

FEBRUARY 3, 1993

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filed not later than January 20, 1993

CITATION

Cite all material in the Washington State Register by its issue number and sequence within that issue, preceded by the acronym WSR. Example: the 37th item in the August 5, 1981, Register would be cited as WSR 81-15-037.

PUBLIC INSPECTION OF DOCUMENTS

A copy of each document filed with the code reviser's office, pursuant to chapter 34.05 RCW, is available for public inspection during normal office hours. The code reviser's office is located on the ground floor of the Legislative Building in Olympia. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. Telephone inquiries concerning material in the Register or the Washington Administrative Code (WAC) may be made by calling (206) 753-7470 (SCAN 234-7470).

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CERTIFICATE

Pursuant to RCW 34.08.040, the publication of rules or other information in this issue of the Washington State Register is hereby certified to be a true and correct copy of such rules or other information, except that headings of public meeting notices have been edited for uniformity of style.

DENNIS W. COOPER
Code Reviser

STATE MAXIMUM INTEREST RATE

(Computed and filed by the State Treasurer under RCW 19.52.025)

The maximum allowable interest rate applicable for the month of February 1993 pursuant to RCW 19.52.020 is twelve point zero percent (12.00%).

NOTICE: FEDERAL LAW PERMITS FEDERALLY INSURED FINANCIAL INSTITUTIONS IN THE STATE TO CHARGE THE HIGHEST RATE OF INTEREST THAT MAY BE CHARGED BY ANY FINANCIAL INSTITUTION IN THE STATE. THE MAXIMUM ALLOWABLE RATE OF INTEREST SET FORTH ABOVE MAY NOT APPLY TO A PARTICULAR TRANSACTION.

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Olympia, WA 98504

The Washington State Register is an official publication of the state of Washington. It contains proposed, emergency, and permanently adopted administrative rules, as well as other documents filed with the code reviser's office pursuant to RCW 34.08.020 and 42.30.075. Publication of any material in the Washington State Register is deemed to be official notice of such information.

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STYLE AND FORMAT OF THE WASHINGTON STATE REGISTER

1. ARRANGEMENT OF THE REGISTER

The Register is arranged in the following six sections:

- (a) **PROPOSED**-includes the full text of preproposal comments, original proposals, continuances, supplemental notices, and withdrawals.
- (b) **PERMANENT**-includes the full text of permanently adopted rules.
- (c) **EMERGENCY**-includes the full text of emergency rules and rescissions.
- (d) **MISCELLANEOUS**-includes notice of public meetings of state agencies, rules coordinator notifications, summaries of attorney general opinions, executive orders and emergency declarations of the governor, rules of the state Supreme Court, and other miscellaneous documents filed with the code reviser's office under RCW 34.08.020 and 42.30.075.
- (e) **TABLE**-includes a cumulative table of the WAC sections that are affected in the current year.
- (f) **INDEX**-includes a combined subject matter and agency index.

Documents are arranged within each section of the Register according to the order in which they are filed in the code reviser's office during the pertinent filing period. The three part number in the heading distinctively identifies each document, and the last part of the number indicates the filing sequence with a section's material.

2. PRINTING STYLE—INDICATION OF NEW OR DELETED MATERIAL

RCW 34.05.395 requires the use of certain marks to indicate amendments to existing agency rules. This style quickly and graphically portrays the current changes to existing rules as follows:

- (a) In amendatory sections—
 - (i) underlined material is new material;
 - (ii) deleted material is (~~lined out between double parentheses~~);
- (b) Complete new sections are prefaced by the heading **NEW SECTION**;
- (c) The repeal of an entire section is shown by listing its WAC section number and caption under the heading **REPEALER**.

3. MISCELLANEOUS MATERIAL NOT FILED UNDER THE ADMINISTRATIVE PROCEDURE ACT

Material contained in the Register other than rule-making actions taken under the APA (chapter 34.05 RCW) does not necessarily conform to the style and format conventions described above. The headings of these other types of material have been edited for uniformity of style; otherwise the items are shown as nearly as possible in the form submitted to the code reviser's office.

4. EFFECTIVE DATE IF RULES

- (a) Permanently adopted agency rules normally take effect thirty-one days after the rules and the agency order adopting them are filed with the code reviser's office. This effective date may be delayed or advanced and such an effective date will be noted in the promulgation statement preceding the text of the rule.
- (b) Emergency rules take effect upon filing with the code reviser's office unless a later date is provided by the agency. They remain effective for a maximum of one hundred twenty days from the date of filing.
- (c) Rules of the state Supreme Court generally contain an effective date clause in the order adopting the rules.

5. EDITORIAL CORRECTIONS

Material inserted by the code reviser's office for purposes of clarification or correction or to show the source or history of a document is enclosed in [brackets].

1992 - 1993
DATES FOR REGISTER CLOSING, DISTRIBUTION, AND FIRST AGENCY ACTION

Issue No.	Closing Dates ¹			Distribution Date	First Agency Hearing Date ³
	Non-OTS & 30 p. or more	Non-OTS & 11 to 29 p.	OTS ² or 10 p. max. Non-OTS		
<i>For Inclusion in--</i>	<i>File no later than--</i>			<i>Count 20 days from--</i>	<i>For hearing on or after</i>
92-16	Jul 8	Jul 22	Aug 5	Aug 19	Sep 8
92-17	Jul 22	Aug 5	Aug 19	Sep 2	Sep 22
92-18	Aug 5	Aug 19	Sep 2	Sep 16	Oct 6
92-19	Aug 26	Sep 9	Sep 23	Oct 7	Oct 27
92-20	Sep 9	Sep 23	Oct 7	Oct 21	Nov 10
92-21	Sep 23	Oct 7	Oct 21	Nov 4	Nov 24
92-22	Oct 7	Oct 21	Nov 4	Nov 18	Dec 8
92-23	Oct 21	Nov 4	Nov 18	Dec 2	Dec 22
92-24	Nov 4	Nov 18	Dec 2	Dec 16	Jan 5, 1993
93-01	Nov 25	Dec 9	Dec 23, 1992	Jan 6, 1993	Jan 26
93-02	Dec 9	Dec 23, 1992	Jan 6, 1993	Jan 20	Feb 9
93-03	Dec 23, 1992	Jan 6, 1993	Jan 20	Feb 3	Feb 23
93-04	Jan 6	Jan 20	Feb 3	Feb 17	Mar 9
93-05	Jan 20	Feb 3	Feb 17	Mar 3	Mar 23
93-06	Feb 3	Feb 17	Mar 3	Mar 17	Apr 6
93-07	Feb 24	Mar 10	Mar 24	Apr 7	Apr 27
93-08	Mar 10	Mar 24	Apr 7	Apr 21	May 11
93-09	Mar 24	Apr 7	Apr 21	May 5	May 25
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93-24	Nov 3	Nov 17	Dec 1	Dec 15	Jan 4, 1994

¹All documents are due at the code reviser's office by 12:00 noon on or before the applicable closing date for inclusion in a particular issue of the Register; see WAC 1-21-040.

²A filing of any length will be accepted on the closing dates of this column if it has been prepared and completed by the order typing service (OTS) of the code reviser's office; see WAC 1-21-040. Agency-typed material is subject to a ten page limit for these dates; longer agency-typed material is subject to the earlier non-OTS dates.

³At least twenty days before the rule-making hearing, the agency shall cause notice of the hearing to be published in the Register; see RCW 34.05.320(1). These dates represent the twentieth day after the distribution date of the applicable Register.

Regulatory Fairness Act

The Regulatory Fairness Act, chapter 19.85 RCW, was adopted in 1982 to minimize the impacts of state regulations on small business. RCW 43.31.025 defines small business as “any business entity (including a sole proprietorship, corporation, partnership, or other legal entity) which is owned and operated independently from all other businesses, which has the purpose of making a profit, and which has fifty or fewer employees.” The act requires review and mitigation of proposed rules that have an economic impact on more than 20 percent of the businesses of all industries or more than 10 percent of the businesses in any one industry (as defined by any three-digit SIC code).

When the above criteria is met, agencies must prepare a small business economic impact statement (SBEIS) that identifies and analyzes compliance costs and determines whether proposed rules impact small businesses disproportionately when compared to large businesses. When a proportionately higher burden is imposed on small businesses, agencies must mitigate those impacts. All permanent rules adopted under the Administrative Procedure Act, chapter 34.05 RCW, are subject to review to determine if the requirements of the Regulatory Fairness Act apply. Impact statements are filed with the Office of the Code Reviser as part of the required notice of hearing.

AN SBEIS IS REQUIRED

When:

The proposed rule has any economic impact on more than 20 percent of all industries or more than 10 percent of any one industry; or

The proposed rule **IMPOSES** costs to business that are not minor and negligible.

AN SBEIS IS NOT REQUIRED

When:

The rule is proposed only to comply or conform with a Federal law or regulation;

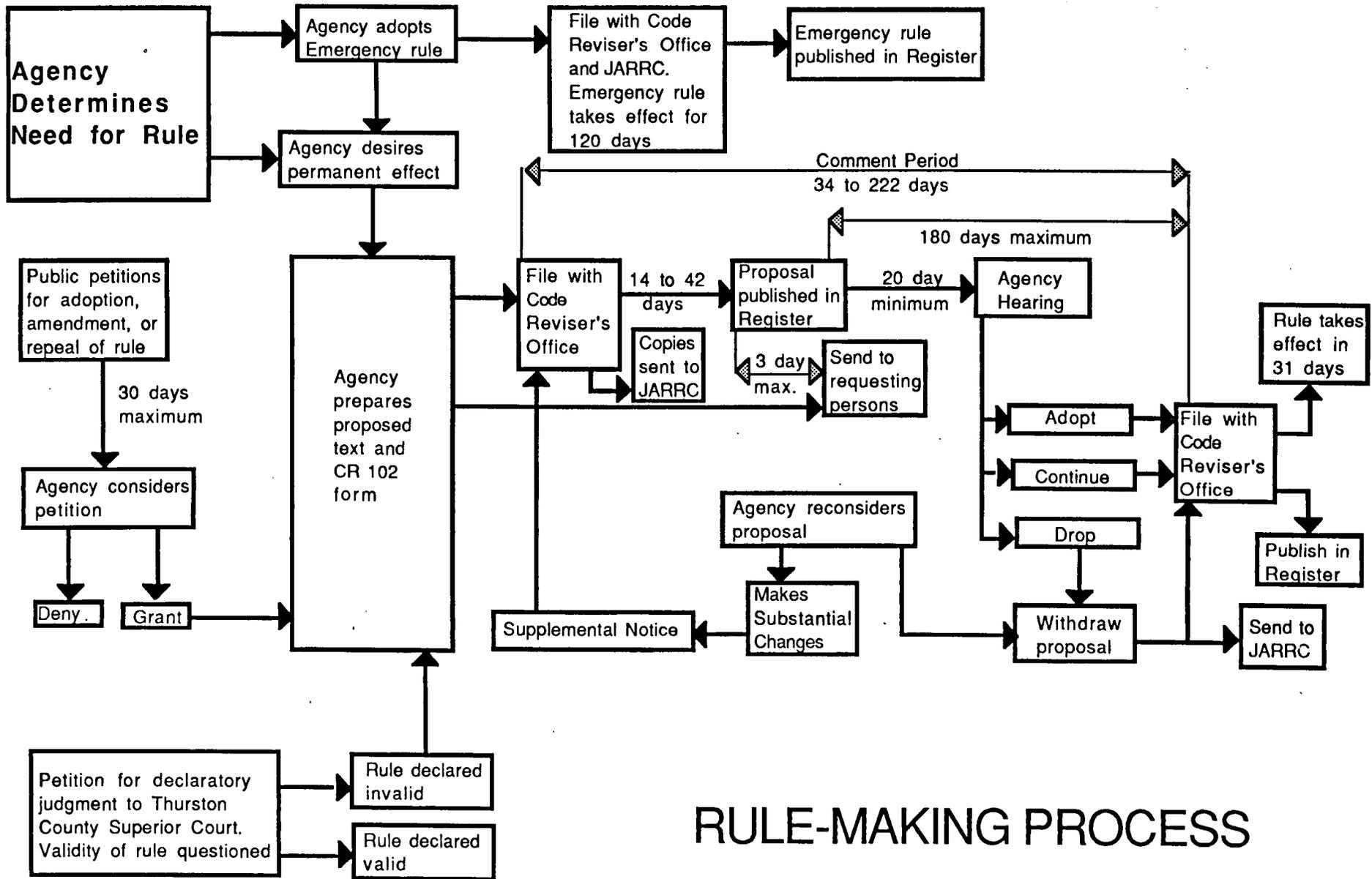
There is no economic impact on business;

The rule **REDUCES** costs to business;

There is only minor or negligible economic impact;

The rule is proposed as an emergency rule, although an SBEIS may be required when an emergency rule is proposed as a permanent rule; or

The rule is pure restatement of statute.



RULE-MAKING PROCESS

WSR 93-03-001
PROPOSED RULES
BOARD OF
PILOTAGE COMMISSIONERS

[Filed January 6, 1993, 3:50 p.m.]

Continuance of WSR 92-24-055.

Title of Rule: WAC 296-116-185 Tariffs and pilotage rates for the Grays Harbor pilotage district.

Purpose: To amend the pilotage tariff rate.

Statutory Authority for Adoption: RCW 88.16.035.

Statute Being Implemented: RCW 88.16.035.

Summary: Hearing has been held on this rule. This notice reflects the continuance of the meeting to vote on adoption. The purpose of the continuance is to correct a calculation error.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Washington State Board of Pilotage Commissioners, Pier 52 Colman Dock, Seattle, Washington, 464-7818.

Name of Proponent: Grays Harbor Pilots Association, private.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed rule would increase the tariff for pilotage services in the Grays Harbor pilotage district by 27.5%.

Proposal Changes the Following Existing Rules: Reflects a five percent increase over the 1991 tariff and a 27.5% increase over the existing rule.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

Hearing Location: Conference Room, Eikum Conference Room, Pier 52 Colman Dock, 801 Alaskan Way, Seattle, WA 98104, on January 14, 1993, at 9:00 a.m.

Submit Written Comments to: Admiral Chet Richmond, Pier 52 Colman Dock, Seattle, Washington 98104-1487, by January 11, 1993.

Date of Intended Adoption: January 14, 1993.

January 6, 1993

Susan P. Jensen

Assistant Attorney General

WSR 93-03-002
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed January 7, 1993, 10:51 a.m.]

Original Notice.

Title of Rule: WAC 392-105-030 [chapter 392-105 WAC], Access to public records.

Purpose: Clarify procedure for requesting agency public records.

Statutory Authority for Adoption: RCW 42.17.250 through [42.17].320.

Summary: See Purpose above.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting: Richard M. Wilson, Superintendent of Public Instruction, Old Capitol Building, (206) 753-2298; Implementation: Ed

Strozyk, Superintendent of Public Instruction, Old Capitol Building, (206) 753-1700; and Enforcement: Linda Hardy, Superintendent of Public Instruction, Old Capitol Building, (206) 753-1700.

Name of Proponent: Superintendent of Public Instruction, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Clarify procedure for requesting agency public records.

Proposal Changes the Following Existing Rules: Gives specific guidance as to appropriate form of request for records.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

Hearing Location: Superintendent of Public Instruction, Old Capitol Building, Wanamaker Conference Room, 2nd Floor, Olympia, Washington 98504-7200, on February 26, 1993, at 9:00 a.m.

Submit Written Comments to: Richard M. Wilson, Superintendent of Public Instruction, Legal Services, P.O. Box 47200, Olympia, WA 98504, by February 23, 1993.

Date of Intended Adoption: March 10, 1993.

January 7, 1993

Judith A. Billings

Superintendent of

Public Instruction

AMENDATORY SECTION (Amending Order 92-04, filed 4/28/92, effective 5/29/92)

WAC 392-105-030 Copying. No fee shall be charged for the inspection of public records. ((SPI)) The superintendent of public instruction may impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy public records; such charges shall not exceed the amount necessary to reimburse SPI for its actual costs incident to such copying. No person shall be released a record so copied until and unless the person requesting the copied public record has tendered payment for such copying to the appropriate official. All charges must be paid by money order, check, or cash in advance.

