel this agreement upon thirty days notice to the other party.

VI. **Indemnification**

User hereby agrees to indemnify and hold harmless (criminal justice agency) and its officers, agents and employees from and against any and all loss, damages, injury, liability suits and proceedings however caused, arising directly or indirectly out of any action or conduct of the (user) in the exercise or enjoyment of this agreement. Such indemnification shall include all costs of defending any suit, including attorney fees.

VII. **Construction**

This agreement shall be liberally construed to apply to both manual and automated information systems wherever and whenever possible.

(CRIMINAL JUSTICE AGENCY) (USER)

By: . . . . . By: . . . . . .
Title: . . . . . Title: . . . . . .
Date: . . . . . Date: . . . . . .

[Statutory Authority: RCW 43.43.760, 43.43.815 and 43.43.838. 92-15-015, § 446-20-440, filed 7/6/92, effective 8/6/92. Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-440, filed 7/1/80.]

WAC 446-20-450 CHRI challenge form.

CHRI CHALLENGE FORM

(REQUEST FOR MODIFICATION OF CHRI)
RCW 10.97.080/WAC 446-20-120

AGENCY . . . . . AGENCY CASE NO. . . . . .
ADDRESS . . . . . DATE . . . . . .

I, (Print Name) , hereby acknowledge review this date, ... , of a copy of a CHRI rap sheet bearing agency number . . . . . , or SID number . . . . . , consisting of . . . . page(s) and identified as a history of criminal offenses charged to me.

I challenge the following specific portion(s) of the CHRI as being inaccurate or incomplete:

Agency	Case No.	Date	Charge
. . . . .	. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .	. . . . .

and request modification to read:

I further request, if such modifications are determined to be valid, that all agencies who have received prior copies of the CHRI be advised of the modifications.

. . . . . .
(Signature of Challenger)

[Statutory Authority: RCW 10.97.080 and 10.97.090. 80-08-057 (Order 80-2), § 446-20-450, filed 7/1/80.]

WAC 446-20-500 Sex offender and kidnapping offender registration. RCW 9A.44.130 requires any adult or juvenile residing in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense to register with the county sheriff for the county of that person's residence. The sheriff is required to forward the registration information to the Washington state patrol identification and criminal history section within five working days. The Washington state patrol is mandated to maintain a central registry of sex offenders and kidnapping offenders consistent with chapters 10.97, 10.98, and 43.43 RCW.

[Statutory Authority: RCW 4.24.550, 9A.44.130, [9A.44.]140, 10.02.200, 43.43.540 and 70.48.470. 98-01-021, § 446-20-500, filed 12/8/97, effective 1/8/98. Statutory Authority: Chapters 10.97 and 43.43 RCW. 97-05-048, § 446-20-500, filed 2/18/97, effective 3/21/97. Statutory Authority: 1991 c 274. 91-20-045 (Order 91-005), § 446-20-500, filed 9/24/91, effective 10/25/91. Statutory Authority: 1990 c 3. 90-20-003 (Order 90-003), § 446-20-500, filed 9/20/90, effective 10/21/90.]

WAC 446-20-510 History retention. Sex and kidnapping offender registration information will be maintained in the offender's criminal history file according to retention periods outlined in RCW 9A.44.140. Once an offender is registered, a notation of "registered sex offender" or "registered kidnapping offender" shall be printed on the transcript of record for that individual.

[Statutory Authority: RCW 4.24.550, 9A.44.130, [9A.44.]140, 10.02.200, 43.43.540 and 70.48.470. 98-01-021, § 446-20-510, filed 12/8/97, effective 1/8/98. Statutory Authority: Chapters 10.97 and 43.43 RCW. 97-05-048, § 446-20-510, filed 2/18/97, effective 3/21/97. Statutory Authority: 1991 c 274. 91-20-045 (Order 91-005), § 446-20-510, filed 9/24/91, effective 10/25/91. Statutory Authority: 1990 c 3. 90-20-003 (Order 90-003), § 446-20-510, filed 9/20/90, effective 10/21/90.]

WAC 446-20-515 Photograph/fingerprint requirement. Registration requires the offender be fingerprinted and photographed and also provide the sheriff with the following information which must be forwarded to the Washington state patrol identification and criminal history section within five working days:

Name;
Address;
Date of birth;
Place of birth;
Social Security number;
Place of employment;
Crime for which convicted;
Date/place of conviction; and
Aliases used.

[Statutory Authority: 1991 c 274. 91-20-045 (Order 91-005), § 446-20-515, filed 9/24/91, effective 10/25/91. Statutory Authority: 1990 c 3. 90-20-003 (Order 90-003), § 446-20-515, filed 9/20/90, effective 10/21/90.]

WAC 446-20-520 Photographs. Photographs should be of the polaroid type and in color. These are not to be file photos. A new photo is required.

On the reverse side of the photo, write full name, date of birth, and SID number. Paperclip (no staples please) the photo to the fingerprint card with the registration information completed and forward to Washington state patrol, identification and criminal history section.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. 97-05-048, § 446-20-520, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 43.43.760, 43.43.815 and 43.43.838. 92-15-015, § 446-20-520, filed 7/6/92, effective 8/6/92. Statutory Authority: 1990 c 3. 90-20-003 (Order 90-003), § 446-20-520, filed 9/20/90, effective 10/21/90.]

WAC 446-20-525 Change of address form. Registered sex and kidnapping offenders who change residence within the same county are required to send a "change of address" form WSP-CRD-502 to the county sheriff at least fourteen days before moving.

Registered sex and kidnapping offenders who change residence from one county to another are required to send written notice fourteen days before moving to the county sheriff in the new county residence and must register with that county sheriff within twenty-four hours of moving. The offender must send a "change of address" form within ten days of moving in the new county to the county sheriff with whom the offender last registered.

Registered sex and kidnapping offenders who move to another state or county must send a "change of address" form ten days before moving to the new state or county to the county sheriff with whom the offender last registered in Washington state.

County sheriffs must forward "change of address" forms to the Washington state patrol identification and criminal history section within five working days upon receipt.

[Statutory Authority: RCW 4.24.550, 9A.44.130, [9A.44.]140, 10.02.200, 43.43.540 and 70.48.470. 98-01-021, § 446-20-525, filed 12/8/97, effective 1/8/98. Statutory Authority: 1990 c 3. 90-20-003 (Order 90-003), § 446-20-525, filed 9/20/90, effective 10/21/90.]

WAC 446-20-530 Refundable fee. Agencies are to bill the Washington state patrol identification and criminal history section for the actual registration cost not to exceed thirty-two dollars for each registration which shall include photographs and fingerprints submitted pursuant to RCW 9A.44.130. This fee will further ensure that direct and indirect costs at the county level associated with the provisions of this chapter are refunded by the Washington state patrol identification and criminal history section on a monthly basis upon receipt of an invoice from the county sheriff indicating the number of registrations submitted.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. 97-05-048, § 446-20-530, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 10.97.090. 91-24-099 (Order 91-004), § 446-20-530, filed 12/4/91, effective 1/4/92. Statutory Authority: 1990 c 3. 90-20-003 (Order 90-003), § 446-20-530, filed 9/20/90, effective 10/21/90.]

WAC 446-20-600 Fees. (1) A nonrefundable fee of ten dollars shall accompany each request for conviction records submitted for a name and date of birth background check or a twenty-five dollar fee if the request is submitted by fingerprint card at the state level pursuant to RCW 43.43.830 through 43.43.845, and chapter 10.97 RCW unless through prior arrangement, an account is authorized and established.

(2) A nonrefundable FBI fee of twenty-four dollars shall be charged for fingerprint cards submitted for federal searches. It shall be the responsibility of the Washington state patrol to collect all fees due and forward fingerprint cards and fees to the FBI.

(3) A nonrefundable fee of ten dollars shall be charged for taking inked fingerprint impressions by the Washington state patrol. Fees are to be deposited in the Washington state patrol fingerprint identification account.

(4) All fees are to be made payable to the Washington state patrol and are to be remitted by cashier's check, money order or check written on a business account. Credit cards may be used only for payment of electronic requests. The Washington state patrol identification and criminal history section shall adjust the fee schedule as may be practicable to ensure that direct and indirect costs associated with the provisions of these chapters are recovered.

(5) Pursuant to the provisions of RCW 43.43.838 and chapter 28A.410 RCW, no fees will be charged to a nonprofit organization, or volunteers in school districts and educational service districts for background checks.

[Statutory Authority: RCW 43.43.742 through 43.43.845 and chapter 10.97 RCW. 99-07-050, § 446-20-600, filed 3/15/99, effective 4/15/99. Statutory Authority: RCW 43.43.830 - [43.43.]845, chapters 10.97, 28A.400 and 74.15 RCW. 96-18-017, § 446-20-600, filed 8/26/96, effective 9/26/96.]

WAC 446-20-610 Superintendent of public instruction—Prospective educational employees—Fees. (1) In addition to the state search, an FBI search is required for requests submitted under chapter 28A.410 RCW. Two fingerprint cards are required to be submitted to the Washington state patrol identification and criminal history section.

(2) Appropriate nonrefundable fees are to be charged and made payable to the Washington state patrol for searches conducted under chapter 28A.410 RCW as follows:

(a) The fee for the state search is fifteen dollars for school district employees.

(b) The fee for the state search is twenty-five dollars for persons applying for their certification or for contractual employees.

(c) The fee for the FBI search is twenty-four dollars.

(d) In addition, a ten-dollar processing fee will be charged for each fingerprint background check processed under chapter 28A.410 RCW. The Washington state patrol will reimburse the superintendent of public instruction ten dollars for each fingerprint background check processed under this chapter for applicants who are certificated, contractual or classified.

(3) Prospective employees hired by the superintendent of public instruction, educational service districts, school districts and/or their contractors shall pay the appropriate fees for state and federal fingerprint checks conducted under chapter 28A.410 RCW.

(4) Fees are to be deposited in the Washington state patrol fingerprint identification account.

[Statutory Authority: RCW 43.43.830 - [43.43.]845 and 1998 c 346. 98-19-039, § 446-20-610, filed 9/11/98, effective 10/12/98. Statutory Authority: RCW 43.43.830 - [43.43.]845, chapters 10.97, 28A.400 and 74.15 RCW. 96-18-017, § 446-20-610, filed 8/26/96, effective 9/26/96.]

WAC 446-20-630 Department of social and health services—Child care licensing—Fees. (1) In addition to the state search, an FBI search is required for requests submitted under chapter 74.15 RCW. Two fingerprint cards are required to be submitted to the Washington state patrol identification and criminal history section.

(2) Department of social and health services (DSHS) shall process fingerprint background checks under chapter 74.15 RCW. Under "reason fingerprinted," cards will be marked "DSHS Child Care Licensing RCW 74.15.030" or "DSHS Child Care Licensing RCW 74.15.030 DDD."

(3) Department of social and health services, division of children and family services (DCFS) shall pay the expense

and submit a waiver of fee form on licensees if the background check expense would work a hardship on the licensee. The six-dollar processing fee will not be applicable when a waiver of fee form is submitted to the Washington state patrol or the fingerprint card is marked "volunteer."

(4) A monthly billing account will be established for the DSHS division of developmental disabilities (DDD). The six-dollar processing fee will not be applicable on any fingerprint cards indicated as "DDD."

(5) Each month the Washington state patrol shall prepare a billing statement and detail report for waiver of fee forms from DCFS and for all DDD fingerprint cards submitted.

(6) All fees collected under chapter 74.15 RCW, will be deposited into the Washington state patrol fingerprint identification account.

(7) Nonrefundable fees are to be charged to:

(a) "DSHS child care licensing RCW 74.15.030" (division of children and family services (DCFS)) as follows:

(i) The fee for the state search is twenty-five dollars.

(ii) The fee for the FBI search is twenty-four dollars.

(iii) A six-dollar processing fee.

(b) "DSHS division of children and family services (DCFS) for fee waivers" as follows:

(i) The fee for the state search is twenty-five dollars.

(ii) The fee for the FBI search is twenty-four dollars.

(c) "DSHS child care licensing RCW 74.15.030 division of developmental disabilities (DDD)" as follows:

(i) The fee for the state search is twenty-five dollars.

(ii) The fee for the FBI search is twenty-four dollars.

(d) "DSHS child care licensing RCW 74.15.030" division of developmental disabilities "volunteers" as follows:

(i) The fee for the state search is twenty-five dollars.

(ii) The FBI fee shall be eighteen dollars on those fingerprint cards clearly designated as "volunteer" pursuant to provisions under Section 3e of the National Child Care Protection Act of 1993 as amended by the Crime Control Act of 1994.

(iii) "Chapter 74.15 RCW" and "volunteer" must be entered in the "reason fingerprinted" box on both the state and FBI fingerprint cards submitted. Failure to indicate "volunteer" and the RCW citation on fingerprint cards will result in full fees being charged.

[Statutory Authority: RCW 43.43.830 - [43.43.]845, chapters 10.97, 28A.400 and 74.15 RCW. 96-18-017, § 446-20-630, filed 8/26/96, effective 9/26/96.]

Chapter 446-30 WAC

DISPOSITION OF VEHICLES SEIZED FOR ALTERED VEHICLE IDENTIFICATION NUMBERS—HEARINGS

WAC

446-30-010 Purpose.
446-30-020 Definitions.
446-30-030 Hearing officer.
446-30-040 Procedure.
446-30-050 Burden of proof.
446-30-060 Record.
446-30-070 Appeal.

WAC 446-30-010 Purpose. The purpose of this regulation is to provide administrative rules and standards for hearings conducted pursuant to chapter 124, Laws of 1974 1st ex. sess. (RCW 9.54.130 and 46.12.330) relating to the disposition of motor vehicles, motorcycles, motor-driven cycles, trailers, vessels, motorboats, or component parts thereof impounded by the Washington state patrol.

[Statutory Authority: RCW 46.12.330. 00-02-069, § 446-30-010, filed 1/4/00, effective 2/4/00; Order II, § 446-30-010, filed 11/22/74.]

WAC 446-30-020 Definitions. (1) The term "aggregate value" of an article or articles whose ownership is in question shall be the current market value of the article as determined by procedures set out in WAC 446-30-040(2) as of the time of the proposed disposition.

(2) The term "interested party" or "party in interest" is defined as a party claiming ownership or a right to possession of the article involved.

(3) The term "article" shall encompass the plural "articles" and includes motor vehicles, motorcycles, motor-driven cycles, trailers, vessels, motorboats, or component parts thereof.

[Order II, § 446-30-020, filed 11/22/74.]

WAC 446-30-030 Hearing officer. The hearing shall be conducted by a person appointed by the chief of the Washington state patrol. The hearing shall be conducted at a place within the state designated by the hearing officer who shall consider the convenience of the witnesses involved in the hearing, and the convenience of the parties in interest. The hearing officer, after having heard evidence submitted to him and having conducted a hearing in accordance with this chapter and chapter 446-08 WAC, shall decide whether a party in interest has presented a claim of ownership or right to possession of the article involved sufficient to award possession of the article to the party. If so, he shall order the article released to such party.

[Order II, § 446-30-030, filed 11/22/74.]