AMENDATORY SECTION (Amending Order 92-04, filed 4/28/92, effective 5/29/92)

WAC 392-105-035 Determination regarding exempt records. (1) ((SPI)) The superintendent of public instruction reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 392-105-025 is exempt pursuant to the provisions set forth in RCW 42.17.310 and 42.17.315. Such determination may be made in consultation with the public records officer, counsel for administrative law services, or an assistant attorney general assigned to the agency.

(2) Pursuant to RCW 42.17.260, ((SPI)) the superintendent of public instruction reserves the right to delete identifying details when it makes available or publishes any public record when there is reason to believe that disclosure of such details would be an unreasonable invasion of personal

privacy: *Provided, however,* In each case, the justification for the deletion shall be explained fully in writing.

(3) Response to requests for a public record must be made promptly. Within five business days of receiving a public record request, the superintendent of public instruction shall respond by either:

(a) Providing the record;

(b) Acknowledging that the superintendent of public instruction has received the request and providing a reasonable estimate of the time the agency will require to respond to the request; or

(c) Denying the public record request.

Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, the superintendent of public instruction may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the superintendent of public instruction need not respond to it.

(4) All denials of request for public records must be accompanied by a written statement, signed by the public records officer or his/her designee, specifying the reason for the denial, a statement of the specific exemption authorizing the withholding of the record, and a brief explanation of how the exemption applies to the public record withheld.

AMENDATORY SECTION (Amending Order 92-04, filed 4/28/92, effective 5/29/92)

WAC 392-105-040 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 which constituted or accompanied the denial.

(2) The written request by a person demanding prompt review of a decision denying a public record shall be submitted to the SPI or his or her designee.

(3) Within two business days after receiving the written request by a person petitioning for a prompt review of a decision denying a public record, ~~((SPI))~~ the superintendent of public instruction or his or her designee, shall complete such review.

(4) During the course of the review ~~((SPI))~~ the superintendent of public instruction or his or her designee shall consider the obligations of the agency fully to comply with the intent of chapter 42.17 RCW insofar as it requires providing full public access to official records, but shall also consider both the exemptions provided in RCW 42.17.310 through 42.17.315, and the provisions of the statute which require the agency to protect public records from damage or disorganization, prevent excessive interference with essential functions of the agency, and prevent any unreasonable invasion of personal privacy by deleting identifying details.

AMENDATORY SECTION (Amending Order 92-04, filed 4/28/92, effective 5/29/92)

WAC 392-105-060 Records index. (1) The agency has available for the use of all persons a current index which provides identifying information as to the following records issued, adopted, or promulgated by the agency after June 30, 1972:

(a) Final ~~((options))~~ opinions, including concurring and dissenting opinions, as well as orders, made in the adjudicated cases;

(b) Those statements of policy and interpretative policy, statute and the constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructional staff that affect a member of the public;

(d) Planning policies and goals, and interim and planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(2) The current index maintained by the agency shall be available to all persons under the same rules and all the same conditions as are applied to public records available for inspection.

WSR 93-03-003
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed January 7, 1993, 2:39 p.m.]

Original Notice.

Title of Rule: Revised adult and pediatric AIDS reporting requirements, WAC 246-100-011, 246-100-041, 246-100-076, and 246-100-236.

Purpose: Updates AIDS case reporting requirements to include amendments to United States Centers for Disease Control (CDC) AIDS case definition and makes symptomatic pediatric HIV infection a reportable condition by amendment to WAC 246-100-011, 246-100-041, 246-100-076, and 246-100-236.

Statutory Authority for Adoption: Chapter 70.24 RCW.
Statute Being Implemented: Chapter 70.24 RCW.

Summary: Proposed rule change will make adolescents and adults with AIDS as defined by the 1993 CDC revision to the AIDS case definition reportable; make class P-2 pediatric HIV-related illness reportable; require laboratories to report some CD4<200 or CD4%<14 results to the State Department of Health (DOH) on a quarterly basis; and strengthens counseling, consent, and confidentiality protections for persons having CD4 tests performed to diagnose HIV infection.

Reasons Supporting Proposal: Federal funding for AIDS services (Ryan White Comprehensive AIDS Resources Emergency Act of 1990) allocates funds to states according to reported numbers of AIDS cases as defined by CDC. Without revision of AIDS case reporting requirements AIDS statistics used for prevention, service planning, and epidemiological analyses will be incomplete and not comparable to data collected in other states.

Name of Agency Personnel Responsible for Drafting and Implementation: Ann Marie Kimball, M.D., Dir., Div. HIV/AIDS & STD, 1511 3rd Avenue, 2nd Floor, Seattle, WA 98101-1632, (206) 464-5488; and Enforcement: Kristine Gebbie, Secretary, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890, (206) 753-5871.

Name of Proponent: Department of Health, governmental.

Rule is necessary because of federal law, Ryan White Comprehensive AIDS Resources Emergency Act of 1990, Public Law 101-381- August 18, 1990; 42 USC 300ff.

Explanation of Rule, its Purpose, and Anticipated Effects: Changes to WAC 246-100-011(1) and 246-100-076 (c)(i) will make AIDS as defined by CDC on January 1, 1993, reportable in Washington which will increase the number of persons reportable with AIDS and Class IV HIV illness by about 10% to 15%. This change will allow Washington to compete equitably with other states for federal AIDS service funds, and make Washington AIDS statistics comparable to those reported nationally and in other states; amendment to WAC 246-100-076 (c)(i) will make Class P-2 pediatric HIV illness a reportable condition. This amendment will help to better estimate service needs for children with symptomatic HIV illness; to prevent the potential misuse of CD4 tests, changes to WAC 246-100-011(18) will expand the definition of "HIV testing" to include CD4 testing except when used for conditions unrelated to HIV infection or for monitoring previously diagnosed HIV infection; to improve reporting completeness, reduce reporting delays, and evaluate overall reporting completeness through cross checks with providers, the amendment to WAC 246-100-236 will require laboratories to report patient specific identifiers or anonymous codes submitted to the laboratory on a quarterly basis to the Department of Health for CD4 specimens with CD4<200 or CD4%<14; and amendment to WAC 246-100-041(1) will allow the state health officer to eliminate laboratory reporting requirements in WAC 246-100-236 if state and federal funding of HIV/AIDS services do not depend on numbers of reported AIDS cases or if less than 10% of cases reported are discovered through laboratory involvement in AIDS reporting requirements.

Proposal Changes the Following Existing Rules: Changes to WAC 246-100-011(1) updates AIDS case definition citation to reference the 1993 CDC AIDS case definition; changes to WAC 246-100-011 (c)(i) will make Class P-2 pediatric HIV illness a reportable condition. Additional changes to WAC 246-100-011 (c)(i) are housekeeping changes which alter the format of previously cited reference to Class IV HIV illness with no change or impact on current rules; changes to WAC 246-100-011(18) expand the definition of "HIV Testing" to include CD4 tests under specific circumstances; and changes to WAC 246-100-

011(32) and to WAC 246-100-011 (33)(c) are housekeeping changes not related to AIDS reporting requirements.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

Hearing Location: Worthington Conference Center, St. Martin's College, 5300 Pacific Avenue S.E., Olympia, WA 98503, on March 10, 1993, at 9:30 a.m.

Submit Written Comments to: Ann Foster, Rules Coordinator, P.O. Box 47902, Olympia, WA 98504-7902, by February 9, 1993.

Date of Intended Adoption: March 10, 1993.

January 5, 1993

Sylvia Beck

Executive Director

AMENDATORY SECTION (Amending Order 225B, filed 12/23/91, effective 1/23/92)

WAC 246-100-011 Definitions. The following definitions shall apply in the interpretation and enforcement of chapter 246-100 WAC:

(1) "Acquired immunodeficiency syndrome (AIDS)" means ~~((an illness characterized by the diseases and))~~ illness, disease, or conditions defined and described by the Centers for Disease Control, U.S. Public Health Service((s)), Morbidity and Mortality Weekly Report (MMWR), ((August 14, 1987, Volume 36, Number 1S)) December 18, 1992, Volume 41, Number RR-17.

(2) "AIDS counseling" means counseling directed toward:

(a) Increasing the individual's understanding of acquired immunodeficiency syndrome; and

(b) Assessing the individual's risk of HIV acquisition and transmission; and

(c) Affecting the individual's behavior in ways to reduce the risk of acquiring and transmitting HIV infection.

(3) "Board" means the Washington state board of health.

(4) "Carrier" means a person harboring a specific infectious agent and serving as a potential source of infection to others, but who may or may not have signs and/or symptoms of the disease.

(5) "Case" means a person, alive or dead, having been diagnosed to have a particular disease or condition by a health care provider with diagnosis based on clinical or laboratory criteria or both.

(6) "Category A disease or condition" means a reportable disease or condition of urgent public health importance, a case or suspected case of which must be reported to the local or state health officer immediately at the time of diagnosis or suspected diagnosis.

(7) "Category B disease or condition" means a reportable disease or condition of public health importance, a case of which must be reported to the local health officer no later than the next working day following date of diagnosis.

(8) "Category C disease or condition" means a reportable disease or condition of public health importance, a case of which must be reported to the local health officer within seven days of diagnosis.

(9) "Child day care facility" means an agency regularly providing care for a group of children for less than twenty-four hours a day and subject to licensing under chapter 74.15 RCW.

(10) "Communicable disease" means an illness caused by an infectious agent which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host or vector, food, water, or air.

(11) "Contact" means a person exposed to an infected person, animal, or contaminated environment which might provide an opportunity to acquire the infection.

(12) "Department" means the Washington state department of social and health services.

(13) "Detention" or "detainment" means physical restriction of activities of an individual by confinement, consistent with WAC 246-100-206(8), for the purpose of monitoring and eliminating behaviors presenting imminent danger to public health and may include physical plant, facilities, equipment, and/or personnel to physically restrict activities of the individual to accomplish such purposes.

(14) "Food handler" means any person preparing, processing, handling, or serving food or beverages for people other than members of his or her household.

(15) "Food service establishment" means any establishment where food or beverages are prepared for sale or service on the premises or elsewhere, and any other establishment or operation where food is served or provided for the public with or without charge.

(16) "Health care facility" means:

(a) Any facility or institution licensed under chapter 18.20 RCW, boarding home, chapter 18.46 RCW, maternity homes, chapter 18.51 RCW, nursing homes, chapter 70.41 RCW, hospitals, or chapter 71.12 RCW, private establishments, clinics, or other settings where one or more health care providers practice; and

(b) In reference to a sexually transmitted disease, other settings as defined in chapter 70.24 RCW.

(17) "Health care provider" means any person having direct or supervisory responsibility for the delivery of health care or medical care who is:

(a) Licensed or certified in this state under Title 18 RCW; or

(b) Is military personnel providing health care within the state regardless of licensure.

(18) "HIV testing" means conducting a laboratory test or sequence of tests to detect the human immunodeficiency virus (HIV) or antibodies to HIV performed in accordance with requirements to WAC 246-100-207. To assure that the protection afforded to HIV testing as described in WAC 246-100-207 also applies to the enumeration of CD4+ (T4) lymphocyte counts (CD4+ counts) and CD4+ (T4) percents of total lymphocytes (CD4+ percents) when used to diagnose HIV infection, CD4+ counts and CD4+ percents will be considered HIV testing except when used in the following circumstances:

(a) Monitoring previously diagnosed infection with HIV;

(b) Monitoring organ or bone marrow transplants;

(c) Monitoring chemotherapy;

(d) Medical research; or

(e) Diagnosis or monitoring of congenital immunodeficiency states or autoimmune states not related to HIV.

(19) "Infection control measures" means the management of infected persons, persons suspected to be infected, and others in such a manner as to prevent transmission of the infectious agent.

(20) "Isolation" means the separation or restriction of activities of infected persons, or of persons suspected to be infected, from other persons to prevent transmission of the infectious agent.

(21) "Laboratory director" means the director or manager, by whatever title known, having the administrative responsibility in any medical laboratory.

(22) "Local health department" means the city, town, county, or district agency providing public health services to persons within the area, as provided in chapter 70.05 RCW and chapter 70.08 RCW.

(23) "Local health officer" means the individual having been appointed under chapter 70.05 RCW as the health officer for the local health department, or having been appointed under chapter 70.08 RCW as the director of public health of a combined city-county health department.

(24) "Medical laboratory" means any facility analyzing specimens of original material from the human body for purposes of patient care.

(25) "Nosocomial infection" means an infection acquired in a hospital or other health care facility.

(26) "Outbreak" means the occurrence of cases of a disease or condition in any area over a given period of time in excess of the expected number of cases.

(27) "Post-test counseling" means counseling after the HIV test when results are provided and directed toward:

(a) Increasing the individual's understanding of human immunodeficiency virus (HIV) infection;

(b) Affecting the individual's behavior in ways to reduce the risk of acquiring and transmitting HIV infection;

(c) Encouraging the individual testing positive to notify persons with whom there has been contact capable of spreading HIV;

(d) Assessing emotional impact of HIV test results; and

(e) Appropriate referral for other community support services.

(28) "Pretest counseling" means counseling provided prior to HIV testing and aimed at:

(a) Helping an individual to understand:

(i) Ways to reduce the risk of human immunodeficiency virus (HIV) transmission;

(ii) The nature, purpose, and potential ramifications of HIV testing;

(iii) The significance of the results of HIV testing; and

(iv) The dangers of HIV infection; and

(b) Assessing the individual's ability to cope with the results of HIV testing.

(29) "Principal health care provider" means the attending physician or other health care provider recognized as primarily responsible for diagnosis and treatment of a patient or, in the absence of such, the health care provider initiating diagnostic testing or therapy for a patient.

(30) "Quarantine" means the separation or restriction on activities of a person having been exposed to or infected with an infectious agent, to prevent disease transmission.

(31) "Reportable disease or condition" means a disease or condition of public health importance, a case of which, and for certain diseases, a suspected case of which, must be brought to the attention of the local health officer.

(32) "School" means a facility for programs of education as defined in RCW ((~~28A.31.102~~) 28A.210.070) (preschool and kindergarten through grade twelve).

(33) "Sexually transmitted disease (STD)" means a bacterial, viral, fungal, or parasitic disease or condition which is usually transmitted through sexual contact, including:

- (a) Acute pelvic inflammatory disease;
- (b) Chancroid;
- (c) Chlamydia ((~~trachomitis~~) trachomatis infection);
- (d) Genital and neonatal herpes simplex;
- (e) Genital human papilloma virus infection;
- (f) Gonorrhea;
- (g) Granuloma inguinale;
- (h) Hepatitis B infection;
- (i) Human immunodeficiency virus infection (HIV) and acquired immunodeficiency syndrome (AIDS);
- (j) Lymphogranuloma venereum;
- (k) Nongonococcal urethritis (NGU); and
- (l) Syphilis.

(34) "State health officer" means the person designated by the secretary of the department to serve as statewide health officer, or, in the absence of such designation, the person having primary responsibility for public health matters in the state.

(35) "Suspected case" means a person whose diagnosis is thought likely to be a particular disease or condition with suspected diagnosis based on signs and symptoms, laboratory evidence, or both.

(36) "Unusual communicable disease" means a communicable disease which is not commonly seen in the state of Washington but which is of general public health concern including, but not limited to, Lassa fever, smallpox, typhus, and yellow fever.

(37) "Veterinarian" means an individual licensed under provisions of chapter 18.92 RCW, veterinary medicine, surgery, and dentistry and practicing animal health care.

AMENDATORY SECTION (Amending Order 225B, filed 12/23/91, effective 1/23/92)

WAC 246-100-041 Responsibilities and duties—State health officer. (1) The state health officer shall have authority to:

(a) Require reporting of cases and suspected cases of disease and conditions in addition to those required in WAC 246-100-076 for a period of time less than thirty-six months when:

- (i) The disease or condition is newly recognized or recently acknowledged as a public health concern, and
- (ii) Epidemiologic investigation based on reports of cases may contribute to understanding of the disease or condition, and

(iii) Written notification is provided to all local health officers regarding:

(A) Additional reporting requirements, and
(B) Rationale or justification for specifying the disease or condition as reportable.

(b) Require laboratories to submit specimens indicative of infections in addition to those required in WAC 246-100-231 for a period of time less than thirty-six months, provided:

- (i) The infection is of public health concern, and

(ii) Written notification is provided to all local health officers and all directors of medical laboratories registered as described in WAC 246-100-221 explaining:

- (A) Actions required, and
- (B) Reason for the addition.