WAC 446-30-040 Procedure. Insofar as it is applicable, (1) Chapter 446-08 WAC, shall govern hearing procedure, and the service of notice of the hearing upon the person who held possession or custody of the article when it was impounded, and upon any other person who, prior to final disposition, notifies Headquarters, Washington state patrol, in writing of a claim of ownership or lawful right to possession thereof.

(2) In accordance with chapter 124, Laws of 1974 1st ex. sess. (RCW 9.54.030(3)), any person claiming ownership or right of possession hereunder may remove the matter to a court of competent jurisdiction if the aggregate value of the article involved is one hundred dollars or more. If the article involved is a component part or parts of a vehicle, then the right to remove the matter to a court of competent jurisdiction shall be conditioned on the component part or parts having an aggregate value of one hundred dollars or more. An officer of the Washington state patrol assigned to the motor vehicle theft section shall determine the current market value of the article based on such factors as the condition of the vehicle, the year, and the make of the vehicle, etc. The value finally arrived at by the officer should reflect the value of the vehicle on the open market. If the value of the article cannot be agreed upon by the officer and the interested party, a dealer

who specializes in the type article shall be contacted to determine the current market value.

(3) The hearing officer, after having heard all pertinent evidence submitted to him, shall make written findings of fact based on the evidence and written conclusions based on his findings and applicable law in accordance with WAC 446-08-410. The findings and conclusions of the hearing officer shall be served on all parties to the hearing within fifteen days of the close of the hearing. If a decision adverse to an interested party is made, no disposition shall be made of the property until after thirty days following service of the hearing officer's decision, or until expiration of any stay of disposition granted by the hearing officer or court of competent jurisdiction, whichever date comes last.

(4) Upon application to the hearing officer by any interested party aggrieved by the decision for a stay of disposition in any matter in which an appeal has been filed, the hearing officer shall stay his order of disposition pending the outcome of the appeal to a court of competent jurisdiction.

[Order II, § 446-30-040, filed 11/22/74.]

WAC 446-30-050 Burden of proof. The person or party in interest claiming to be the lawful owner or to have the lawful right to possession shall have the burden of establishing his claim of ownership.

[Order II, § 446-30-050, filed 11/22/74.]

WAC 446-30-060 Record. Any oral proceedings shall be recorded on tape and such tape shall become part of the hearing record.

[Order II, § 446-30-060, filed 11/22/74.]

WAC 446-30-070 Appeal. Appeal from the decision of the hearing officer to a superior court by an interested party aggrieved by a decision in a contested case shall be in accordance with RCW 34.04.130 and applicable court rules.

[Order II, § 446-30-070, filed 11/22/74.]

Chapter 446-40 WAC

DISABILITY RETIREMENTS—APPLICATIONS—DECISIONS—APPEALS

WAC

446-40-010 Purpose.
446-40-020 Definitions.
446-40-025 Line duty disabilities.
446-40-030 Application for disability.
446-40-040 Application by member or personnel officer.
446-40-050 Action by chief.
446-40-060 Finality of chief's decision—Exception.
446-40-070 The board—Responsibilities and functions.
446-40-080 Procedure.
446-40-090 Responsibility of member.
446-40-100 Duties of board following hearing.
446-40-110 Decision by the chief.
446-40-130 Statement of earnings and status.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

446-40-120 Pay when disability retirement status in question. [Order II, § 446-40-120, filed 11/22/74.] Repealed by Order 4, filed 2/27/76.

WAC 446-40-010 Purpose. The purpose of this regulation is to provide an administrative procedure and standards for disability retirements under RCW 43.43.040.

[Order II, § 446-40-010, filed 11/22/74.]

WAC 446-40-020 Definitions. (1) The term "active service," as it applies to a member of the Washington state patrol, is defined as all performance of duties of whatever type, performed pursuant to orders by a superior of the member, provided, such duties shall be consistent with the responsibilities of the Washington state patrol. "Active service" shall consist of "line duty" and "other duty."

(2) "Line duty" is active service which encompasses the traffic law enforcement duties and/or other law enforcement responsibilities of the Washington state patrol. These duties encompass all law enforcement activities, accident and criminal investigations, or actions requiring physical exertion or exposure to hazardous elements.

(3) "Other duty" is active service which encompasses activities consistent with the responsibilities of the Washington state patrol, but which do not foreseeably require more physical exertion than that normally required for the performance of clerical tasks.

(4) "Disability" is defined as any injury or incapacitation of such an extent as to render a member of the Washington state patrol mentally or physically incapable of active service.

(5) "Applicant" as the term is used in this regulation shall refer either to the member or to the department, whichever is initiating action pursuant to this regulation.

(6) The term "member" is defined as a regularly commissioned officer in the Washington state patrol.

(7) The term "chief" in this regulation refers to the chief of the Washington state patrol.

(8) The term "personnel officer" is defined as the person designated by the chief to be responsible for personnel matters within the Washington state patrol.

(9) The term "department" refers to the Washington state patrol as a state agency.

[Statutory Authority: RCW 43.43.040. 89-10-015 (Order 89-01-RD), § 446-40-020, filed 4/24/89; Order II, § 446-40-020, filed 11/22/74.]

WAC 446-40-025 Line duty disabilities. (1) Line duty disabilities occur when a commissioned officer of the Washington state patrol is injured or incapacitated while:

(a) Performing traffic law enforcement duties.

(b) Investigating accidents or suspected criminal activities.

(c) Participating in law enforcement training that requires physical exertion, use of firearms, or exposure to hazardous elements.

(d) Performing other activities which must be performed by a commissioned law enforcement officer and exposes the officer to hazardous elements or requires physical exertion.

(2) Injuries that occur while performing activities that do not expose the officer to hazardous elements or require physical exertion, such as, but not limited to, report writing, answering telephone inquiries, attending meetings, or performing limited duty, do not qualify as line duty injuries.

(3) If a commissioned officer assigned to administrative duties must perform work defined as "line duty" and is injured, it will be considered a line duty injury.

[Statutory Authority: RCW 43.43.040. 89-10-015 (Order 89-01-RD), § 446-40-025, filed 4/24/89.]

WAC 446-40-030 Application for disability. No member shall be placed in or removed from disability retirement status by application of the member, the department, or the personnel officer except in accordance with this regulation.

[Order II, § 446-40-030, filed 11/22/74.]

WAC 446-40-040 Application by member or personnel officer. (1) Whenever a member of the Washington state patrol desires to be placed in disability retirement status or the personnel officer determines that the member should be placed in disability retirement status, the member or the personnel officer, as appropriate, will make application through command channels to the chief, stating in full the basis of his claim of disability and include with his application such supporting documents as may be available to include medical history, reports, doctors' analyses, and other pertinent materials. When the personnel officer makes such application, he shall forward a copy of the application and supporting documents to the member concerned.

(2) Upon receipt of such application, the chief, after seeking such evaluation and advice as he shall deem necessary, shall determine whether the applicant shall be placed in disability retirement status. Following this determination, the chief shall indicate to the applicant that based upon the information available to him at that time, placement in disability retirement status is or is not warranted. If the chief orders a member into disability retirement status, the member shall not be prejudiced by a failure to obey this order if, within seven days of receiving the order, he requests a formal hearing as provided for in WAC 446-40-070 et seq.

(3) Similarly, when a member of the Washington state patrol is in disability retirement status and seeks return to active service status, he shall apply to the chief, stating in full the basis for his seeking return to active status and including with his application such supporting documents as may be available to include medical history, reports, doctors' analyses, and other pertinent materials. Upon receipt of such application, the chief, after seeking such evaluation and advice as he may deem necessary, shall determine if the applicant should be restored to active service. Following this determination, the chief will indicate to the applicant that based upon the information available to him at that time, restoration is or is not warranted.