(c) Eliminate the requirement for laboratories to report CD4+ counts and CD4+ percents as specified in WAC 246-100-236 if state and federal funding of HIV/AIDS-related health services do not depend on numbers of reported AIDS cases or if less than ten percent of cases reported are discovered through laboratory reporting of CD4+ count and CD4+ percent results.

(2) The state health officer's authorization to require reporting of cases or submission of laboratory specimens, other than those specified in WAC 246-100-076 and 246-100-231, shall expire thirty-six months from the date of written notification of local health officers and laboratory directors unless amended rules are adopted by the state board of health.

(3) The state health officer shall distribute periodic epidemiologic summary reports and an annual review of public health issues to local health officers and local health departments.

AMENDATORY SECTION (Amending Order 225B, filed 12/23/91, effective 1/23/92)

WAC 246-100-076 Reportable diseases and conditions. (1) The following diseases and conditions shall be reported as individual case reports to the local health department in accordance with requirements and procedures described throughout chapter 246-100 WAC:

(a) Category A diseases require an immediate report at the time a case is suspected or diagnosed and include:

- (i) Anthrax,
- (ii) Botulism (including food-borne, infant, and wound),
- (iii) Cholera,
- (iv) Diphtheria, noncutaneous,
- (v) Measles (rubeola),
- (vi) Paralytic shellfish poisoning,
- (vii) Plague,
- (viii) Poliomyelitis, and
- (ix) Rabies.

(b) Category B diseases or conditions require a case report within one day of diagnosis and include:

- (i) Brucellosis,
- (ii) Gastroenteritis of suspected food-borne or water-borne origin,
- (iii) Hemophilus influenzae invasive disease (excluding otitis media) in children age five years and under,
- (iv) Hepatitis A and B, acute,
- (v) Leptospirosis,
- (vi) Listeriosis,
- (vii) Meningococcal disease,
- (viii) Paratyphoid fever (see salmonellosis),
- (ix) Pertussis,
- (x) Rubella, including congenital,
- (xi) Salmonellosis, including paratyphoid fever and typhoid fever,
- (xii) Shigellosis,
- (xiii) Syphilis—primary, secondary, or congenital (for other, see Category C),

(xiv) Typhoid fever, including carrier (see salmonellosis),

(xv) Unusual communicable disease (see definition WAC 246-100-011).

(c) Category C diseases or conditions require a case report within seven days of diagnosis and include:

(i) Acquired immunodeficiency syndrome (AIDS) (and class IV human immunodeficiency virus (HTLV III or LAV diseases classified by centers for disease control, United States public health service, MMWR, 5/23/86))) class IV human immunodeficiency virus (HIV, HTLV III, or LAV) disease (as classified by the Centers for Disease Control, U.S. Public Health Service, Morbidity and Mortality Weekly Report (MMWR), May 23, 1986, Volume 35, Number 20), and class P-2 pediatric HIV illness (as classified by the Centers for Disease Control, U.S. Public Health Service, MMWR, April 24, 1987, Volume 36, Number 15),

- (ii) Amebiasis,
- (iii) Campylobacteriosis,
- (iv) Chancroid,
- (v) Chlamydia trachomatis infection,
- (vi) Ecoli 0157:H7 infection,
- (vii) Encephalitis, viral,
- (viii) Giardiasis,
- (ix) Gonorrhea,
- (x) Granuloma inguinale,
- (xi) Herpes simplex, initial genital infection,
- (xii) Herpes simplex, neonatal,
- (xiii) Hepatitis non-A, non-B, and unspecified,
- (xiv) Kawasaki syndrome,
- (xv) Legionellosis,
- (xvi) Leprosy (Hansen's disease),
- (xvii) Lyme disease,
- (xviii) Lymphogranuloma venereum,
- (xix) Malaria,
- (xx) Mycobacteriosis, including tuberculosis,
- (xxi) Mumps,
- (xxii) Nongonococcal urethritis,
- (xxiii) Pelvic inflammatory disease, acute,
- (xxiv) Pseudomonas folliculitis of suspected waterborne origin,

- (xxv) Psittacosis,
- (xxvi) Q fever,
- (xxvii) Relapsing fever (borreliosis),
- (xxviii) Reye Syndrome,
- (xxix) Rheumatic fever,
- (xxx) Rocky mountain spotted fever,
- (xxxi) Syphilis—other (see also Category B),
- (xxxii) Tetanus,
- (xxxiii) Tick paralysis,
- (xxxiv) Toxic shock syndrome,
- (xxxv) Trichinosis,
- (xxxvi) Tuberculosis,
- (xxxvii) Tularemia,
- (xxxviii) Vibriosis,
- (xxxix) Yersiniosis, and
- (xxxx) Severe adverse reaction to immunization.

(2) Any cluster or pattern of cases, suspected cases, deaths, or increased incidence of any disease or condition beyond that expected in a given period which may indicate an outbreak, epidemic, or related public health hazard shall be reported immediately by telephone to the local health

officer. Such patterns include, but are not limited to, suspected or confirmed outbreaks of food borne or waterborne disease, chickenpox, influenza, viral meningitis, nosocomial infection suspected due to contaminated products or devices, or environmentally related disease.

(3) Local health officers may require reporting of additional diseases and conditions.

AMENDATORY SECTION (Amending Order 225B, filed 12/23/91, effective 1/23/92)

WAC 246-100-236 Duties of laboratories—Reporting of laboratory results indicative of certain reportable diseases. (1) By December 31, 1987, medical laboratories shall:

(a) Report each positive culture or other suggestive test results to the local health officer by phone, written report, or submission of specimen within two working days, unless specified otherwise, for:

- (i) Anthrax (*Bacillus anthracis*),
- (ii) Botulism (*Clostridium botulinum*),
- (iii) Cholera (*Vibrio cholerae*),
- (iv) Diphtheria (*Corynebacterium diphtheriae*) - toxigenic strains,
- (v) Gonorrhea (*Neisseria gonorrhoeae*) (report within seven days),
- (vi) Measles (rubeola) (measles virus),
- (vii) Plague (*Yersinia pestis*),
- (viii) Rabies (rabies virus),
- (ix) Brucellosis (*Brucella* species),
- (x) Leptospirosis (*Leptospira interrogans*),
- (xi) Listeria infection of blood or spinal fluid (*Listeria monocytogenes*),
- (xii) Meningococcal infection of blood or spinal fluid (*N. meningitidis*),
- (xiii) Pertussis (*Bordetella pertussis*),
- (xiv) Salmonellosis (*Salmonella* species),
- (xv) Shigellosis (*Shigella* species), and
- (xvi) Hepatitis A (positive anti-HAV IgM).

(b) Send a copy of the state form accompanying specimen submitted as required in WAC 246-100-231 or identifying information including:

- (i) Type of specimen tested (e.g., serum or sputum),
- (ii) Test result,
- (iii) Name of reporting laboratory,
- (iv) Date of report,
- (v) Name of requesting health care provider or health care facility, and
- (vi) Name of patient.

(2) By December 31, 1987, medical laboratories shall report positive cultures or other suggestive test results for chlamydial infection (*chlamydia trachomatis*) to local health departments monthly including either:

- (a) Identifying information specified in subsection (1)(b)(i-vi) of this section, or
- (b) Aggregate numbers of positive tests including age, sex, and site of infection when known.

(3) Medical laboratories shall label or stamp reports appropriately with information indicating "reportable disease" and the telephone number of the local health department, if such labels or stamps are provided by the local health department.

(4) State and local health officers and health departments receiving reports from medical laboratories shall:

(a) Allow time for the laboratory to notify the principal health care provider prior to contact if:

- (i) Delay is unlikely to jeopardize public health, and
- (ii) The laboratory requests a delay.

(b) Try to contact the principal health care provider and discuss circumstances prior to contact of a patient when possible.

(5) By April 15, 1993, medical laboratories performing CD4+ (T4) tests shall submit to the state HIV/AIDS office quarterly reports on the enumeration of CD4+ (T4) lymphocyte counts (CD4+ counts) and CD4+ (T4) percents of total lymphocytes (CD4+ percents) for specimens submitted after January 1, 1993, of patients aged thirteen or older with CD4+ counts less than two hundred or CD4+ percents less than fourteen. Laboratories may, but are not required to, exclude information concerning specimens which are unrelated to HIV infection or performed in conjunction with medical research, but otherwise shall report the following information:

- (a) Patient's name, patient-specific identifier, or anonymous code submitted to the laboratory; and
- (b) Name of the patient's health care provider; and
- (c) Address of patient's health care provider; and
- (d) CD4+ count (and CD4+ percent if available); and
- (e) Date of CD4+ count or CD4+ percent.

WSR 93-03-015

**WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF WILDLIFE**

[Filed January 11, 1993, 4:44 p.m.]

The proposed rule adopting WAC 232-28-61914, 1992-94 Washington game fish seasons and catch limits—Caliche Lake (Grant County), filed on June 30, 1992, WSR 92-14-103, is hereby withdrawn.

Daniel Wyckoff
Administrative Regulations Officer

WSR 93-03-019

**WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF LICENSING**

(By the Code Reviser's Office)

[Filed January 12, 1993, 8:14 a.m.]

WAC 308-125-100, proposed by the Department of Licensing in WSR 92-14-084, appearing in issue 92-14 of the State Register, which was distributed on July 15, 1992, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 93-03-024

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed January 12, 1993, 2:26 p.m.]

Original Notice.

Title of Rule: Amending WAC 458-18-220 Refunds—Rate of interest.

Purpose: To comply with the statute and provide current interest rates to be applied to refunds of property taxes.

Statutory Authority for Adoption: RCW 84.08.010 and 84.69.100.

Statute Being Implemented: RCW 84.69.100.

Summary: The rate of interest applicable to property tax refunds is specifically stated.

Reasons Supporting Proposal: Annually required by statute.

Name of Agency Personnel Responsible for Drafting: Kim Qually, 711 Capitol Way, #205, Olympia, (206) 664-0086; Implementation: Les Jaster, 711 Capitol Way, #205, Olympia, (206) 586-7150; and Enforcement: William Rice, 6004 Capitol Boulevard, Tumwater, (206) 753-5503.

Name of Proponent: Department of Revenue, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule is to set rates for interest on refunds of taxes. The rule imposes no burden on taxpayers.

Proposal does not change existing rules.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

The Department of Revenue has reviewed administrative provisions contained in this rule in order to lessen the economic impact on small businesses. A small business economic impact statement is not required for the following reason(s): The proposed rule does not impose a performance burden on a taxpayer resulting in an economic impact.

Hearing Location: Evergreen Plaza Building, 2nd Floor Conference Room, 711 Capitol Way South, Olympia, WA, on February 24, 1993, at 9:30 a.m.

Submit Written Comments to: Kim Qually, Counsel, Department of Revenue, Legislation and Policy, P.O. Box 47458, FAX (206) 586-7603, Olympia, WA 98504-7458, by February 24, 1993.

Date of Intended Adoption: March 3, 1993.

January 12, 1993

William N. Rice

Assistant Director

AMENDATORY SECTION (Amending 92-17-027, filed 8/11/92.)

WAC 458-18-220 Refunds—Rate of interest. The following rates of interest shall apply on refunds of taxes made pursuant to RCW 84.69.010 through 84.69.090 in accordance with RCW 84.69.100. The following rates shall also apply to judgments entered in favor of the plaintiff pursuant to RCW 84.68.030. The interest rate is derived from the equivalent coupon issue yield of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted after June 30th of the

calendar year preceding the date the taxes were paid or the claim for refund is filed, whichever is later. The rate thus determined shall be applied to the amount of the judgment or the amount of the refund, until paid:

Year tax paid (chapter 84.68 RCW); Year tax paid or claim filed (whichever is later) (chapter 84.69 RCW)	Auction Year	Rate
1985	1984	11.27%
1986	1985	7.36%
1987	1986	6.11%
1988	1987	5.95%
1989	1988	7.04%
1990	1989	8.05%
1991	1990	8.01%
1992	1991	5.98%
1993	1992	3.42%

**WSR 93-03-026
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)**

[Filed January 12, 1993, 2:44 p.m.]

Original Notice.

Title of Rule: WAC 388-83-026 Availability of resources—General, 388-83-041 Income—Eligibility, and 388-92-045 Exempt resources.

Purpose: Clarify language. Include burial space purchase agreements and accrued interest as exempt resources. Clarify treatment of a sales contract. Deletes language and makes technical changes for easier reading.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

Summary: Removes obsolete or redundant language. Defines treatment of sales contracts as resources and under what conditions the income is counted. Burial space purchase agreements exempt resource.

Reasons Supporting Proposal: Clarification of language. Clarify treatment of sales contracts. Add burial space purchase agreements as exempt resources.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Joanie Scotson, Medical Assistance Administration, 753-7462.

Name of Proponent: Department of Social and Health Services, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Same as above.

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

Hearing Location: OB-2 Auditorium, 14th and Franklin, Olympia, Washington, on February 23, 1993, at 10:00 a.m.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Mailstop 5805, Department of Social

and Health Services, Olympia, 98504, FAX 664-0118 or SCAN 366-0118, by February 23, 1993.

Date of Intended Adoption: February 24, 1993.

January 12, 1993

Rosemary Carr

Acting Director

Administrative Services

AMENDATORY SECTION (Amending Order 3093, filed 11/20/90, effective 12/21/90)

WAC 388-83-026 Availability of resources—General. (1) ~~((To be eligible for medical care, a person's resources shall not exceed the specified limits for the appropriate eligibility standards for non cash or cash assistance categorically needy, medically needy, qualified Medicare beneficiaries, or qualified working disabled individual groups.~~

~~(2) In establishing eligibility for medical care,))~~ The department shall consider ~~((only those))~~ resources ~~((actually))~~ available ~~((or in hand that a person))~~ when the client or spouse:

(a) Owns the resource; and

(b) Has the authority ~~((or power))~~ to convert the resource to cash ~~((or cash))~~; and

(c) Is not legally restricted from using the resource for the person's support and maintenance.

~~((3) In establishing eligibility for medical assistance for))~~ (2) The department shall exempt noncash ((assistance)) resources when the client:

(a) Applies for categorically ((and)) needy or medically needy ((persons, the department shall not consider)) medical assistance; and

(b) Can not convert the noncash resource((s, that cannot be expected to be converted into)) to cash within twenty work days((, available to the extent that there is an ongoing bona fide effort)); and

(c) Makes an ongoing attempt to convert the noncash resources ((into)) to cash.

(3) The department shall consider the availability of a sales contract under WAC 388-92-045(2).

AMENDATORY SECTION (Amending Order 3366, filed 4/7/92, effective 5/8/92)

WAC 388-83-041 Income—Eligibility. (1) For cash assistance ~~((recipients))~~ clients of AFDC, FIP, ~~GA-U~~, or SSI, the department shall find a person eligible for medical care programs without a separate determination of eligibility.

(2) For a noncash medical assistance ~~((recipients or applicants))~~ client, the department shall determine countable income according to AFDC, FIP, or SSI methodology, except the department shall:

(a) Budget income prospectively as defined under WAC 388-28-483;

(b) Not use mandatory monthly income reporting;

(c) Consider financial relative responsibility as described under WAC 388-83-130 and 388-92-025;

(d) Exclude lump sum payments as described under WAC 388-92-045;

(e) Consider the AFDC earned income exemption as described under WAC 388-83-130; and

(f) ~~((Count))~~ Consider the principle and interest payment from a sales or real estate contract as described under WAC 388-92-045 (2)(a) as unearned income;

(g) Consider the ~~((payment and))~~ interest payment from a sales or real estate contract~~((s))~~ as described under WAC 388-92-045 (2)(b) as unearned income;

~~((g))~~ (h) Require clients to take all necessary steps to obtain any annuities, pensions, retirement, and disability benefits to which they are entitled, unless they can show good cause for not doing so. The client's annuities, pensions, retirement, and disability benefits may include, but are not limited to, veteran's compensation and pensions, OASDI benefits, railroad retirement benefits, and unemployment compensation;

~~((h))~~ (i) Allow child care expenses ~~((paid by))~~ the client pays as an income deduction; and

~~((i))~~ ~~Exclude~~ (j) Exempt earned income tax credit refunds and payments, the person receives on or after January 1, 1991, during the month of receipt and the following month.

AMENDATORY SECTION (Amending WSR 92-08-037, filed 3/24/92, effective 4/24/92)

WAC 388-92-045 ~~((Excluded))~~ Exempt resources.

(1) The department shall ~~((exclude))~~ exempt the following resources in determining eligibility for medical care programs:

(a) Home.

(i) A home means any shelter:

(A) In which the client has ownership interest; and

(B) The client uses as the principal place of residence.

The department shall consider only one home as the client's principal place of residence.

(ii) Client's absence from the home shall not affect the home exclusion. The client's home shall remain the principal place of residence as long as:

(A) The client intends to return home. The department shall accept the client's statement of intent without challenge; or

(B) A client's spouse or dependent relative uses the home during the client's absence. The department shall:

(I) Consider a person a dependent relative when such person is either financially or medically dependent on the client; and

(II) Accept the client's or dependent relative's written statement of dependency or relationship unless the department has reason to question ~~((it))~~ such statement.

(iii) The department shall exclude the client's proceeds from the sale of the excluded home providing the client uses the proceeds to purchase another home within three months of the receipt of the proceeds. Proceeds ~~((shall))~~ include real estate contracts, or any similar home financing arrangements, and the income produced.

(iv) The department shall evaluate transfers of the home by an institutional client or client's spouse under WAC 388-95-395.

(b) Household goods and personal effects.

(c) Automobile or automobiles.

(i) The department shall ~~((exclude))~~ exempt one automobile regardless of its value if, for the client or a member of the client's household, the automobile is:

(A) Necessary for employment; or

(B) Necessary for the ~~((person's medical))~~ treatment of a specific or regular medical problem; or

(C) Modified for operation by, or transportation of, a handicapped ~~((client))~~ person; or

(D) Necessary due to climate, terrain, distance, or similar factors to provide ~~((the client))~~ transportation to perform essential daily activities.

(ii) The department shall:

(A) ~~((Exclude))~~ Exempt one of the client's automobiles to the extent its current market value does not exceed four thousand five hundred dollars;

(B) Count any excess against the resource limit; and

(C) ~~((Exclude))~~ Exempt an automobile under this subdivision only if an automobile is not ~~((excluded))~~ exempt under subsection (1)(c)(i) of this section.

(iii) The department shall treat the client's ownership of other automobiles as nonexempt resources and count the client's automobile equity value toward the resource limit.

(d) Property essential to self-support. The department shall ~~((exclude))~~ exempt:

(i) Property regardless of value, when the client uses the property:

(A) In a trade or business;

(B) As an employee for work; or

(C) As authorized by the government for income producing activity.

(ii) Nonbusiness property up to six thousand dollars equity, when the client uses the property for producing goods or services essential to daily activities, solely for the client's household.

(iii) Nonbusiness property up to six thousand dollars equity, when the client uses the property to produce an annual income return of six percent or more of the ~~((excluded))~~ exempt equity or is expected to produce at least a six percent return within a twenty-month period as long as the client:

(A) Currently uses the property in items (1)(d)(i), (ii), and (iii) of this section in the described activity; or

(B) Is expected to resume the use of the property in items (1)(d)(i), (ii), and (iii) of this section in the described activity within twelve months.

(e) Resources of a blind or disabled person. The department shall ~~((exclude))~~ exempt resources necessary to fulfill an approved plan for a client to achieve self-support as long as such plan remains in effect.

(f) Alaska Native Claims Settlement Act. The department shall exempt:

(i) ~~((Exclusions before February 3, 1988, the department shall exclude))~~ Shares of stock held in a regional or village corporation ~~((during the period of twenty years ending January 1, 1992, in which such stock is inalienable under the Alaska Native Claims Settlement Act.));~~

(ii) ~~((Exclusions beginning February 3, 1988:~~

~~((A)))~~ Cash received from a native corporation ~~(()),~~ including cash dividends on stock received from a native corporation ~~((to the extent it does not exceed two thousand dollars per person per year));~~

~~((B))~~ (iii) Stock issued or distributed by a native corporation as a dividend or distribution on the stock;

~~((C))~~ (iv) A partnership interest;

~~((D))~~ (v) Land or an interest in land ~~((C))~~, including land or an interest in land received from a native corporation as a dividend or distribution on stock~~((C))~~;

~~((E))~~ (vi) An interest in a settlement trust.

(g) Life insurance.

(i) The department shall ~~((exclude))~~ exempt the total cash surrender value if the total face value of all the policies held by each person is ~~((over))~~ one thousand five hundred dollars or less.

(ii) The cash surrender value applies to the resource limit if the face value of all the policies held by each person is over one thousand five hundred dollars.

(iii) When determining total face value in subsection (1)(g)(i) of this section, the department shall ~~((exclude))~~ exempt term or burial insurance with no cash surrender value.

(h) Restricted allotted land. The department shall ~~((exclude))~~ exempt restricted allotted land owned by an enrolled tribal member and spouse, if married, if such land cannot be sold, transferred, or otherwise disposed of without permission of other persons, the tribe, or an agency of the federal government.

(i) Insurance settlements. The department shall ~~((exclude))~~ exempt cash the client receives from an insurance company for purposes of repairing or replacing ~~((an excluded))~~ a resource providing the client uses the total amount of the cash to repair or replace ~~((such excluded))~~ the exempt resource within nine months. The department may extend the nine-month period based on circumstances beyond the control of the client to a maximum of nine additional months. The department shall consider any cash not used within the time period as an available resource.

(j) Burial spaces. The department shall ~~((exclude))~~ exempt the value of burial spaces for the client, the client's spouse, or any member of the client's immediate family.

(i) Burial spaces ~~((shall))~~ include conventional gravesites, crypts, mausoleums, urns, and other repositories customarily and traditionally used for the remains of deceased persons.

(ii) Burial spaces include a burial space purchase agreement as well as any interest accrued on and left to accumulate as part of the value of the burial space purchase agreement.

(iii) For purposes of subsection (1)(j) and (k) of this section, immediate family means a client's minor and adult children, including adopted children and stepchildren; a client's brothers, sisters, parents, adoptive parents, and the spouses of those persons. The department shall consider neither dependency nor living-in-the-same-household as factors in determining whether a person is an immediate family member.

(k) Burial funds.

(i) Funds specifically set aside for the burial arrangements of a client or the client's spouse shall not ~~((to))~~ exceed one thousand five hundred dollars for each spouse. The department shall count burial funds in excess of this limit toward the resource limit in WAC 388-92-050.

(ii) The department shall require funds set aside for burial expenses be kept separate from all other resources not intended for the burial of the client or the client's spouse and separately identified and designated as set aside for burial. If the ~~((excluded))~~ exempt burial funds are mixed with resources not intended for burial, ~~((this exclusion))~~ the department shall not apply this exemption to any portion of the funds. The department may ~~((exclude))~~ exempt designated burial funds retroactively back to the first day of the month in which the person intended the funds to be set aside for burial ~~((or to November 1, 1982, whichever is later))~~.

(iii) Funds set aside for burial include revocable burial contracts, burial trusts, other burial arrangements, cash, accounts, or other financial instruments with a definite cash value the person clearly designates as set aside for the person's ~~((C))~~ or spouse's ~~((, if any))~~ burial expenses.

(iv) The department shall reduce the one~~((-))~~thousand~~((-))~~ five~~((-))~~hundred~~((-))~~dollar~~((-))~~ ~~((s exclusion))~~ exemption by:

(A) The face value of the client's insurance policies owned by the person or spouse on the life of the person if the policies have been ~~((excluded))~~ exempted as provided in subsection (1)(g) of this section; and

(B) Amounts in an irrevocable trust.

(v) The department shall ~~((exclude))~~ exempt the interest earned on ~~((excluded))~~ exempt burial funds and appreciation in the value of ~~((excluded))~~ exempt burial arrangements if the ~~((excluded))~~ exempt interest and appreciation are left to accumulate and become part of the separately identified burial fund.

(vi) When used for other purposes, the department shall consider any ~~((excluded))~~ exempt burial funds, interest, or appreciated values set aside for burial expenses as ~~((an))~~ available ~~((resource))~~ income if, at the first of the month of use, when added to other nonexempt resources, the total exceeds the resource limit.

(l) Other resources ~~((excluded))~~ considered exempt by federal statute.

(m) Retroactive payments. The department shall ~~((exclude))~~ exempt retroactive SSI payments including benefits a client receives under the interim assistance reimbursement agreement with the Social Security administration, or OASDI payments~~((:~~

~~((:))~~ for six months following the month of receipt this ~~((exclusion))~~ exemption applies to:

~~((A))~~ (i) Payments the client ~~((received from October 1, 1984 through September 30, 1987 and after September 30, 1989;~~

~~((B))~~ Payments received by the client, spouse, ~~((and/))~~ or any other person ~~((whose income))~~ receives that the department considers available to meet the ~~((applicant's or recipient's))~~ client's needs;

~~((C))~~ (ii) SSI payments made to the client for benefits due for a month before the month of payment;

~~((D))~~ (iii) OASDI payments made to the client for benefits due for a month that is two or more months before the month of payment; and

~~((E))~~ (iv) Payments that remain in the form of cash, checking accounts or saving accounts. ~~((This exclusion))~~ The department shall not apply this exemption once the retroactive payment has been converted to any other form.

~~((ii))~~ For nine months following the month of receipt if:

~~(A) Subsection (1)(m)(i)(B), (C), (D), and (E) of this section is met; and~~

~~(B) The payment is received during the period beginning October 1, 1987, and ending September 30, 1989.)~~

(n) Payments for medical or social services. The department shall ~~((exclude))~~ exempt, from resources for ~~((the))~~ one-calendar month following the month of receipt, certain cash payments an SSI person receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services.

(o) Restitution to civilians relocated and interned during war time. The department shall ~~((exclude))~~ exempt payments to persons of Japanese or Aleut ancestry under P.L. 100-383.

(p) The annuity payment of trust funds to Puyallup Tribal Indians received under P.L. 101-41.

(q) Funds received from the Agent Orange Settlement Fund or any other funds established to settle Agent Orange liability claims under P.L. 101-201.

(r) Payments to certain survivors of the Holocaust under the Federal Republic of Germany's law for compensation of National Socialist Persecution or German Restitution Act. Interest earned on conserved payment is not ~~((excluded))~~ exempt.

(s) Unspent assistance payments the client receives because of a presidentially declared major disaster, under P.L. 93-288, ~~((is))~~ are ~~((excluded))~~ exempt for nine months from date of receipt.

(i) The ~~((exclusion))~~ exemption may extend an additional nine months, if circumstances beyond the client's control:

(A) Prevents the client from repairing or replacing the damaged or destroyed property; or

(B) Keeps the client from contracting for such repair or replacement.

(ii) Interest earned on the ~~((excluded))~~ exempt resource is ~~((excluded))~~ exempt for the period the exclusion applies.

(t) Earned income tax credit refunds and payments, received on or after January 1, 1991, during the month of receipt and the following month.

(u) Payments from a state administered victim's compensation program for a period of nine calendar months after the month of receipt.

(v) Payments, or interest accrued on payments received under the Radiation Exposure Compensation Act received by the injured person, the surviving spouse, children, grandchildren, or grandparents.

(w) Effective September 1, 1991, payments under section 500 through 506 of the Austrian General Social Insurance Act:

(i) The department shall not consider such payments as income or resources for determining eligibility or post eligibility;

(ii) The earned interest from such payments is countable income for the ~~((recipient))~~ client.

(2) The department shall ~~((not))~~ consider a sales contract ~~((s-as countable resources to the extent that the sales contracts are not transferred. WAC 388-83-027 shall apply to sales contract income and interest payments))~~:

(a) An exempt resource when the current market value of the contract:

(i) Is zero; or

(ii) Exceeds the resource limit; and

(iii) The department shall consider payment of principal and interest on a sales contract meeting the criteria of subsection (2)(a)(i) or (ii) under WAC 388-83-041 (2)(f).

(b) An available resource when the value of the sales contract, combined with other countable resources, is within the resource limit. For a sales contract the department determines an available resource, the department shall consider payment that represents:

(i) Principal, an available resource.

(ii) Interest, under WAC 388-83-041 (2)(g).

(c) An available resource when transferred by the client to a person other than the client's spouse. See WAC 388-95-395.

~~((Applicants or recipients))~~ The client may transfer or exchange exempt resources except the home or a sales contract. The department shall consider cash received from the sale of an exempt resource as a nonexempt resource to the extent that the cash is not used to:

(a) Replace ~~((another))~~ an exempt resource; or

(b) Be ~~((reinvested))~~ invested in ~~((another))~~ an exempt resource within the same month, ~~((except as))~~ unless specified differently under this section.

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

WSR 93-03-027
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)

[Filed January 12, 1993, 2:45 p.m.]

Original Notice.

Title of Rule: WAC 388-95-340 Computation of available income and resources and 388-95-360 Allocation of income and resources—Institutionalized client.

Purpose: Adds that child support is the income of the child. Changes the post-eligibility treatment of veteran's aid and attendance allowance. Separates exempt and disregarded income into separate subsection to clarify the treatment of income when determining eligibility and post-eligibility. Removes the requirement that spouse's income and resources are considered available to each other for six months. Removes redundant language. Adds agent orange, German restitution, radiation exposure, and Austrian social insurance funds as income exemptions. Updates community spouse allowance to \$1,769 effective January 1, 1993.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

Summary: Removes redundant language—clarifies exempt/disregarded income update community spouse allowance. Changes treatment of child support and veteran's aid and attendance allowance. Removes requirement that spouse's income and resources remain available for six months after separation.

Reasons Supporting Proposal: Update for changes in allocation and computation of income and/or resources for institutionalized client.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Joanie Scotson, Medical Assistance Administration, 753-7462.

Name of Proponent: Department of Social and Health Services, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Same as above.

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

Hearing Location: OB-2 Auditorium, 14th and Franklin, Olympia, Washington, on February 23, 1993, at 10:00 a.m.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Mailstop 5805, Department of Social and Health Services, Olympia, 98504, FAX 664-0118 or SCAN 366-0118, by February 23, 1993.

Date of Intended Adoption: February 24, 1993.

January 12, 1993

Rosemary Carr

Acting Director

Administrative Services

AMENDATORY SECTION (Amending Order 2411, filed 8/21/86)

WAC 388-95-340 Computation of available income and resources. (1) The department shall limit financial responsibility of relatives to:

(a) A spouse for a spouse; and

(b) A parent for a child.

(2) Financial responsibility of spouses(-):

~~(a) ((If both spouses apply or are eligible as aged, blind, or disabled and cease to live together their income and resources are considered available to each other for the time periods specified below. After the appropriate time period only the income and resources that are actually contributed by one spouse to the other are considered available.~~

~~(i) If spouses cease to live together because of the institutionalization of one spouse—~~

~~(A) Consider their income as available to each other through the month in which they cease to live together. Mutual consideration of income ceases with the month after the month in which separation occurs.~~

~~(B) Consider their resources as available to each other for the month during which they cease to live together and the six months following that month.~~

~~(ii) If spouses cease to live together for any reason other than institutionalization consider their income and resources as available to each other for the month during which they cease to live together and the six months following that month. If the mutual consideration of income and resources causes the individuals to lose eligibility as a couple, the agency will determine if an individual is eligible in accordance with subsection (b) of this section.~~

~~(b) If only one spouse in a couple applies or is eligible, or both spouses apply and are not eligible as a couple, and they cease to live together consider only the income and resources of the ineligible spouse that are actually contributed to the eligible spouse beginning with the month after the month in which they cease to live together.~~

~~(c) When both spouses are eligible and institutionalized income and resources are considered separately even if they share the same room.~~

~~(d) When only one spouse is eligible and both are institutionalized consider only the income and resources of the ineligible spouse that are actually contributed to the eligible spouse, even if they share the same room.~~

~~(e) If the community income received in the name of the nonapplicant spouse exceeds the community income received in the name of the applicant spouse, the applicant's interest in that excess is considered unavailable to the applicant.~~

~~(2) Relative responsibility shall be limited to spouse for spouse and parent for child.~~

~~(3) For children age eighteen to twenty one the parents' income is not deemed to the child. Count only the income that is actually contributed to the child.~~

~~(4) Exclusions from income.—The following shall be excluded)) The department shall consider, in the month the spouses stopped living together, the:~~

(i) Resources available to each spouse;

(ii) Income available to the applying spouse;

(A) In the name of the applying spouse; and

(B) Community income received in the name of the nonapplying spouse that does not exceed the community income received in the name of the applying spouse.