[Order II, § 446-40-040, filed 11/22/74.]

WAC 446-40-050 Action by chief. When the chief determines pursuant to RCW 43.43.040 and based upon available medical history, reports, doctors' analyses and the like, that a member in disability retirement status should be returned to active service status, he may so order the member to active service status pursuant to RCW 43.43.040. The member shall not be prejudiced by failure to report if, within seven days after receipt of the order, he requests a formal hearing as provided for in WAC 446-40-070, et seq.

[Order 4, § 446-40-050, filed 2/27/76; Order II, § 446-40-050, filed 11/22/74.]

WAC 446-40-060 Finality of chief's decision—Exception. The decision of the chief, made under any of the circumstances set out in WAC 446-40-040 or 446-40-050, shall be final, unless the member concerned, within seven days of receipt of the decision, requests a formal hearing before the Washington state patrol disability retirement board.

[Order II, § 446-40-060, filed 11/22/74.]

WAC 446-40-070 The board—Responsibilities and functions. (1) The board shall consist of an administrative law judge and three members appointed by the chief, two of whom shall be appointed annually. The administrative law judge shall be the presiding officer and shall make all necessary rulings in the course of the hearing, but shall not participate in the deliberations or preparation of findings and recommendations by the board. The third member shall be appointed each time the board is convened and shall be of the same rank as the member whose case the board is hearing.

(2) The board shall inquire into all pertinent matters relating to the disability retirement questions before the board.

(3) The board shall obtain and review reports or testimony of mental or physical examinations of the member and shall advise the chief whether, in its opinion, the member is mentally or physically capable of continuing in active service or of resuming active service.

(4) When reviewing the case of a member in disability retirement status, the board shall recommend whether disability retirement should be continued or whether the member shall be directed to return to active duty.

(5) When reviewing an application by a member or the personnel officer for disability retirement status, the board shall recommend whether the chief should deny or grant the application.

(6) When the board recommends that a member presently in disability retirement status should return to active duty, or that a request for disability retirement should be denied, the board shall also make findings based on the evidence before it whether the member is physically or mentally capable of performing any specific assignment while on active duty. Where the board finds the member has a physical or mental impairment or disability, it shall describe such impairment or disability and the expected duration thereof, and shall recommend specific job assignments within the department which the member is mentally and physically capable of performing in his/her present condition.

(7) When the board recommends that the application for disability retirement status should be granted, it shall also determine whether the departmental member was injured or incapacitated while in the performance of his/her official duties or while on standby or available for duty.

[Statutory Authority: RCW 43.43.040. 93-15-074, § 446-40-070, filed 7/19/93, effective 8/19/93; 82-22-004 (Order 82-6), § 446-40-070, filed 10/21/82; 81-04-042 (Order 81-1), § 446-40-070, filed 2/3/81; Order 4, § 446-40-070, filed 2/27/76; Order II, § 446-40-070, filed 11/22/74.]

WAC 446-40-080 Procedure. The provisions of chapter 446-08 WAC shall govern the conduct of the hearing and procedure before the board. The burden of proof in the hearing before the board shall be upon the applicant, whether a

member or the department, who is seeking a change in a member's status to disability retirement or to active service.

[Order 4, § 446-40-080, filed 2/27/76; Order II, § 446-40-080, filed 11/22/74.]

WAC 446-40-090 Responsibility of member. All department members having knowledge pertinent to the issues before the board shall cooperate with the board and shall not withhold information or facts within their knowledge, provided that no person shall be required to furnish any information or statements which would tend to incriminate him.

[Order II, § 446-40-090, filed 11/22/74.]

WAC 446-40-100 Duties of board following hearing. In all cases, the board shall prepare a record of the hearing as described in RCW 34.04.090(5). All oral testimony before the board shall be taped. The tapes shall be part of the record. Such record shall be presented to the chief within fourteen days following the conclusion of the board's hearing. A copy of the record shall be delivered to the member within fourteen days following the conclusion of the board's hearings.

[Statutory Authority: RCW 43.43.040. 82-22-004 (Order 82-6), § 446-40-100, filed 10/21/82; Order 4, § 446-40-100, filed 2/27/76; Order II, § 446-40-100, filed 11/22/74.]

WAC 446-40-110 Decision by the chief. (1) The chief shall review the record if he has not heard the evidence, and in all cases shall review the findings, exceptions and recommendations of the other members of the board, and decide on the basis of this material and upon no other basis or prior action whether the member shall or shall not be placed in or removed from disability retirement status. The chief may order the hearing reopened in the event he finds it necessary to do so to make a decision and he shall inform the board what additional inquiry is required. The board's supplemental action, if any, shall be made in the manner set out in WAC 446-40-070 through 446-40-100.

(2) In accordance with RCW 34.04.110, prior to making a final decision which is adverse to the member, the chief, if he has not heard or read the evidence, shall cause to be served on the member a proposal for decision, including findings of fact and conclusions of law, and shall afford the member an opportunity to file exceptions and present written arguments to the chief, who shall personally consider the whole record or such portions thereof as may be cited by the member. Such exceptions and arguments shall be filed with the office of the chief within twenty days of receipt of the proposal for decision. The chief may grant additional time for filing upon good cause shown. In his discretion, the chief may allow oral arguments in support of the exceptions.

[Statutory Authority: RCW 43.43.040. 82-22-004 (Order 82-6), § 446-40-110, filed 10/21/82; Order 4, § 446-40-110, filed 2/27/76; Order II, § 446-40-110, filed 11/22/74.]

WAC 446-40-130 Statement of earnings and status. A member who is in disability retirement status and to whom the provisions of RCW 43.43.040(2) apply shall file with the chief every six months a signed, sworn statement of earnings. In addition, every member in disability retirement status shall file with the chief every six months a signed, sworn statement of his current status of health, any medication or treatment he is undergoing, the nature and description of his employment, if any, and the medical prognosis of his condition.

[Order 4, § 446-40-120, (codified as WAC 446-40-130), filed 2/27/76; Order II, § 446-40-130, filed 11/22/74.]

Chapter 446-50 WAC
TRANSPORTATION OF HAZARDOUS MATERIALS

WAC

446-50-010 Authority.
446-50-020 Purpose.
446-50-030 Definitions.
446-50-050 Inspection.
446-50-060 Inspection forms.
446-50-070 Intrastate quarterly inspection.
446-50-080 Transportation requirements.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

446-50-040 Procedure upon entering the state. [Statutory Authority: RCW 46.48.190. 80-01-009 (Order 79-4), § 446-50-040, filed 12/11/79.] Repealed by 94-01-180, filed 12/22/93, effective 1/22/94. Statutory Authority: RCW 46.48.190.

WAC 446-50-010 Authority. Chapter 46.48 RCW authorizes the Washington state patrol acting by and through its chief after conferring with the committee created by RCW 46.48.190 to adopt regulations concerning the safe transportation of hazardous materials, hazardous waste, and radioactive waste materials upon the public highways of this state. Chapter 46.32 RCW permits the inspection of vehicles traveling on the highways of this state.

[Statutory Authority: RCW 46.48.190. 81-03-008 (Order 80-2), § 446-50-010, filed 1/8/81; 80-01-009 (Order 79-4), § 446-50-010, filed 12/11/79.]

WAC 446-50-020 Purpose. These rules are intended to protect persons and property from unreasonable risk of harm or damage due to incidents or accidents resulting from the transportation of hazardous materials and hazardous waste and to insure that the vehicle equipment of all carriers of radioactive waste materials are inspected by the Washington state patrol.

[Statutory Authority: RCW 46.48.190. 81-03-008 (Order 80-2), § 446-50-020, filed 1/8/81; 80-01-009 (Order 79-4), § 446-50-020, filed 12/11/79.]