(b) The department shall consider, in the month after the month the spouses stopped living together, the spouses' income and resources only when a spouse actually contributes such income and resources; and

(c) The department shall consider the income and resources of spouses living in the same household as available to each other.

(3) The department shall consider institutionalized spouses as not living together even if such spouses share a room.

(4) Financial responsibility of parent to child. The department shall consider available only the parent's income actually contributed to an institutionalized person twenty years of age or younger.

(5) The department shall consider a client's income exemptions as unavailable income when determining initial eligibility or post-eligibility. The department shall exempt sequentially from income:

(a) Any ((amount received from any)) public ((agency as a return of)) agency's refund of taxes paid on real property or on food ((purchased by such individual or spouse));

(b) Supplemental security income (SSI) and state public assistance based on financial need;

(c) Any portion of ((any)) a grant, scholarship, or fellowship ((received for use in paying the cost of)) used to pay tuition ((and)), fees, or other necessary educational expenses at any educational institution;

~~(d) ((Income that is not reasonably anticipated, or received infrequently or irregularly, if such income does not exceed twenty dollars per month if unearned, or ten dollars per month if earned;~~

~~(e) One third of any payment for) Child support received by a parent, from an absent parent, for a minor child who is not institutionalized;~~

~~((f) The first twenty dollars per month of earned or unearned income. There is no exclusion on income which is paid on the basis of need and is totally or partially funded by the federal government or by a private agency;~~

~~(g)) (e) Tax exempt payments received by Alaska natives under the Alaska Native Claims Settlement Act;~~

~~((h)) (f) Tax rebates or special payments excluded by other statutes;~~

~~((i)) (g) Compensation provided to volunteers in ACTION programs established by ((Public Law)) P.L. 93-113, the Domestic Volunteer Service Act of 1973;~~

~~((j)) (h) Veteran's benefits((, only the following portions are excluded.~~

~~(i) The veteran's aid and attendance/house bound allowance.~~

~~(ii) The portion attributable to) designated for the veteran's dependent((~~

~~(k) A fee charged by a guardian to reimburse himself or herself for services provided. (l));~~

~~(i) Income received by an ineligible or nonapplying spouse from a governmental agency for services provided to an eligible ((recipient)) client (e.g. chore services)((, (5) Earned income exclusions));~~

~~(j) Funds received from the Agent Orange Settlement Fund or any other funds established to settle Agent Orange liability claims under P.L. 101-201;~~

~~(k) Payments to certain survivors of the Holocaust under the Federal Republic of Germany's law for compensation of National Socialist Persecution or German Restitution Act. Interest earned on conserved payment is not exempt;~~

~~(l) Payments under the Radiation Exposure Compensation Act received by the injured person, the surviving spouse, children, grandchildren, or grandparents;~~

~~(m) Payments under section 500 through 506 of the Austrian General Social Insurance Act. The department shall considered the earned interest from such payments as countable income;~~

~~(n) Certain cash payments a client receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;~~

~~(o) Restitution payment to a civilian of Japanese or Aleut ancestry under P.L. 100-383;~~

~~(p) The amount of expenses directly related to a client's impairment that allows the permanently and totally disabled client to continue to work;~~

~~(g) The amount of blindness related work expenses of a blind client;~~

~~(r) Interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement which are left to accumulate and become part of the separately identified burial funds set aside on or after November 1, 1982;~~

~~(s) Earned income tax credit (EITC);~~

~~(t) Victim's compensation.~~

(6) The department shall consider disregarded income as unavailable income when determining initial eligibility but shall consider the income available during post-eligibility. See WAC 388-95-360 for post-eligibility treatment of income. The department shall disregard sequentially from a client's income:

(a) Income that is not reasonably anticipated, or is received infrequently or irregularly, when such income does not exceed:

(i) Twenty dollars per month if unearned; or

(ii) Ten dollars per month if earned.

(b) The first twenty dollars per month of earned or unearned income. The department may not exclude income paid to a client on the basis of need and is totally or partially funded by the federal government or by a private agency;

(c) The veteran's aid and attendance/house bound allowance;

(d) For an SSI-related ((individuals shall be)) person, the first sixty-five dollars per month of earned income not excluded according to subsection ((4)) (5) of this section, plus one-half of the remainder((, (6));

(e) Money voluntarily withheld from SSA Title II benefits by the Social Security Administration (for the recovery of SSI overpayment) ((is considered as available income for the institutionalized individual's contribution toward the cost of care)); and

(f) A fee charged by a guardian as reimbursement for provided services.

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

AMENDATORY SECTION (Amending Order 3356A, filed 3/31/92 and 5/5/92, effective 5/5/92 and 6/5/92)

WAC 388-95-360 Allocation of income and resources—Institutionalized ((recipient)) client. (1) In reducing payment to the institution, the department shall consider the institutionalized ((recipient's)) client's:

(a) Income under WAC 388-95-335 (3)(a), (b), (c), and (d);

(b) Resources under WAC 388-95-380 and 388-95-395.

(2) In reducing payment to the institution, the department shall consider the eligible institutional client's excess resources available to meet cost of care after the following allocations:

(a) Health insurance and Medicare premiums, deductions, and co-insurance not paid by a third party; and

(b) Noncovered medical bills which are the liability of the client and not paid by a third party.

(3) The department shall not use allocations used to reduce excess resources under WAC 388-95-360(2) to reduce income under WAC 388-95-360(4).

(4) The department shall deduct the following amounts, in the following order, from the institutionalized ((recipient's)) client's total income, including amounts excluded in determining eligibility:

(a) Specified personal needs allowance;

(b) An amount an SSI, AFDC, or FIP-related client in a medical facility receives as a cash assistance payment

sufficient to bring the client's income up to the personal needs allowance;

(c) The current personal needs allowance plus wages the SSI-related client receives for work approved by the department as part of a training or rehabilitative program designed to prepare the person for a less-restrictive placement when the total wages received plus the personal needs allowance do not exceed the one-person medically needy income level:

(i) A deduction is not allowed for employment expenses; and

(ii) The excess wages shall apply to the cost of care when the total wages received plus the initial personal needs allowance exceeds the one-person medically needy income level.

(d) A monthly needs allowance for the community spouse not to exceed one thousand seven hundred ~~((eighteen))~~ sixty-nine dollars, unless specified in subsection ~~((4))~~ (6) of this section. The monthly needs allowance shall be:

(i) An amount added to the community spouse's income to provide a total community spouse's income of one thousand two hundred fifty-eight dollars; and

(ii) Excess shelter expenses as specified in subsection ~~((3))~~ (5) of this section.

(e) An amount for the maintenance needs of each dependent family member residing with the community spouse. Child support received from an absent parent is the child's income:

(i) An amount(:

~~(A) Effective April 1, 1992, equal to one third of the amount one thousand nineteen dollars exceeds the family member's income; and~~

~~(B) Effective July 1, 1992,))~~ equal to one-third of the amount one thousand one hundred forty-nine dollars exceeds the family member's income.

(ii) A family member is a:

(A) Dependent or minor child;

(B) Dependent parent; or

(C) Dependent sibling of the institutionalized or community spouse.

(f) If an institutional ~~((recipient))~~ client does not have a community spouse, an amount for the maintenance needs of family members residing in the ~~((recipient's))~~ client's home is equal to the medically needy income level for the number of legal dependents in the home less the income of the dependents;

(g) Amounts for incurred medical expenses not subject to third-party payment including, but not limited to:

(i) Health insurance premiums, co-insurance, or deductible charges; and

(ii) Necessary medical care recognized under state law, but not covered under Medicaid.

(h) Maintenance of the home of a single person or couple:

(i) Up to one hundred eighty dollars per month; and

(ii) Limited to a six-month period; and

(iii) A physician has certified that either of the persons is likely to return to the home within that period; and

(iv) Social service staff shall document initial need for the income exemption and review the person's circumstances after ninety days.

~~((3))~~ (5) For the purposes of this section, excess shelter expenses:

(a) Means the actual required maintenance expenses for the community spouse's principal residence for:

(i) Rent;

(ii) Mortgage;

(iii) Taxes and insurance;

(iv) Any maintenance care for a condominium or cooperative; and

(v) A food stamp standard allowance for utilities, provided the utilities are not included in the maintenance charges for a condominium or cooperative.

(b) Shall not exceed three hundred five dollars and seventy cents, effective April 1, 1992; and

(c) Shall not exceed three hundred forty-four dollars and seventy cents, effective July 1, 1992.

~~((4))~~ (6) The amount allocated from the institutional spouse to the community spouse may be greater than the amount in subsection ~~((2))~~ (4)(d)(i) of this section only when:

(a) A court enters an order against the institutional client for the community spouse support; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

~~((5) The department shall not deduct specified personal needs allowance, community spouse, needy dependent maintenance needs, or home maintenance needs from a veteran's aid and attendance allowance.~~

~~(6))~~ (7) The ~~((recipient))~~ client shall use the income remaining after allocations specified in subsection ~~((2))~~ (4) of this section, toward payment of the recipient's cost of care at the department rate.

~~((7))~~ (8)(a) Effective July 1, 1988, SSI-related clients shall continue to receive total payment under 1611 (b)(1) of the Social Security Act (SSA) for the first three full calendar months of institutionalization in a public or Medicaid-approved medical institution or facility if the:

(i) Stay in the institution or facility is not expected to exceed three months; and

(ii) SSI-related clients plan to return to their former living arrangements.

(b) The department shall not consider the SSI payment when computing the participation amount.

~~((8))~~ (9) The department shall not consider income from reparation payments made by the Federal Republic of Germany when computing the participation amount.

WSR 93-03-030

**REVIEW OF PREVIOUSLY ADOPTED RULES
DEPARTMENT OF HEALTH**

(Board of Optometry)

[Filed January 12, 1993, 2:56 p.m.]

Finding of Joint Administrative Rules Review Committee related to: Existing rule not within intent of legislature.

Hearing on committee's finding will be held at the Tye Hotel, 500 Tye Drive, Tumwater Room, Olympia, WA 98512, on February 26, 1992, at 1:30 p.m.

Statement of Committee's Findings and Reasons: The Joint Administrative Rules Review Committee by a majority vote determined that recently adopted rules concerning the definition of a contact lens prescription fail to meet the legislative intent of chapter 18.54 RCW. The findings of the committee were based on the written and oral testimony presented at the hearing. That testimony indicated that the rules as adopted improperly regulate and restrict the practice of opticianry and unnecessarily restrict consumer access to contact lens services. Further, the testimony did not include adequate evidence that the rules are necessary for the safety, protection and welfare of the public.

Other Agency Comments or Information: Although there are no specific modifications or amendments to the rule at this time, the rules as they currently exist are attached to this notice for information purposes to those individuals who wish to provide written or oral testimony.

January 4, 1993
Garard Gustafson, O.D.
Chair

WAC 246-851-270 Retention of minimum contact lens records. At a minimum, the following specifications for a contact lens prescription must be retained in the records of the licensed optometrist who writes the prescription:

- (1) Dioptic power;
- (2) Base curve (inside radius of curvature);
- (3) Thickness when applicable;
- (4) Secondary/peripheral curve, when applicable;
- (5) Diameter;
- (6) Color, if used;
- (7) Type of material used;
- (8) Special features equivalent to variable curves, fenestration, or coating.

WAC 246-851-360 Required identification on prescriptions. Written optical prescriptions related to the practice of optometry must include as a minimum:

- (1) Typed or commercially printed name, address of practice and telephone number of the prescribing doctor of optometry.
- (2) Date of prescription.
- (3) Patient's name.
- (4) Signature of prescribing doctor of optometry and license number.
- (5) Expiration date of prescription not more than two years.

WAC 246-851-520 Contact lens prescription defined.

An optometric contact lens prescription is a written, signed order from an optometrist to another optometrist, physician, or dispensing optician describing optical and physical characteristics of the contact lenses to be dispensed. It shall be based upon a comprehensive vision and eye health examination, followed by a diagnostic or trial evaluation, and a final evaluation of the contact lens on the eye by the prescribing doctor.

WAC 246-851-530 Determination of contact lens specifications by dispensing opticians. (1) With the consent of the prescribing doctor of optometry, a dispensing optician who is not under the prescribing doctor's direct supervision may be authorized by the prescribing doctor, pursuant to a prescription directed to the dispensing optician, to determine contact lens specifications under the following conditions:

(a) The prescription to a dispensing optician must be in writing and signed by the prescribing doctor.

(b) The prescription to a dispensing optician who fits the contact lens shall be based upon a comprehensive vision and eye health examination.

(c) The prescription to a dispensing optician shall be limited to a determination by the dispensing optician of the physical characteristics of the contact lenses, a nonrefractive trial evaluation of the contact lenses and a recommendation for an appropriate solution system.

(d) The prescription to a dispensing optician shall contain a directive notifying the patient to return to the prescribing doctor for follow-up care, and a final evaluation of the lens on the eye.

(2) Following the final evaluation of the contact lens on the eye of a patient whose contact lens specifications have been determined by a dispensing optician not under the prescribing doctor's direct supervision, the prescribing doctor shall write a contact lens prescription and release it to the dispensing optician who determined the contact lens specification.

(3) In an emergency, an optometrist may orally or in writing, authorize appropriately licensed practitioners to dispense replacement contact lenses to patients who are away from the area of their residence. Any oral authorization shall be verified in writing within ten working days.

WSR 93-03-034
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)

[Filed January 13, 1993, 11:50 a.m.]

Original Notice.

Title of Rule: WAC 388-86-012 Audiometric services.

Purpose: Adds that routine screening may be done under EPSDT/healthy kids. Adds that audiometric services

are available to medically needy children under the early, periodic screening diagnostic and treatment program (EPSDT).

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

Summary: Adds that routine screening may be done for EPSDT/healthy kids.

Reasons Supporting Proposal: To add consistency with audiometric services and EPSDT/healthy kids services.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bobbe Andersen, Medical Assistance Administration, 753-0529.

Name of Proponent: Department of Social and Health Services, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Same as above.

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

Hearing Location: OB-2 Auditorium, 14th and Franklin, Olympia, Washington, on February 23, 1993, at 10:00 a.m.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Mailstop 5805, Department of Social and Health Services, Olympia, 98504, FAX 664-0118 or SCAN 366-0118, by February 23, 1993.

Date of Intended Adoption: February 24, 1993.

January 13, 1993

Rosemary Carr

Acting Director

Administrative Services

AMENDATORY SECTION (Amending Order 1725, filed 12/3/81)

WAC 388-86-012 Audiometric services. ~~((Evaluation of))~~ The department shall pay for hearing ((by)) evaluations involving audiometric equipment ((is available)) when:

(1) An approved audiologist, physician, or an advanced registered nurse practitioner provides the service to:

(a) Categorically needy ((recipients)) clients of Medicaid ((when administered by an approved audiologist or a physician));

(b) Medically needy children under twenty-one years of age; or

(c) State-funded children's health program clients. ((These evaluations must be related))

(2) The audiometric services shall relate to the provision of a hearing aid, a healthy kids/EPSTD screening service, or to a ((disease process)) medical condition; and ((are))

(3) The audiometric services shall not be available for routine or group screenings, except under healthy kids/EPSTD services as specified under WAC 388-86-027.

Original Notice.

Title of Rule: WAC 246-849-200 Apprenticeship training—Definitions, defines maximum number of hours that can be accumulated in one year, and what is required for direct supervision of apprentices; WAC 246-849-210 Registration of apprentices, describes the application process to register as an apprentice ophthalmologist; WAC 246-849-220 Application for examination, describes the license application process; WAC 246-849-230 Temporary permits, describes eligibility requirements; WAC 246-849-240 Definitions, defines terms relating to temporary practice permits; WAC 246-849-250 Issuance and duration of temporary practice permits, describes the temporary permit application process and establishes the expiration date; WAC 246-849-260 Retired active license, describes eligibility requirements, application process, and reinstatement to active status; and WAC 246-849-270 Service disclosure, describes what information the ophthalmologist is required to disclose to customers or patients. Establishes minimum retention for this document.

Purpose: Implement legislative changes to the ophthalmologist statute.