WAC 446-50-030 Definitions. (1) Port of entry - means any place where members of the Washington state patrol or any state official are stationed to check the movement of vehicles into the state of Washington.

(2) Certification inspection - means an inspection form furnished by the chief of the Washington state patrol for the purpose of defining the proper items of equipment to be inspected.

(3) Radioactive waste materials - means any material or combination of materials as provided for in Title 49, Code of Federal Regulations, Part 172.101 Hazardous Materials Table.

(4) Hazardous material carrier - means any vehicle transporting any hazardous material provided for in Title 49, Code of Federal Regulations, Part 172.101 Hazardous Materials Table.

(5) Radioactive waste materials disposal site - means a location that has been designated by the federal and state government where radioactive waste material can be deposited for the purpose of disposal.

[Statutory Authority: RCW 46.48.190. 80-01-009 (Order 79-4), § 446-50-030, filed 12/11/79.]

WAC 446-50-050 Inspection. All carriers of radioactive waste materials within the state shall submit to a comprehensive safety equipment inspection conducted by members of the Washington state patrol. These equipment inspections shall be conducted under the authority of RCW 46.48.170 through 46.48.190.

[Statutory Authority: RCW 46.48.190. 80-01-009 (Order 79-4), § 446-50-050, filed 12/11/79.]

WAC 446-50-060 Inspection forms. No interstate carrier of radioactive waste material will be allowed to enter any radioactive waste materials disposal site without displaying a certificate of inspection form issued by a member of the Washington state patrol, for that particular load. The chief of the Washington state patrol shall prepare and furnish such certificate of inspection forms and any other forms deemed necessary to assure compliance.

[Statutory Authority: RCW 46.48.190. 80-01-009 (Order 79-4), § 446-50-060, filed 12/11/79.]

WAC 446-50-070 Intrastate quarterly inspection. Intrastate radioactive waste material carriers will be required to contact the Washington state patrol and submit to an inspection on a quarterly basis. Upon being contacted by the radioactive waste material carriers the Washington state patrol will conduct a thorough equipment inspection of that intrastate carrier at a designated location. Upon completion of the inspection the carrier will be issued an inspection sticker that will be valid for 90 days. A current and valid inspection sticker will be required for entry into the radioactive waste material site.

[Statutory Authority: RCW 46.48.190. 80-01-009 (Order 79-4), § 446-50-070, filed 12/11/79.]

WAC 446-50-080 Transportation requirements. (1) The Washington state patrol acting by and through the chief of the Washington state patrol after conferring with the committee created by RCW 46.48.190 hereby adopts the following parts of Title 49 Code of Federal Regulations, as they exist during 1985, subject to any appendices and amendments in the future: 170 (Reserved), 171 General information, regulations, and definitions, 172 Hazardous materials table and hazardous materials communications regulations, 173 Shippers—General requirements for shipments and packaging, 177 Carriage on public highway, 178 Shipping container specifications, 180-189 (Reserved). Title 49 CFR, parts 100 through 199, relates to safety in the transportation of hazardous materials upon the public highways. This regulation is intended to apply only to the transportation of hazardous materials by highway in Washington, to the handling and storage operations incident to such transportation, and to the highway portion of an intermodal shipment of hazardous materials.

(2) Copies of Title 49 CFR, parts 100 through 199, now in force are on file at the code reviser's office, Olympia[,] and at the Washington state patrol headquarters, commercial vehicle enforcement section, Olympia. Additional copies may be available for review at Washington state patrol district headquarters offices, public libraries, Washington utilities and transportation [(commission offices and at the United States Department of Transportation)], bureau of motor carrier safety office, Olympia. Copies of the CFR may be purchased through the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402.

[Statutory Authority: RCW 46.48.170 - 46.48.190. 85-20-070 (Order 85-1), § 446-50-080, filed 9/30/85. Statutory Authority: RCW 46.48.170. 84-05-010 (Order 82-3), § 446-50-080, filed 2/7/84; 83-03-008 (Order 82-3), § 446-50-080, filed 1/11/83; 82-07-100 (Order 82-2), § 446-50-080, filed 3/24/82. Statutory Authority: RCW 46.48.190. 81-03-008 (Order 80-2), § 446-50-080, filed 1/8/81; 80-01-009 (Order 79-4), § 446-50-080, filed 12/11/79.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

Chapter 446-65 WAC
COMMERCIAL MOTOR VEHICLE REGULATIONS

WAC

446-65-005 Promulgation.
446-65-010 Transportation requirements.
446-65-020 Physical qualifications for drivers.

WAC 446-65-005 Promulgation. By authority of RCW 46.32.020, the Washington state patrol hereby adopts the following rules establishing standards for commercial motor vehicles as defined by chapter 46.32 RCW.

[Statutory Authority: RCW 46.30.020. 94-08-004, § 446-65-005, filed 3/24/94, effective 4/24/94. Statutory Authority: RCW 46.32.020. 91-06-066 (Order 90-005), § 446-65-005, filed 3/1/91, effective 4/1/91.]

WAC 446-65-010 Transportation requirements. (1) The Washington state patrol hereby adopts the following parts of Title 49 Code of Federal Regulations, for motor carriers used in intrastate or interstate commerce, in their entirety: Parts 390 General, 391 Qualification of drivers, 392 Driving of motor vehicles, 393 Parts and accessories necessary for safe operation, 395 Hours of service of drivers, 396 Inspection, repair, and maintenance, 397 Transportation of hazardous materials; driving and parking rules, provided, however, motor carriers operating vehicles with a gross vehicle weight rating between 10,001 lbs. and 26,000 lbs. operating solely intrastate, and not used to transport hazardous materials in a quantity requiring placarding, are exempt from Parts 390 General, 391 Qualifications of drivers, 392 Driving of motor vehicles, 395 Hours of service, and 396 Inspection, repair, and maintenance.

(2) As provided in Part 395, exemption for agricultural transporters, the harvest dates are defined as starting February 1 and ending November 30 of each year.

(3) Agricultural operations exceptions:

(a) Agricultural operations transporting agricultural products other than Class 2 material (Compressed Gases), over roads, other than the National System of Interstate

Defense Highways, between fields of the same farm, is excepted from part 397 when:

(i) The agricultural product is transported by a farmer who is an intrastate private motor carrier.

(ii) The movement of the agricultural product conforms to all other laws in effect on or before July 1, 1998, and 49 CFR 173.24, 173.24a, and 173.24b.

(b) The transportation of an agricultural product to or from a farm within one hundred fifty miles of the farm, is excepted from the requirements of 49 CFR part 172 subpart G (emergency response information) and H (training requirements) when:

(i) The agricultural product is transported by a farmer who is an intrastate private motor carrier;

(ii) The total amount of agricultural product being transported on a single vehicle does not exceed:

(A) Sixteen thousand ninety-four pounds of ammonium nitrate fertilizer properly classed as Division 5.1, PGIII, in bulk packaging; or

(B) Five hundred two gallons for liquids or gases, or five thousand seventy pounds for solids, of any other agricultural product;

(iii) The packaging conforms to the requirements of state law and is specifically authorized for transportation of the agricultural product by state law and such state law has been in effect on or before July 1, 1998; and

(iv) Each person having any responsibility for transporting the agricultural product or preparing the agricultural product for shipment has been instructed in the applicable requirements of 49 CFR adopted in this section.

(C) Formulated liquid agricultural products in specification packaging of fifty-eight gallon capacity or less, with closures manifolded to a closed mixing system and equipped with a positive dry disconnect device, may be transported by a private motor carrier between a final distribution point and an ultimate point of application or for loading aboard an airplane for aerial application.