Statutory Authority for Adoption: RCW 18.55.095(1).

Statute Being Implemented: Chapter 18.55 RCW.

Summary: See Purpose above.

Reasons Supporting Proposal: Current WACs do not support the statute adequately.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Janice K. Boden, 1300 S.E. Quince Street, Olympia, WA 98503 [98504], (206) 753-3576.

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

Explanation of Rule, its Purpose, and Anticipated Effects: See Purpose above.

Proposal does not change existing rules.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

Hearing Location: OB-2 Auditorium, Office Building 2, 14th and Jefferson, Olympia, Washington 98504, on February 24, 1993, at 1:00 p.m.

Submit Written Comments to: Ann Foster, Rules Coordinator, 1300 S.E. Quince Street, P.O. Box 47902, Olympia, WA 98504, by February 23, 1993.

Date of Intended Adoption: March 3, 1993.

January 12, 1993

Kristine M. Gebbie

Secretary

NEW SECTION

WAC 246-849-200 Apprenticeship training - Definitions. (1) For the purpose of administering and recording apprenticeship training and out-of-state work experience, the maximum number of hours that can be accumulated in one year shall be two thousand.

(2) "Direct supervision" means that the supervising ophthalmologist inspect all of the apprentice's work and be physically present on the premises where the apprentice is working at all times.

NEW SECTION

WAC 246-849-210 Registration of apprentices. (1) An applicant for apprenticeship may request registration as an apprentice by submitting to the department:

- (a) An application on a form provided by the secretary;
 - (b) A registration fee as specified in WAC 246-849-990.
- (2) Training received from more than one supervisor shall require separate applications.
- (3) Only the apprenticeship training received subsequent to the date that the apprentice was formally registered with the secretary will be considered towards the required 10,000 hours necessary to sit for the examination.

(4) A registered apprentice shall notify the department in writing whenever the apprenticeship training is terminated, unless such termination is concluded by reason of the apprentice becoming licensed as an ophthalmologist in this state.

(5) A registered apprentice shall notify the secretary in writing within thirty days of any name or address change.

(6) In order to facilitate comments on the apprentice's performance, the apprentice registration card along with the name, business address and business telephone number of the apprentice's supervisor shall be posted in public view on the premises where the apprentice works.

(7) An apprentice registration shall be valid for one year from the date of registration. Each registration shall be renewed annually.

NEW SECTION

WAC 246-849-220 Application for examination. (1) An individual shall make application for examination, in accordance with RCW 18.55.040, on an application form prepared by and provided by the secretary.

(2) The apprenticeship training requirement shall be supported with certification by the licensed individual (or individuals) who provided such training.

(3) Examination fees are not refundable. If an applicant is unable to attend his or her scheduled examination, and so notifies the department in writing at least 7 days prior to the scheduled examination date, the applicant will be rescheduled at no additional charge. A written request received less than seven days before the test shall be reviewed by the department to determine if the test may be rescheduled or the fee forfeited.

(4) If an applicant takes the examination and fails to obtain a satisfactory grade, he or she may be scheduled to retake the examination by submitting an application and paying the statutory examination fee.

(5) Applications and fees for examination and all documents required in support of the application must be submitted to the division of professional licensing, department of health, at least sixty days prior to the scheduled examination. Failure to meet the deadline will result in the applicant not being scheduled until the next scheduled examination.

(6) Apprenticeship training shall be completed prior to the application deadline.

NEW SECTION

WAC 246-849-230 Temporary practice permits: Scope and purpose. (1) The temporary practice permit is established to enable safe, qualified and trained ophthalmologists who are currently licensed in another state as defined in WAC 246-849-250 to work in the state of Washington prior to completing the licensing examination in this state. All licensing requirements established for the purpose of obtaining an ophthalmologist license will need to be completed as part of the application for a temporary practice permit.

NEW SECTION

WAC 246-849-240 Definitions. For the purpose of issuing temporary practice permits the following definitions shall apply:

(1) "Licensed in another state" shall mean the applicant holds a current valid license to practice as an ophthalmologist in another state and is in good standing;

(2) "Substantially equivalent" shall mean the applicant has successfully completed an examination administered by or authorized by a state other than Washington State. The examination shall cover the same subject matters as the Washington state approved examination. The law under which the applicant is licensed shall, at a minimum, include the duties described in RCW 18.55.075.

NEW SECTION

WAC 246-849-250 Issuance and duration of temporary practice permits. (1) The department shall issue a temporary practice permit unless there is a basis for denial of the license or issuance of a conditional license. In addition to general application requirements, a person applying for a temporary practice permit shall submit to the department as a condition of temporary permit issuance:

(a) A completed application requesting a temporary practice permit on a form provided by the department;

(b) Temporary practice permit fee, as specified in WAC 246-849-990.

(c) Request all states in which the applicant is or has been licensed to send written licensure verification directly to the licensing office. The verification must be completed by the state and must verify that the applicant has not had any disciplinary action taken against himself/herself and that the applicant is in good standing and not subject to charges or disciplinary action for unprofessional conduct or impairment; and

(d) An affidavit on forms provided by the department, attesting that the temporary permit applicant has read, understands and shall abide by the Washington state laws regarding the practice of an ophthalmologist.

(2) The temporary permit shall be issued only once to any applicant. The temporary practice permit is nonrenewable and shall expire upon any one of the following conditions whichever comes first:

(a) The release of the results of the next scheduled examination for which the applicant would be eligible;

- (b) Issuance of a license by the department; or
- (c) Six months.

NEW SECTION

WAC 246-849-260 Active retired license. (1) A person holding a current Washington state ocularist license who wishes to practice only in emergency or intermittent circumstances may apply for a retired active license if that person:

- (a) Resides in another state and practices no more than sixty days each year in Washington State;
 - (b) Resides in this state but practices no more than sixty days each year;
 - (c) Does not wish to practice on an intermittent basis but is available to practice for an extended period of time for the purposes of providing his or her professional services in emergency circumstances such as times of declared war or other states of emergency.
- (2) An individual requesting a retired active license status shall submit a letter notifying the department of his or her intent to practice only on an intermittent or emergency basis. Active retired licenses will not be retroactively issued for prior years.
- (3) An active retired license is subject to annual renewal and penalty for late renewal as established in RCW 18.55.050 and WAC 246-849-980. Subsequent to being issued a retired active license, the licensee shall report, with the annual renewal the dates and circumstances under which the licensee practiced during the previous year.
- (4) To reinstate the license to an active license status the licensee shall notify the department in writing five days in advance of the change and pay a reinstatement fee as specified in WAC 246-849-990.
- (5) Individuals on a retired active license status are subject to chapter 18.130 RCW to the same extent as individuals holding an active license.

NEW SECTION

WAC 246-849-270 Service disclosure. The ocularist shall provide a written explanation of services to customers or patients. This explanation shall include at a minimum the type of prosthesis or service they are receiving or purchasing. This explanation shall be signed by the customer or patient and maintained in the customer or patient records for a minimum of three years. This documentation shall be available and furnished to the department upon request.

WSR 93-03-055
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Public Assistance)
 [Filed January 15, 1993, 1:07 p.m.]

Original Notice.

Title of Rule: WAC 388-24-074 Aid to families with dependent children-employable—Deprivation due to unemployment of a parent.

Purpose: The family independence program (FIP) will end June 30, 1993. During the period July 1, 1988, through June 30, 1989, AFDC rules in WAC 388-24-074(7) did not apply to FIP applicants. Some FIP recipients have been eligible continuously since before June 30, 1989. Effective July 1, 1993, AFDC rules in WAC 388-24-074(7) do apply to these FIP recipients, and these recipients must meet the work quarter requirement in order to be eligible under AFDC. This amendment clarifies the policy as it pertains to FIP recipients converting to AFDC.

Statutory Authority for Adoption: RCW 74.04.057.

Statute Being Implemented: RCW 74.04.057.

Summary: Effective July 1, 1993, AFDC rules in WAC 388-24-074(7) do apply to FIP recipients who qualified for FIP during the period July 1, 1988, through June 30, 1989. These recipients must meet the AFDC work quarter requirement in order to be eligible under AFDC. This amendment adding subsection (8), clarifies the policy as it pertains to FIP recipients converting to AFDC.

Reasons Supporting Proposal: During the period July 1, 1988, through June 30, 1989, AFDC work quarter requirement rules in WAC 388-24-074(7) did not apply to FIP applicants. Some FIP recipients who qualified during that period have been eligible for FIP continuously.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Culhane, Division of Income Assistance, 438-8310.

Name of Proponent: Department of Social and Health Services, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Same as above.

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

Hearing Location: OB-2 Auditorium, 14th and Franklin, Olympia, Washington, on February 23, 1993, at 10:00 a.m.; Spokane County Public Health Center (map enclosed), West 1101 College Avenue, Room 140-Auditorium, Spokane, WA 99201-2095, on February 23, 1993, at 5:30 to 7:30 p.m.; Moses Lake CSO, 1620 South Pioneer Way, Moses Lake, WA 98837, on February 24, 1993, at 2:00 to 4:00 p.m.; Klickitat County Bank (map enclosed), Upstairs Meeting Room, Tohomish and Wauna Streets, White Salmon, Washington 98672, on February 25, 1993, at 2:00 to 4:00 p.m.; Annex (across road from Heritage College) (map enclosed), Room 504 (upstairs), Fort and McKinley Roads, Toppenish, Washington, on February 26, 1993, at 10:00 a.m. to noon; Broadway Public Library, 130th Street and 12755 Greenwood Avenue North, Seattle, WA 98133, on March 4, 1993, at 2:00 to 4:00 p.m.; and Everett Community College, 801 Wetmore Avenue, Everett, WA, on March 5, 1993, at 2:00 to 4:00 p.m.

Reviser's note: The maps mentioned above can be obtained from Sharon Staley, Department of Social and Health Services, Mailstop 5805, (206) 586-6423, SCAN 321-6423.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Mailstop 5805, Department of Social

and Health Services, Olympia, 98504, FAX 664-0118 or SCAN 366-0118, by May 25, 1993.

Date of Intended Adoption: May 27, 1993.

January 15, 1993

Rosemary Carr

Acting Director

Administrative Services

AMENDATORY SECTION (Amending Order 3408, filed 6/23/92, effective 7/24/92)

WAC 388-24-074 Aid to families with dependent children-employable—Deprivation due to unemployment of a parent. (1) The department shall consider a child deprived of parental care and support due to the unemployment of a parent when the child lives with two parents, one of which meets all the requirements in this section.

(2) The department shall designate the qualifying parent as that parent earning the greater amount of income in the twenty-four-calendar-month period immediately preceding the month the application for assistance is filed. The department shall:

(a) Designate the qualifying parent using the best evidence available;

(b) Consider the earnings of both parents regardless of when the relationship began;

(c) Continue the designation for each consecutive month the family remains on assistance based on the current application; and

(d) Designate the qualifying parent if both parents earned an identical amount of income.

(3) The department shall consider the qualifying parent unemployed when the qualifying parent:

(a) Is employed less than one hundred hours a month;

(b) Exceeds this standard for a particular month if the excess is of a temporary nature evidenced by being under the one hundred hour standard for the two prior months and is expected to be under the standard during the next month; or

(c) Participates in institutional and work experience training under the JOBS program and is not otherwise employed over one hundred hours.

(4) The qualifying parent shall be unemployed as defined in subsection (3) of this section for thirty days or more before the date AFDC-E is authorized except when:

(a) AFDC-E is terminated due to employment of the qualifying parent;

(b) The full-time employment ends within thirty days of termination; and

(c) The qualifying parent reapplies and is found otherwise eligible for AFDC-E.

(5) During the same thirty-day period, or subsequent period, the qualifying parent shall not have:

(a) Refused a bona fide offer of employment;

(b) Refused training for employment;

(c) Voluntarily left a job without good cause; or

(d) If eligible, refused to apply for or accept unemployment compensation.

(6) The qualifying parent shall participate, as required in the JOBS program, or, if exempt due to remoteness, and not participating in JOBS, shall be registered with a public employment agency in the state.

(7) The qualifying parent shall have one of the following:

(a) Six or more quarters of work within any thirteen calendar quarter period ending within one year before the application for assistance.

(i) A "quarter of work" means a calendar quarter in which the parent earned or received earned income of fifty dollars or more, or participated in the OPPORTUNITIES program; FIP-related education, training, employment services; or JOBS program.

(ii) A "calendar quarter" means three consecutive months ending March 31st, June 30th, September 30th, or December 31st.

(b) Within one year before the application, received, or had such a work history to be eligible to receive, unemployment compensation.

(8) A family independence program (FIP) enrollee who was approved for FIP before June 30, 1989, based on the unemployment of the qualifying parent, and who received FIP continuously through June 30, 1993, shall have eligibility for AFDC determined according to WAC 388-24-074 (1) through (7).

WSR 93-03-056

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Public Assistance)

[Filed January 15, 1993, 1:08 p.m.]

Original Notice.

Title of Rule: WAC 388-28-425 Effect of resources on financial need—Real property other than home—All programs.

Purpose: The family independence program (FIP) will expire June 30, 1993. Under FIP, recipients who owned real property with a net equity value in excess of the resource maximum could receive benefits as long as they continued to make a good faith effort to sell the property. The purpose of this rule is to clarify that FIP recipients, who own real property with a net equity value in excess of the resource maximum, must meet the AFDC conditional eligibility requirements at the time of program conversion to AFDC.

Statutory Authority for Adoption: RCW 74.04.057.

Statute Being Implemented: RCW 74.04.057.

Summary: Clarifies that FIP recipients who own real property with a net equity value in excess of the resource maximum must meet the AFDC conditional eligibility requirements at the time of program conversion to AFDC.

Reasons Supporting Proposal: Under the family independence program (FIP), recipients who owned real property with a net equity value in excess of the resource maximum could be eligible as long as they continued to make a good faith effort to see [sell] the property. FIP will expire June 30, 1993.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Culhane, Division of Income Assistance, 438-8310.

Name of Proponent: Department of Social and Health Services, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Same as above.

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

Hearing Location: OB-2 Auditorium, 14th and Franklin, Olympia, Washington, on February 23, 1993, at 10:00 a.m.; Spokane County Public Health Center (map enclosed), West 1101 College Avenue, Room 140-Auditorium, Spokane, WA 99201-2095, on February 23, 1993, at 5:30 to 7:30 p.m.; Moses Lake CSO, 1620 South Pioneer Way, Moses Lake, WA 98837, on February 24, 1993, at 2:00 to 4:00 p.m.; Klickitat County Bank (map enclosed), Upstairs Meeting Room, Tohomish and Wauna Streets, White Salmon, Washington 98672, on February 25, 1993, at 2:00 to 4:00 p.m.; Annex (across road from Heritage College) (map enclosed), Room 504 (upstairs), Fort and McKinley Roads, Toppenish, Washington, on February 26, 1993, at 10:00 a.m. to noon; Broadway Public Library, 130th Street and 12755 Greenwood Avenue North, Seattle, WA 98133, on March 4, 1993, at 2:00 to 4:00 p.m.; and Everett Community College, 801 Wetmore Avenue, Everett, WA, on March 5, 1993, at 2:00 to 4:00 p.m.

Reviser's note: The maps mentioned above can be obtained from Sharon Staley, Department of Social and Health Services, Mailstop 5805, (206) 586-6423, SCAN 321-6423.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Mailstop 5805, Department of Social and Health Services, Olympia, 98504, FAX 664-0118 or SCAN 366-0118, by May 25, 1993.

Date of Intended Adoption: May 27, 1993.

January 15, 1993
Rosemary Carr
Acting Director
Administrative Services

AMENDATORY SECTION (Amending Order 2691, filed 9/12/88)

WAC 388-28-425 Effect of resources on financial need—Real property other than home—All programs.

(1) If an applicant owns real property with net equity value in excess of the resource maximum, the applicant may receive assistance for a period not to exceed nine months provided the applicant:

(a) Is making a good-faith effort to sell the property. "Good-faith effort" means listing the property with a multiple listing realtor or other reasonable means when a multiple listing is unavailable or the realtor refuses to list the property.

(b) Signs a repayment agreement to repay the lesser of the amount of aid received or the net proceeds of such sale. "Net sale proceeds" means sale price less encumbrances and costs incurred in selling the property.