(4) Copies of Title 49 CFR, parts 390 through 397, now in force are on file at the code reviser's office, Olympia and at the Washington state patrol headquarters, commercial vehicle enforcement section, Olympia. Additional copies may be available for review at Washington state patrol district headquarters offices, public libraries, Washington utilities and transportation commission offices, and at the United States Department of Transportation, Bureau of Motor Carrier Safety Office, Olympia. Copies of the CFR may be purchased through the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402.

[Statutory Authority: RCW 46.48.170. 98-19-043, § 446-65-010, filed 9/11/98, effective 10/12/98. Statutory Authority: RCW 46.33.020. 96-22-035, § 446-65-010, filed 10/31/96, effective 12/1/96. Statutory Authority: RCW 46.32.020. 95-13-080, § 446-65-010, filed 6/20/95, effective 7/21/95; 94-01-178, § 446-65-010, filed 12/22/93, effective 1/22/94; 91-06-066 (Order 90-005), § 446-65-010, filed 3/1/91, effective 4/1/91.]

WAC 446-65-020 Physical qualifications for drivers. This section provides a process whereby drivers of commercial motor vehicles, which operate solely intrastate and require a commercial driver's license, may receive a clearance to obtain a medical certificate for certain physical conditions.

(1) A person shall not drive a commercial motor vehicle unless they are physically qualified to do so and, except as provided in CFR 49, Part 391.67, and WAC 446-65-010(1), has on their person the original, or a photographic copy, of a medical examiner's certificate that they are physically qualified to drive a motor vehicle.

(2) A person is physically qualified to drive a motor vehicle if that person:

(a) Has no loss of a foot, a leg, a hand, or an arm, or has obtained from the department of licensing the proper driver's license, endorsement, and restrictions (if any) for the operation of the class of motor vehicle the person is driving;

(b) Has no impairment of:

(i) A hand or finger which interferes with prehension of power grasping; or

(ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a motor vehicle; or any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a motor vehicle; or has obtained from the department of licensing the proper license, endorsement, and restrictions (if any) for the class of motor vehicle the person is driving;

(c) Has no established medical history of clinical diagnosis of diabetes mellitus currently requiring insulin for control, or if diagnosed as having diabetes mellitus requiring insulin for control, has been cleared by the department of licensing for the operation of the class of motor vehicle the person is driving;

(d) Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure, or if diagnosed as having any of these medical complications, has been cleared by the department of licensing for the operation of the class of motor vehicle the person is driving;

(e) Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with his/her ability to control and drive a motor vehicle safely, or if diagnosed as having a respiratory dysfunction which could interfere with his/her ability to control and drive a motor vehicle safely, has been cleared by the department of licensing for the operation of the class of motor vehicle the person is driving;

(f) Has no current clinical diagnosis of high blood pressure likely to interfere with his/her ability to operate a motor vehicle safely, or if diagnosed as having high blood pressure likely to interfere with his/her ability to operate a motor vehicle safely, has been cleared by the department of licensing for the operation of the class of motor vehicle the person is driving;

(g) Has no established medical history of clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular, or vascular disease which interferes with his/her ability to control and operate a motor vehicle safely, or if diagnosed as having any of these medical complications which might interfere with his/her ability to control and operate a motor vehicle safely, has been cleared by the department of licensing for the operation of the class of motor vehicle the person is driving;

(h) Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a motor vehicle, or if diagnosed as having epilepsy or any other condition likely to cause loss of consciousness or any loss of ability to control a motor vehicle, has been cleared by the department of licensing for the operation of the class of motor vehicle the person is driving;

(i) Has no mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with his/her ability to drive a motor vehicle safely, or if diagnosed as having any of these complications likely to interfere with his/her ability to drive a motor vehicle safely, has been cleared by the department of licensing for the operation of the class motor vehicle the person is driving;

(j) Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70| horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber, or if not meeting these standards, has been cleared by the department of licensing for the operation of the class of motor vehicle the person is driving.

(k) First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid, or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5-1951, or if not meeting these standards, has been cleared by the department of licensing for the operation of the class of motor vehicle the person is driving;

(l) Does not use any unprescribed amphetamine, narcotic, or habit-forming drug and if using a prescribed amphetamine, narcotic, or habit-forming drug, it must be used according to the directions regarding dosage and the operation of motor vehicles or heavy equipment; and

(m) Has no current clinical diagnosis of untreated alcoholism.

(3) If the medical examiner finds that the person he/she examined is physically qualified to drive a motor vehicle in accordance with subsection (2) of this section and the items listed in Chapter 49, CFR 391.43, he/she shall complete a certificate in the form prescribed in Chapter 49 CFR 391.43 and shall furnish one copy to the person who was examined and one copy to the motor carrier that employs him/her.

(4) If the medical examiner finds any physical condition listed in subsection (2)(a) through (m) of this section that is likely to interfere with the driver's ability to operate or control a motor vehicle safely, it shall be the responsibility of the driver to immediately forward a copy of the driver's medical examination to the Department of Licensing, Responsibility Division, Medical Section, PO Box 9030, Olympia WA 98507-9030. Upon receipt of the medical examination, the department of licensing will review and evaluate the driver's physical qualifications to operate the class of motor vehicle the person intends to drive.

The department of licensing shall send a notice of determination to the driver. A department of licensing clearance notification shall be sufficient cause for the medical examiner to issue a medical examiner's certificate.

A failure by the driver to furnish a copy of the medical examination to the department of licensing as required above shall result in no clearance action being taken by the department of licensing.

[Statutory Authority: RCW 46.32.020. 95-13-080, § 446-65-020, filed 6/20/95, effective 7/21/95.]

Chapter 446-70 WAC
AFFIRMATIVE ACTION

WAC

446-70-010 Purpose.
446-70-020 Authority.
446-70-030 Goals and timetables regarding officer promotion to the ranks of RCW sergeant and lieutenant.
446-70-040 Definitions.
446-70-050 Affirmative action plan and requirements.
446-70-060 Affirmative action plan progress reporting.
446-70-070 Affirmative action plan use.
446-70-080 RCW 43.43.340 supplemental (plus 3) referrals.

WAC 446-70-010 Purpose. These rules are proposed by the Washington state patrol as a result of the passage of Engrossed Substitute Senate Bill 3446, revising RCW 43.43.340, which mandates that the Washington state patrol develop rules pertaining to affirmative action. The purpose of these rules is to specify the development and implementation of affirmative action plan goals and timetables in promoting protected group members to the ranks of RCW sergeant and lieutenant.

[Statutory Authority: RCW 43.43.340. 87-09-049 (Order 87-RD-001), § 446-70-010, filed 4/16/87.]

WAC 446-70-020 Authority. The rules contained in this section are promulgated as a result of the authority granted the Washington state patrol by RCW 43.43.340 as amended by chapter 365, Laws of 1985. These laws provide that the Washington state patrol shall adopt rules consistent with the provisions of the chapter regarding the procedures to be followed in complying with affirmative action measures in promotion of Washington state patrol officers to the ranks of RCW sergeant and lieutenant. It further requires the development and implementation of state patrol affirmative action goals and timetables in this regard and that the patrol monitor and report the progress made in attaining the goals and timetables as outlined.

[Statutory Authority: RCW 43.43.340. 87-09-049 (Order 87-RD-001), § 446-70-020, filed 4/16/87.]

WAC 446-70-030 Goals and timetables regarding officer promotion to the ranks of RCW sergeant and lieutenant. The state patrol will develop and implement goals and timetables for promoting members of protected groups to the ranks of RCW sergeant and lieutenant where it has been determined that underutilization exists. Goals shall be established from the state patrol's qualified available work force for RCW sergeants and lieutenants. Timetables for achieving these goals will be calculated by measuring turnover rate, new positions, and other relevant factors.

[Statutory Authority: RCW 43.43.340. 87-09-049 (Order 87-RD-001), § 446-70-030, filed 4/16/87.]

WAC 446-70-040 Definitions. Unless the context clearly indicates otherwise, the words used in these rules shall have the meaning set forth in the definitions below.

Affirmative action: Procedures by which racial/ethnic minorities, women, persons in the protected age category, persons with disabilities, Vietnam-era veterans, and disabled veterans are provided with increased employment opportunities. It shall not mean any sort of quota system.

Goal: A target expressed as both a number and a percentage, for placing protected group members in a job category/group for which underutilization exists. It should normally be the maximum rate that can be achieved by making every good-faith effort.

Protected groups: Means Blacks, Asian/Pacific Islanders, Hispanics, Native Americans, women, persons in the protected age class, qualified persons with physical or mental handicaps meeting the established standards for law enforcement, Vietnam-era veterans, and disabled veterans.

Supplemental (plus 3) referral: A statutorily authorized process by which three qualified, eligible members of underutilized protected groups may be referred to the chief for consideration for promotion to RCW sergeant or lieutenant in addition to the top five names appearing on the eligibility list as required by statute.

Timetables: Established time period by which specific areas of underutilization should be corrected.

[Statutory Authority: RCW 43.43.340. 87-09-049 (Order 87-RD-001), § 446-70-040, filed 4/16/87.]

WAC 446-70-050 Affirmative action plan and requirements. The Washington state patrol will develop and implement both an equal opportunity/affirmative action policy statement and an affirmative action plan. These shall include provisions for the promotion of protected group members to the ranks of RCW sergeant and lieutenant to comply with RCW 43.43.340 and other applicable state and federal laws, regulations, rules, and guidelines. It shall be updated annually.

[Statutory Authority: RCW 43.43.340. 87-09-049 (Order 87-RD-001), § 446-70-050, filed 4/16/87.]

WAC 446-70-060 Affirmative action plan progress reporting. The chief's designee shall monitor the state patrol's progress with respect to its affirmative action plan and submit a report to the chief of the Washington state patrol, at least annually, defining such progress and containing such other information as the chief may require. An annual report will be sent to the Washington state human rights commission regarding affirmative action progress within the Washington state patrol with respect to promotion of protected group members to the ranks of RCW sergeant and lieutenant.

[Statutory Authority: RCW 43.43.340. 87-09-049 (Order 87-RD-001), § 446-70-060, filed 4/16/87.]

WAC 446-70-070 Affirmative action plan use. The Washington state patrol may apply affirmative action plans and programs to increase the number of protected group members in the Washington state patrol and particularly in the ranks of RCW sergeant and lieutenant, when it has been determined that a particular protected group or groups are underutilized.

[Statutory Authority: RCW 43.43.340. 87-09-049 (Order 87-RD-001), § 446-70-070, filed 4/16/87.]

WAC 446-70-080 RCW 43.43.340 supplemental (plus 3) referrals. For each sergeant or lieutenant vacancy to be filled by promotion, the affirmative action plan will be reviewed. When it is determined under the approved formula established in the patrol's affirmative action plan that a protected group is underutilized, names of qualified protected group members will be referred to the chief for promotional consideration in accord with the plus 3 provision of RCW 43.43.340. Referrals shall be by:

(1) The top five names on the eligibility list will be referred regardless of their membership in a protected group.

(2) Only those protected group members who have qualified and have been placed on the eligibility promotional register for either RCW sergeant or lieutenant shall be considered for inclusion in the plus 3 referral.

(3) As promotional opportunities occur, the protected group which is most underutilized in the particular rank shall be determined and members of this group shall be first to be considered for inclusion in the plus 3 referral.

(4) If there is no sufficient number of members of the most underutilized protected group on the eligibility list to refer three members thereof for promotional consideration in accord with the plus 3 referral, members of the next most underutilized group may be referred, and so on until three names have been obtained to fulfill the requirements of the plus 3 referrals.

(5) All persons of each group included in the plus 3 referral shall be chosen from the eligibility list in the rank order in which they appear on the register.

(6) In accordance with the plus 3 process, under no circumstances will more than three protected group members along with the top five names on the register be referred for any one promotional vacancy.

(7) The same person or persons may be referred under plus 3 for more than one vacancy.

(8) All officers selected for promotion must pass a medical examination and be certified as to physical fitness to perform the duties of the advanced position.

[Statutory Authority: RCW 43.43.340. 87-09-049 (Order 87-RD-001), § 446-70-080, filed 4/16/87.]

Chapter 446-75 WAC
DNA IDENTIFICATION

WAC

446-75-010	Definitions.
446-75-020	Purpose.
446-75-030	Purposes of DNA identification.
446-75-040	DNA identification system established.
446-75-050	DNA identification system analytical procedures.
446-75-060	Collection of biological sample for DNA databank—Procedures—Time frame.
446-75-070	Expungement of DNA data.
446-75-080	DNA identification data—Prohibitions.

WAC 446-75-010 Definitions. (1) "DNA" wherever used in this chapter shall mean deoxyribonucleic acid.

(2) "Convicted felon" wherever used in this chapter shall mean:

(a) Every individual convicted after July 1, 1990, of a felony defined as a sex or violent offense under RCW 9.94A.030;

(b) Every individual convicted on or before July 1, 1990, of a felony defined as a sex or violent offense under RCW 9.94A.030, who is still incarcerated on or after July 25, 1999;

(c) Every juvenile adjudicated guilty after July 1, 1994, of a felony defined as a sex or violent offense under RCW 9.94A.030 or an equivalent juvenile offense;

(d) Every juvenile adjudicated guilty on or before July 1, 1994, of a felony defined as a sex or violent offense under RCW 9.94A.030 or an equivalent juvenile offense, who is still incarcerated on or after July 25, 1999;

(e) Every adult or juvenile convicted of a felony, stalking under RCW 9A.46.100, harassment under RCW 9A.46.020, or communicating with a minor for immoral purposes under RCW 9.68A.090, or adjudicated guilty of an equivalent juvenile offense, on or after July 1, 2002;

(f) Every adult or juvenile convicted of a felony, stalking under RCW 9A.46.100, harassment under RCW 9A.46.020, or communicating with a minor for immoral purposes under RCW 9.68A.090, or adjudicated guilty of an equivalent juvenile offense, before July 1, 2002, who is still incarcerated on or after July 1, 2002.

(3) "DNA identification" wherever used in this chapter shall mean the identification of a particular individual from the chemical structure of the DNA contained in cells of the human body.

(4) "Biological sample" wherever used in this chapter means a buccal swab (a swabbing of the inside of the mouth between the cheek and gum). The Washington state patrol crime laboratory division will supply a buccal swab collection kit to any agency responsible for collecting convicted felon samples for DNA typing. If there is a reason that a buccal swab cannot be obtained, a bloodstain collected by a finger stick may be taken from the individual.

[Statutory Authority: RCW 43.43.759. 03-08-053, § 446-75-010, filed 3/28/03, effective 4/28/03; 91-11-046, § 446-75-010, filed 5/14/91, effective 6/14/91.]

WAC 446-75-020 Purpose. The purpose of this chapter is to provide procedures for the operation of DNA identification systems as required by RCW 43.43.752 through 43.43.758, and to prohibit the improper use of DNA identification data as required by RCW 43.43.759.

[Statutory Authority: RCW 43.43.759. 03-08-053, § 446-75-020, filed 3/28/03, effective 4/28/03; 91-11-046, § 446-75-020, filed 5/14/91, effective 6/14/91.]