(2) If the owner of excess real property ceases to make good-faith efforts to sell the property, the entire amount of assistance may become an overpayment. Clients must be

advised of their right to a fair hearing and afforded the opportunity to challenge a decision that good-faith efforts to sell have ceased, prior to assessment of an overpayment under this section.

(3) At the time assistance is authorized, the department shall file a lien without a sum certain on the specific property.

(4) An enrollee in the family independence program (FIP) who converts to AFDC, and who owns real property with net equity value in excess of the resource maximum, shall have eligibility for AFDC determined according to WAC 388-28-425 (1), (2), and (3).

**WSR 93-03-057
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Public Assistance)

[Filed January 15, 1993, 1:09 p.m.]

Original Notice.

Title of Rule: WAC 388-28-570 Net cash income—Exempt earned income.

Purpose: The family independence program (FIP) expires June 30, 1993. Income budgeting rules under FIP were different than under AFDC, but FIP recipients' income was computed under the rules of both AFDC and FIP. FIP recipients received the benefits that were the highest of the two computations. The \$30 plus 1/3 disregard was not an income disregard under FIP. FIP recipients with income had their income computed using the \$30 plus 1/3 disregard, however. The purpose of this rule is to clarify that the \$30 plus 1/3 of the remainder disregard shall not start over when FIP recipients, for whom this disregard was applied while they received FIP, convert to AFDC effective July 1, 1993.

Statutory Authority for Adoption: RCW 74.04.057.

Statute Being Implemented: RCW 74.04.057.

Summary: Clarifies that the 30 plus 1/3 income disregard shall not start over when FIP recipients, for whom the 30 plus 1/3 disregard was applied while they received FIP, convert to AFDC effective July 1, 1993.

Reasons Supporting Proposal: Income budgeting rules under FIP were different than under AFDC. The 30 plus 1/3 disregard was not an income disregard under FIP, but FIP recipients with income had their income computed using this disregard. FIP recipients' income was computed both under AFDC and FIP rules, and FIP recipients received the benefits that were the highest of the two computations.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Culhane, Division of Income Assistance, 438-8310.

Name of Proponent: Department of Social and Health Services, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Same as above.

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

Hearing Location: OB-2 Auditorium, 14th and Franklin, Olympia, Washington, on February 23, 1993, at 10:00 a.m.; Spokane County Public Health Center (map enclosed), West 1101 College Avenue, Room 140-Auditorium, Spokane, WA 99201-2095, on February 23, 1993, at 5:30 to 7:30 p.m.; Moses Lake CSO, 1620 South Pioneer Way, Moses Lake, WA 98837, on February 24, 1993, at 2:00 to 4:00 p.m.; Klickitat County Bank (map enclosed), Upstairs Meeting Room, Tohomish and Wauna Streets, White Salmon, Washington 98672, on February 25, 1993, at 2:00 to 4:00 p.m.; Annex (across road from Heritage College) (map enclosed), Room 504 (upstairs), Fort and McKinley Roads, Toppenish, Washington, on February 26, 1993, at 10:00 a.m. to noon; Broadway Public Library, 130th Street and 12755 Greenwood Avenue North, Seattle, WA 98133, on March 4, 1993, at 2:00 to 4:00 p.m.; and Everett Community College, 801 Wetmore Avenue, Everett, WA, on March 5, 1993, at 2:00 to 4:00 p.m.

Reviser's note: The maps mentioned above can be obtained from Sharon Staley, Department of Social and Health Services, Mailstop 5805, (206) 586-6423, SCAN 321-6423.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Mailstop 5805, Department of Social and Health Services, Olympia, 98504, FAX 664-0118 or SCAN 366-0118, by May 25, 1993.

Date of Intended Adoption: May 27, 1993.

January 15, 1993
Rosemary Carr
Acting Director
Administrative Services

AMENDATORY SECTION (Amending WSR 92-08-033, filed 3/24/92, effective 11/24/92)

WAC 388-28-570 Net cash income—Exempt earned income. (1) For rules on exempting earned income of a full- or part-time student, see WAC 388-28-535. For rules exempting income from training, see WAC 388-28-515. For rules exempting earned income for refugee assistance, see WAC 388-55-010. For rules on other income, see WAC 388-28-580.

(2) As used in this section, "earned income" shall mean income in cash or in-kind earned as wages, salary, commissions, or profit from activities in which the individual is engaged as a self-employed person or as an employee. Earned income may be derived from self-employment (such as business enterprise or farming), or derived from wages or salary received as an employee. Earned income also includes earnings over a period of time for which settlement is made at one time, for example, sale of farm crops, livestock, or poultry. Income from rentals is earned income, provided the individual has managerial responsibility for the rental property.

(3) For an AFDC recipient, earned income includes earnings under Title I of the Elementary and Secondary Education Act, all earnings received under the Economic Opportunity Act, wages from WIN on-the-job training, and wages paid under the Job Training Partnership Act (JTPA).

See WAC 388-28-535(2) for treatment of a child excluded from the grant.

(4) The definition of "earned income" excludes:

(a) Returns from capital investment with respect to which the individual is not actively engaged, as in a business. For example, under most circumstances, dividends and interest are excluded from "earned income((-));"

(b) Benefits accruing as compensation or reward for service, or as compensation for lack of employment, for example, pensions and benefits from labor organizations, veterans' benefits, unemployment compensation, Social Security, etc.;

(c) Income from WIN incentive payments and training-related expenses derived from WIN institutional or work experience training((-);

(d) Income received under the Job Training Partnership Act for training allowances, payments for support services, etc.

(5) In AFDC, refugee assistance, and general assistance when payment of income earned over a period of more than one month is delayed, the exemption applies to the period during which the income was earned.

(6) Aid to families with dependent children.

(a) The following shall be disregarded sequentially from the monthly gross earned income of each individual member of the assistance unit((-);

(i) Ninety dollars for work expenses, regardless of the number of hours worked per month((-);

(ii) For each nonstudent dependent child and adult found otherwise eligible to receive assistance or having received assistance in one of the four prior months, thirty dollars and one-third of the remainder not already disregarded. The thirty dollars and one-third disregard shall be applied for a maximum of four consecutive months; it cannot be applied again until the recipient has ((been a nonrecipient for twelve consecutive months-)) not received AFDC, FIP, or a combination of AFDC and FIP for twelve consecutive months. Family independence program (FIP) enrollees who had earned income greater than seventy five dollars per month from July 1, 1988, through September 30, 1989, or greater than ninety dollars per month from October 1, 1989, through June 30, 1993, shall be deemed to have had the thirty dollars and one-third of the remainder of earned income disregard applied to their earned income when income was budgeted;

(iii) After expiration of the disregard in subsection (6)(a)(ii) of this section, thirty dollars for a maximum of eight consecutive months, whether or not the recipient has earnings or is receiving assistance; it cannot be applied again until the recipient has been a nonrecipient for twelve consecutive months((-);

(iv) The actual cost for care of each dependent child or incapacitated adult living in the same home and receiving AFDC provided:

(A) Conditions under WAC 388-51-110 (1)(c) are met for each dependent child;

(B) No disregard will be allowed for care provided by a parent or stepparent;

(C) The provider verifies the cost incurred;

(D) The cost is incurred for the month of employment being reported; and

(E) The cost for each dependent child or incapacitated adult, depending on the number of hours worked per month does not exceed the following:

Hours Worked Per Month	Dependent Care Maximum Deductions Dependent 2 Years of Age or Older	Dependent Care Maximum Deductions Dependent Under 2 Years of Age
0 - 40	\$ 43.75	\$ 50.00
41 - 80	87.50	\$100.00
81 - 120	131.25	\$150.00
121 or more	175.00	\$200.00

(b) The exemptions and deductions in subsection (6)(a) of this section will not be applied for any month if the individual within a period of thirty days preceding the month in which the income was received:

- (i) Terminated the individual's employment or reduced the individual's earned income without good cause; or
- (ii) Refused without good cause to accept employment in which the individual is able to engage which is offered through employment security department, or is otherwise offered by an employer if the offer of such employment is determined by the local office to be a bona fide offer of employment.

(c) The exemptions and deductions in subsection (6)(a) of this section will not be applied for any month the recipient failed without good cause to make a timely report of income. When a timely report is made under these circumstances, the thirty-dollar and one-third exemption shall be counted in the applicable time limits. Good cause shall be determined by the department. Any circumstance beyond the control of the recipient shall constitute good cause.

To be considered timely, a report must be received by the department:

- (i) On or before the eighteenth day of the month following the month in which the income was received(;;); or
- (ii) By the first following work day if the eighteenth day of the month falls on a weekend or holiday.

(d) If a recipient requests termination in order to break the consecutiveness of the applicable time limits for the thirty-dollar plus one-third exemption, and would have been eligible, the months of voluntary nonreceipt of assistance shall be counted toward the applicable time limits.

(e) If a recipient quits work without good cause, the thirty-dollar and one-third exemption shall be deemed to have been received and shall be counted toward the applicable time limits.

(f) Months in which the applicant/recipient received the thirty-dollar and one-third exemption in another state shall not apply toward the applicable time limits.

(7) The following conditions when verified shall constitute good cause for refusal of an offer of employment or refusal to continue employment:

- (a) Physical, mental, or emotional inability of the individual to satisfactorily perform the work required;
- (b) Inability of the individual to get to and from the job without undue cost or hardship to the individual;
- (c) The nature of the work would be hazardous to the individual;

(d) The wages do not meet any applicable minimum wage requirements and are not customary for such work in the community;

- (e) The job is available because of a labor dispute; or
- (f) Adequate child care is not available to the AFDC household.

**WSR 93-03-058
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Public Assistance)
[Filed January 15, 1993, 1:10 p.m.]

Original Notice.

Title of Rule: WAC 388-47-115 Funding approval of education and jobs components.

Purpose: The family independence program (FIP) will end on June 30, 1993. This amendment makes clear that enrollees in FIP who have an approved employability plan will be considered to have the same plan approved under JOBS on July 1, 1993.

Statutory Authority for Adoption: RCW 74.04.057.

Statute Being Implemented: RCW 74.04.057.

Summary: Effective July 1, 1993, all form [former] FIP enrollees who have an approved FIP employability plan in effect June 30, 1993, will be considered to have approved plans under JOBS.

Reasons Supporting Proposal: The termination for the family independence program (FIP) on June 30, 1993, requires an equitable transition of FIP enrollees to the JOBS program on July 1, 1993. This issuance provides for this transition.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Sue Langley, Division of Income Assistance, 438-8281.

Name of Proponent: Department of Social and Health Services, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Same as above.

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

Hearing Location: OB-2 Auditorium, 14th and Franklin, Olympia, Washington, on February 23, 1993, at 10:00 a.m.; Spokane County Public Health Center (map enclosed), West 1101 College Avenue, Room 140-Auditorium, Spokane, WA 99201-2095, on February 23, 1993, at 5:30 to 7:30 p.m.; Moses Lake CSO, 1620 South Pioneer Way, Moses Lake, WA 98837, on February 24, 1993, at 2:00 to 4:00 p.m.; Klickitat County Bank (map enclosed), Upstairs Meeting Room, Tohomish and Wauna Streets, White Salmon, Washington 98672, on February 25, 1993, at 2:00 to 4:00 p.m.; Annex (across road from Heritage College) (map enclosed), Room 504 (upstairs), Fort and McKinley Roads, Toppenish, Washington, on February 26, 1993, at 10:00 a.m. to noon; Broadway Public Library, 130th Street and 12755

Greenwood Avenue North, Seattle, WA 98133, on March 4, 1993, at 2:00 to 4:00 p.m.; and Everett Community College, 801 Wetmore Avenue, Everett, WA, on March 5, 1993, at 2:00 to 4:00 p.m.

Reviser's note: The maps mentioned above can be obtained from Sharon Staley, Department of Social and Health Services, Mailstop 5805, (206) 586-6423, SCAN 321-6423.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Mailstop 5805, Department of Social and Health Services, Olympia, 98504, FAX 664-0118 or SCAN 366-0118, by May 25, 1993.

Date of Intended Adoption: May 27, 1993.

January 15, 1993
Rosemary Carr
Acting Director
Administrative Services

AMENDATORY SECTION (Amending Order 3398, filed 5/29/92, effective 7/1/92)

WAC 388-47-115 Funding approval of education and JOBS components. (1) For the purpose of plan approval initial approving authority begins with the employment security department. The department of social and health services shall:

(a) Review approved plans within ~~((30))~~ thirty calendar days of initial approval.

(b) Review disapproved plans within ten calendar days of denial.

(c) Review if the plan clearly violates department policy or whether the department has information which clearly indicates a concern with the plan.

(d) Joint agency administrative review will be conducted at the local level of any initial approval with which the department does not concur.

(2) The contractor shall fund approvable JOBS plan components in accordance with the following priorities:

(a) First priority shall be given to participants in an approved educational, training or employment plan whose JOBS or FIP plan is in process and is being re-authorized;

(b) Second priority shall be given to volunteers included in the target groups specified under WAC 388-47-070(1);

(c) Third priority shall be given to participants volunteering for basic education and job ready participants volunteering for intensive job search, on-the-job training or the work supplementation program;

(d) Fourth priority shall be given to all other recipients.

(3) Separate allocation may be established for each priority group.

(4) The contractor shall accept all employability plans approved under the family independence program (FIP) as approved under JOBS effective July 1, 1993.

(5) The contractor shall limit plan approval subject to the availability of funds and to a specific component.

~~((5))~~ (6) Funding approval for child care participants in a tribal JOBS program shall be subject to the provisions of this section.

~~((6))~~ (7) The contractor shall create a local obligational register. When funds have been exhausted for a priority group, a local waiting list shall be established. Ranking

within each priority shall be on a first come first served basis using the date of request for participation in JOBS or FIP.

~~((7))~~ (8) If the funds appropriated for JOBS are available, the contractor shall approve the plan for the highest ranked person on the waiting list and obligate sufficient funds from the obligational register to cover the cost of:

(a) Training or education, component costs, child care, and support services necessary to complete the approved plan; or

(b) For participants in a tribal JOBS program, the cost of child care necessary to complete the approved plan.

~~((8))~~ (9) The contractor shall limit plan approval through the end of the state biennium. In obligating funds, the contractor shall obligate funds through the completion of the plan or the end of the biennium, whichever is earlier. Priority for subsequent years is established in subsection (2) of this section.

~~((9))~~ (10) The contractor's approval of a plan shall be by specific components. Requests to change to another component shall be subject to the availability of funds and other applicable criteria for component approval. If the contractor does not approve a change in components because of lack of funds, the contractor shall place the person on a waiting list.

~~((10))~~ (11) For self-initiated training that is approvable, the contractor will place the person on a local waiting list and if funds are available provide necessary child care and support services as provided in the approved plan. The contractor shall not pay for tuition, books, or other fees.

~~((11))~~ (12) A participant may choose to participate in training without child care and support services. For such persons, the contractor shall:

(a) Place the person on a local waiting list;

(b) Approve the plan subject to review of child care and support service needs when partial funds are available; and

(c) At such time as funds are available to fund the remainder of the plan offer support services.

~~((12))~~ (13) Participants shall utilize other funding sources such as Pell grants before JOBS funds are used. Plan approval shall be pended until grant or aid resources have been determined.

~~((13))~~ (14) Total JOBS costs shall not exceed the maximum of four thousand five hundred dollars per participant excluding child care.

WSR 93-03-059
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)

[Filed January 15, 1993, 1:11 p.m.]

Original Notice.

Title of Rule: WAC 388-77A-010 Purpose, 388-77A-020 Benefit change limitations, 388-77A-030 Standards of assistance-family independence program (FIP) households entitled to employment incentive payments earned in May and June 1993, 388-77A-040 Transitional child care and

medical benefits, and 388-77A-050 Fair hearing-continuation of benefits.

Purpose: The family independence program (FIP) will end June 30, 1993. FIP enrollees will have earned incentives for employment during the months of May and June. Due to retrospective budgeting, these incentives will not be paid until July and August. This rule allows for the payment of these incentives after the FIP program has ended. This rule also clarifies the fair hearing rules to clearly state that enrollees may not continue to receive benefits if they file a fair hearing regarding the termination of the FIP program. This rule also makes clear that benefits will not be terminated for enrollees due to program closing prior to July 1, 1993, and prior to written notification.

Statutory Authority for Adoption: RCW 74.04.057.