WAC 446-75-030 Purposes of DNA identification. DNA identification systems as authorized by chapter 43.43 RCW shall be used only for three purposes:

(1) Identification of possible suspects in criminal investigations;

(2) Convicted felon identification databanking; and

(3) Identification of human remains or missing persons. Nothing in this section prohibits the submission of results derived from the biological samples to the Federal Bureau of Investigation combined DNA index system.

[Statutory Authority: RCW 43.43.759. 03-08-053, § 446-75-030, filed 3/28/03, effective 4/28/03; 91-11-046, § 446-75-030, filed 5/14/91, effective 6/14/91.]

WAC 446-75-040 DNA identification system established. The DNA identification system established by the chief of the Washington state patrol shall be compatible with the method(s) used by the Federal Bureau of Investigation. Identification systems established by other local law enforcement agencies shall be compatible to the current Washington state patrol system.

[Statutory Authority: RCW 43.43.759. 91-11-046, § 446-75-040, filed 5/14/91, effective 6/14/91.]

WAC 446-75-050 DNA identification system analytical procedures. Law enforcement agencies establishing a DNA identification system shall maintain written analytical procedures necessary to complete the analyses. A copy of the analytical procedures shall be forwarded to the chief of the Washington state patrol to ensure compatibility with the Washington state patrol system. The chief shall approve or disapprove the procedures utilizing the standards set forth for DNA identification by the Federal Bureau of Investigation prior to any implementation by the submitting agency. The appeal process for any disapproval shall be in accordance with the provisions of the Administrative Procedure Act (chapter 34.05 RCW).

[Statutory Authority: RCW 43.43.759. 91-11-046, § 446-75-050, filed 5/14/91, effective 6/14/91.]

WAC 446-75-060 Collection of biological sample for DNA databank—Procedures—Time frame. (1) The collection, preservation, and shipment of blood samples obtained from convicted felons pursuant to RCW 43.43.754 for the convicted felon databank program shall be in conformance with the "Protocol for the Collection of Biological Sample for the Convicted Felon DNA Program" as prepared by the Washington state patrol crime laboratory division. Copies of the current protocol may be obtained from the Washington State Patrol Crime Laboratory Division, Olympia, WA.

(a) If the convicted felon does not serve a term of confinement in a facility operated by the department of corrections or the department of social and health services, and does serve a term of confinement in a city or county jail facility, officials at the city or county jail facility shall be responsible for obtaining the biological sample either as part of the intake process if the person is convicted on or after July 1, 2002, or within a reasonable time after July 1, 2002, but prior to the person's release, if the person was incarcerated before July 1, 2002.

(b) If the convicted felon serves a term of confinement in a facility operated by the department of corrections or the department of social and health services, officials at the facility shall be responsible for obtaining the biological sample either as part of the intake process if the person is convicted on or after July 1, 2002, or within a reasonable time after July 1, 2002, but prior to the person's release, if the person was incarcerated before July 1, 2002.

(c) If the convicted felon is sentenced on or after July 1, 2002, and does not serve a term of confinement in a city, county or state facility, the local police department or sheriff's office shall be responsible for obtaining the biological sample after sentencing.

(2) Results from DNA identifications made from blood samples obtained from convicted felons under RCW 43.43.754 shall be submitted to the chief of the Washington state patrol and entered into the Washington state patrol DNA databank. Such results shall reside in the databank until expungement pursuant to WAC 446-75-070.

[Statutory Authority: RCW 43.43.759. 03-08-053, § 446-75-060, filed 3/28/03, effective 4/28/03; 91-11-046, § 446-75-060, filed 5/14/91, effective 6/14/91.]

WAC 446-75-070 Expungement of DNA data. (1) A person desiring the destruction of his DNA identification data from a DNA databank shall make his request therefor on a form furnished by the chief of the Washington state patrol. The request shall be mailed or delivered to the Washington State Patrol Crime Laboratory Division, Olympia, WA.

(2) The request shall be completed, signed by the person whose record is sought to be expunged. The signature shall be notarized. It shall include the address of the applicant, the printed name and the address of the witness to the applicant's signature and such other information requested on the application as identifies the applicant and the offense for which the request of expungement is made.

(3) The request shall include proof that the person making the request for expungement is the same person whose DNA data is sought to be expunged. Such proof shall include a sworn statement of identity. When requested by the patrol, fingerprints and a blood sample shall also be required from the applicant.

(4) The request shall include proof that the person making the request has no record as a convicted felon under RCW 43.43.754 or has other lawful grounds for expungement. Such proof shall include a sworn statement from the applicant, and not-guilty or released without conviction documentation from such criminal charges. Where the finding or release is based on an order of a court, the applicant shall furnish a certified true copy of the court order.

(5) The Washington state patrol crime laboratory has discretion to deny the request for expungement.

[Statutory Authority: RCW 43.43.759. 03-08-053, § 446-75-070, filed 3/28/03, effective 4/28/03; 91-11-046, § 446-75-070, filed 5/14/91, effective 6/14/91.]

WAC 446-75-080 DNA identification data—Prohibitions. The use of any data obtained from DNA identification procedures is prohibited for any research or other purpose not related to a criminal investigation, to identification of human remains or missing persons, or to improving the operation of the system established by the Washington state patrol and authorized by RCW 43.43.752 through 43.43.759.

[Statutory Authority: RCW 43.43.759. 03-08-053, § 446-75-080, filed 3/28/03, effective 4/28/03; 91-11-046, § 446-75-080, filed 5/14/91, effective 6/14/91.]

Chapter 446-80 WAC
EXEMPTION TO WEIGHING REQUIREMENT

WAC

446-80-005 Promulgation.
446-80-010 Stopping at scales exemption.

WAC 446-80-005 Promulgation. By authority of RCW 46.44.105(12), the Washington state patrol hereby adopts the following rules establishing standards for size, weight, and load enforcement activities authorized in chapter 46.44 RCW.

[Statutory Authority: RCW 46.44.105(2). 93-18-043, § 446-80-005, filed 8/27/93, effective 9/27/93.]

WAC 446-80-010 Stopping at scales exemption. The requirement to stop at a weighing facility when traffic control signs indicate the weighing facility is open does not apply to: Unladen trucks towing or carrying a pole trailer, as defined in RCW 46.04.414, whose design and use is for transporting logs, except at the points of entry weighing facilities listed below.

Points of entry are:

Vancouver Port of Entry	I-5 MP 15
Bow Hill Port of Entry	I-5 MP 235
Plymouth Port of Entry	I-82 MP 1
Spokane Port of Entry	I-90 MP 300
Wallula Port of Entry	SR-12 MP 308
Home Valley	SR-14 MP 50
Goldendale	SR-97 MP 13
Tonasket	SR-97 MP 315
Kettle Falls	SR-395 MP 239

[Statutory Authority: RCW 46.44.105(2). 93-18-043, § 446-80-010, filed 8/27/93, effective 9/27/93.]

Chapter 446-85 WAC
ACCIDENT-REPORTING THRESHOLD

WAC

446-85-005 Promulgation.
446-85-010 Accident-reporting threshold.

WAC 446-85-005 Promulgation. By authority of RCW 46.52.030(5), the chief of the Washington state patrol hereby establishes the following rule for the accident-reporting threshold based on the inflationary index as recommended by the office of financial management.

[Statutory Authority: RCW 46.52.030. 00-10-092, § 446-85-005, filed 5/2/00, effective 5/3/00.]

WAC 446-85-010 Accident-reporting threshold. Beginning January 1, 2000, the accident-reporting threshold for property damage accidents shall be seven hundred dollars.

[Statutory Authority: RCW 46.52.030. 00-10-092, § 446-85-010, filed 5/2/00, effective 5/3/00.]