Statute Being Implemented: RCW 74.04.057.

Summary: Provide legal authority to continue incentives for FIP enrollees under retrospective budgeting after July 1, 1993; continue transitional child care and medical benefits for the certification period; limit continuation of benefits to other than program termination issues.

Reasons Supporting Proposal: New chapter to incorporate various related sections regarding conversion of FIP enrollees to AFDC recipients on July 1, 1993.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Linda Marvel, Division of Income Assistance, 438-8279.

Name of Proponent: Department of Social and Health Services, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Same as above.

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

Hearing Location: OB-2 Auditorium, 14th and Franklin, Olympia, Washington, on February 23, 1993, at 10:00 a.m.; Spokane County Public Health Center (map enclosed), West 1101 College Avenue, Room 140-Auditorium, Spokane, WA 99201-2095, on February 23, 1993, at 5:30 to 7:30 p.m.; Moses Lake CSO, 1620 South Pioneer Way, Moses Lake, WA 98837, on February 24, 1993, at 2:00 to 4:00 p.m.; Klickitat County Bank (map enclosed), Upstairs Meeting Room, Tohomish and Wauna Streets, White Salmon, Washington 98672, on February 25, 1993, at 2:00 to 4:00 p.m.; Annex (across road from Heritage College) (map enclosed), Room 504 (upstairs), Fort and McKinley Roads, Toppenish, Washington, on February 26, 1993, at 10:00 a.m. to noon; Broadway Public Library, 130th Street and 12755 Greenwood Avenue North, Seattle, WA 98133, on March 4, 1993, at 2:00 to 4:00 p.m.; and Everett Community College, 801 Wetmore Avenue, Everett, WA, on March 5, 1993, at 2:00 to 4:00 p.m.

Reviser's note: The maps mentioned above can be obtained from Sharon Staley, Department of Social and Health Services, Mailstop 5805, (206) 586-6423, SCAN 321-6423.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Mailstop 5805, Department of Social

and Health Services, Olympia, 98504, FAX 664-0118 or SCAN 366-0118, by May 25, 1993.

Date of Intended Adoption: May 27, 1993.

January 15, 1993

Rosemary Carr

Acting Director

Administrative Services

**Chapter 388-77A WAC
FAMILY INDEPENDENCE PROGRAM EXPIRATION**

NEW SECTION

WAC 388-77A-010 Purpose. Chapter 74.21 RCW authorizing the family independence program (FIP) expires on June 30, 1993. The department shall convert FIP enrollees to regular AFDC, food assistance, medical assistance and the job opportunities basic skills and training program (JOBS) in the five FIP demonstration sites and the ten remaining FIP and AFDC combined sites on July 1, 1993.

NEW SECTION

WAC 388-77A-020 Benefit change limitations. (1) The department shall not change an enrollee's benefits and/or services as a result of this program change prior to July 1, 1993.

(2) The department shall not change an enrollee's benefits before the enrollee receives written notice of the proposed action.

NEW SECTION

WAC 388-77A-030 Standards of assistance-family independence program (FIP) households entitled to employment incentive payments earned in May and June 1993. (1) The department shall pay to households who are eligible for AFDC at the end of the FIP demonstration project on June 30, 1993, an incentive payment when all of the following conditions apply:

(a) The household is eligible to receive a July 1993 AFDC IV-A grant payment.

(b) The household received a FIP-IV-A grant payment in June of 1993;

(c) An eligible member of the household earned a FIP employment incentive in May of 1993;

(d) The household was in a retrospective budgeting cycle for the report month of May; and

(e) The income earned and the hours worked are reported by the eighteenth of the process month, unless there is good cause for late reporting.

(2) The department shall pay to households who are eligible for AFDC at the end of the FIP demonstration project on June 30, 1993, an incentive payment when all of the following conditions apply:

(a) The household is eligible to receive an August 1993 AFDC IV-A grant payment;

(b) The household received a FIP-IV-A grant payment in June of 1993;

(c) An eligible member of the household earned a FIP employment incentive in June of 1993;

(d) The household was in a retrospective budgeting cycle for the report month of June; and

(e) The income earned and the hours worked are reported by the eighteenth of the process month, unless there is good cause for late reporting.

(3) For the purpose of this rule, the incentive payment shall be calculated in the following manner:

(a) The department shall determine what the FIP-IV-A cash assistance would have been using under WAC 388-77A-030(4);

(b) The department shall determine what IV-A cash benefits the household is eligible to receive under the AFDC chapter 388-28 WAC;

(c) The department shall compare the amounts in subsection (4) of this section and chapter 388-28 WAC. If the amount determined under subsection (4) is greater, the department shall issue a supplement to bring the AFDC IV-A payment up to the amount the household would have received on FIP.

(4) For the purpose of this rule FIP-IV-A cash assistance benefits shall be calculated as follows:

(a) The department shall deduct nonexempt income, less disregards, from the sum of the applicable AFDC payment standard, the incentive, and authorized additional requirements. The department shall round the amount to be issued down to the nearest dollar;

(b) The department's benchmark standard for FIP assistance units shall be equal to the sum of the applicable AFDC payment standard for households with shelter costs plus eighty percent of the thrifty food plan;

(c) The department shall treat earned income as follows:

(i) In computing income for FIP Title IV-A assistance, the only deduction the department shall allow is ten percent from gross earned income. The department shall disallow this deduction when earnings are reported after the eighteenth of the process month without good cause for late reporting;

(ii) In addition to income exempted under the AFDC program in chapter 388-28 WAC, the department shall exempt from the FIP calculation the earnings of a child seventeen years of age or younger.

(d) The department shall treat unearned income the same as AFDC as described under chapter 388-28 WAC;

(e) The department shall provide enrollees who are employed with incentive benefits as follows:

(i) Fifteen percent of the benchmark standard for enrollees working half-time (seventy-five to one hundred forty-nine hours per month);

(ii) Thirty-five percent of the benchmark standard for enrollees working full time (one hundred fifty or more hours per month).

(f) Incentives shall not be provided for earnings:

(i) Reported after the eighteenth day of the process month unless good cause exists for late reporting; or

(ii) That are exempt or disregarded, except when the earnings are produced by an adult member in the assistance unit.

(g) Incentives for self-employed enrollees with an approved self-employment plan will be based on:

(i) The enrollee's declaration of the hours worked for six consecutive months starting with the first month the enrollee is entitled to an incentive for self-employment; and

(ii) Thereafter, the hours worked as computed by dividing the enrollee's gross income by the federal minimum wage.

(h) The incentive paid shall be the highest for which the assistance unit qualifies. The department shall not allow more than one incentive per assistance unit;

(i) Incentives shall be rounded down to the nearest dollar;

(j) Incentive payment shall be disregarded in the food stamp calculations.

NEW SECTION

WAC 388-77A-040 Transitional child care and medical benefits. (1) Individuals who will be receiving FIP noncash child care and medical benefits on June 30, 1993, will be eligible for family support act (FSA) child care and medical benefits based on FSA requirements as of July 1, 1993.

(2) Individuals who are determined eligible for FSA shall continue to receive transitional child care or transitional medical for the remainder of the time period authorized under FIP.

NEW SECTION

WAC 388-77A-050 Fair hearing-continuation of benefits. (1) When a FIP enrollee files a request for fair hearing according to chapter 388-08 WAC within the advance notice period, assistance shall not be continued when the sole issue is one of state or federal law requiring automatic grant adjustment for classes of recipients.

(2) The following specific FIP program components require automatic grant adjustments for FIP enrollees as a result of the expiration of the FIP law. Fair hearing requests based on, but not limited to, the following shall not result in the continuation of benefits pending a fair hearing:

(a) Discontinuance of the FIP program effective June 30, 1993;

(b) Discontinuance of qualifying for FIP five percent, fifteen percent and thirty-five percent incentive payments effective June 30, 1993;

(c) Discontinuance of FIP food cash assistance rather than food stamp benefits effective June 30, 1993;

(d) Discontinuance of payment of a full grant for persons living in supplied shelter who continue to be eligible for continuing assistance from other programs effective July 1, 1993.

(3) Enrollees who remain eligible for assistance under other programs effective July 1, 1993, shall have their eligibility and benefits determined according to the rules for the program for which they become eligible on that date. AFDC eligibility rules regarding income, work quarters, and excess real property are contained in WAC 388-24-074, 388-28-425, and 388-28-570.

(4) When benefits are continued pending a fair hearing the continued payment shall not exceed the maximum

payment standard in effect for the AFDC program on July 1, 1993.

**WSR 93-03-060
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Public Assistance)
[Filed January 15, 1993, 1:12 p.m.]

Original Notice.

Title of Rule: WAC 388-83-033 Children—Eligible to nineteen years of age, 388-83-130 Eligibility—Special situations, 388-84-105 Medical application, 388-99-010 Persons eligible for medically needy assistance, and 388-82-115 Categorically needy medical assistance eligibility.

Purpose: Based on a mandatory federal requirement, effective January 1, 1993, an eligible child under nineteen years of age may receive Medicaid coverage.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

Summary: Effective January 1, 1993, an eligible child under nineteen years of age may receive Medicaid coverage.

Reasons Supporting Proposal: The current Title XIX state plan provides that children under nineteen years of age receive Medicaid coverage.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Joanie Scotson, Medical Assistance Administration, 753-7462.

Name of Proponent: Department of Social and Health Services, governmental.

Rule is necessary because of federal law, CFR 435.712 and 435.724.

Explanation of Rule, its Purpose, and Anticipated Effects: Same as above.

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

Hearing Location: OB-2 Auditorium, 14th and Franklin, Olympia, Washington, on February 23, 1993, at 10:00 a.m.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Mailstop 5805, Department of Social and Health Services, Olympia, 98504, FAX 664-0118 or SCAN 366-0118, by February 23, 1993.

Date of Intended Adoption: February 24, 1993.

January 15, 1993
Rosemary Carr
Acting Director
Administrative Services

AMENDATORY SECTION (Amending Order 3307, filed 1/10/92, effective 2/10/92)

WAC 388-82-115 Categorically needy medical assistance eligibility. The department shall classify as eligible for categorically needy medical assistance:

- (1) A client who:
 - (a) In August 1972, received:
 - (i) Old age assistance (OAA);

- (ii) Aid to blind (AB);
- (iii) Aid to families with dependent children (AFDC); or
- (iv) Aid to the permanently and totally disabled (APTD); and

(b) Received retirement, survivors, and disability insurance (RSDI) benefits; and

(c) Is ineligible for OAA, AB, AFDC, or APTD solely because of the twenty percent increase in Social Security benefits under P.L. 92-336.

(2) A client who:

(a) Was entitled to RSDI benefits in August 1972; and

(b) Is ineligible for AFDC, family independence program (FIP), or supplemental security income (SSI) solely because of the twenty percent increase in Social Security benefits under P.L. 92-336.

(3) A family unit which becomes ineligible for AFDC before April 1, 1990, solely because of increased hours or increased income from employment shall remain categorically eligible for medical assistance (MA) for four calendar months beginning with the month of ineligibility provided:

(a) The family received AFDC in at least three of the six months immediately preceding the month of ineligibility; and

(b) A member of such family continues to be employed.

(4) A current recipient of Title II, Social Security Administration (SSA) benefits who:

(a) Was a concurrent recipient of Title II and SSI benefits;

(b) Is ineligible for SSI benefits and/or state supplementary payments (SSP); and

(c) Would be eligible for SSI benefits if the following are deducted from the current Title II benefit amount:

(i) All Title II cost-of-living benefit increases under P.L. 94-566, Section 503 received by the recipient since termination from SSI/SSP; and

(ii) All Title II cost-of-living benefit increases received during the time period in (c)(i) of this subsection by the recipient's spouse and/or other financially responsible family member living in the same household.

(5) A recipient of SSI, after January 1, 1981, who continues to be eligible for medical assistance (MA) under P.L. 96-265 and 99-643.

(6) A pregnant woman, with no other eligible children, who is ineligible for AFDC cash assistance solely because she has not reached the sixth month of pregnancy.

(7) A client who is denied AFDC or FIP cash payments solely because of a departmental recovery of an overpayment.

(8) A child (~~under seven years of age, who is born after September 30, 1983, and who meets the income and resource requirements of AFDC or FIP financial assistance~~) meeting residence, citizenship, and Social Security Number requirements whose family income is:

(a) Under one hundred eighty-five percent of the federal poverty level (FPL) for a child under one year of age; or

(b) Under one hundred thirty-three percent of the FPL for a child under six years of age;

(c) Under one hundred percent of the FPL for a child under eighteen years of age; or

(d) Effective January 1, 1993, under one hundred percent of the FPL for a child eighteen years of age.

PROPOSED

(9) A family unit shall remain categorically eligible for medical assistance for nine calendar months beginning with the month of ineligibility for AFDC, when terminated before April 1, 1990, from AFDC financial assistance solely because of:

(a) The loss of the thirty dollars plus one-third exemption; or

(b) The thirty-dollar income exemption.

(10) A child, born to a woman eligible for and receiving medical assistance on the date of the child's birth, from the date of birth for a period of one year when the child remains a member of the mother's household.

(11) A family unit ineligible for AFDC or FIP financial assistance as a result (wholly or partly) of the collection or increased collection of child or spousal support shall be eligible for medical assistance for four months beginning with the month of ineligibility; provided the family unit:

(a) Received AFDC or FIP financial assistance in at least three of the six months immediately preceding the month of ineligibility; and

(b) Became ineligible for AFDC or FIP on or after August 16, 1984.

(12) A pregnant woman who does not meet the deprivation requirements of AFDC or FIP financial assistance if:

(a) She would meet the AFDC or FIP financial assistance income requirements if the number in the household is increased by one before being compared to the payment standard; and

(b) She meets the AFDC or FIP financial assistance resource requirements.

(13) An alien denied AFDC, FIP, or SSI cash assistance solely because of deeming of income of the alien's sponsors.

(14) A current disabled client receiving widow's or widower's benefits under section 202 (e) or (f) of the Social Security Act if the disabled client:

(a) Was entitled to a monthly insurance benefit for December 1983 under Title II of the Social Security Act;

(b) Was entitled to and received a widow's or widower's benefit for January 1984 based on a disability under section 202 (e) or (f) of the Social Security Act;

(c) Became ineligible for SSI/SSP in the first month in which the increase provided under section 134 of P.L. 98-21 was paid to the client;

(d) Has been continuously entitled to a widow's or widower's benefit under section 202 (e) or (f) of the act;

(e) Would be eligible for SSI/SSP benefits if the amount of that increase, and any subsequent cost-of-living increases provided under section 215(i) of the act, were disregarded;

(f) Is fifty through fifty-nine years of age; and

(g) Filed an application for Medicaid coverage before July 1, 1988.

(15) Effective January 1, 1991, any person receiving Title II widow/widower benefits under section 202 (e) or (f) of the SSA, if the person:

(a) Is not eligible for the hospital insurance benefits under Medicare Part A of Title XVIII;

(b) Received SSI/SSP payments in the month before receiving such Title II benefits;

(c) Became ineligible for SSI/SSP due to receipt of or increase in such Title II benefits; and

(d) Would be eligible for SSI/SSP if the amount of such Title II benefits or increase in such Title II benefits under section 202 (e) or (f) of the SSA, and any subsequent cost-of-living increases provided under section 215(i) of the act were disregarded.

(16) A family unit suspended from FIP financial assistance because of increased earned income. This period of eligibility shall not exceed twelve months as determined by WAC 388-77-737.

(17) A family unit which becomes ineligible for FIP before April 1, 1990, solely because of increased hours of employment shall remain categorically eligible for medical assistance for four calendar months beginning with the month of ineligibility provided:

(a) The family unit received FIP in at least three of the six months immediately preceding the month of ineligibility;

(b) A member of such family continues to be employed.

(18) A disabled or blind client receiving Title II disabled adult childhood (DAC) benefits under section 202(d) of the SSA if the client:

(a) Has attained eighteen years of age;

(b) Lost SSI/SSP on or after July 1, 1988, due to receipt of or increase in DAC benefits; and

(c) Would be eligible for SSI/SSP if the amount of the DAC benefits or increase under section 202(d) of the SSA and any subsequent cost-of-living increases provided under section 215(i) of the SSA act were disregarded.

AMENDATORY SECTION (Amending Order 3389, filed 5/19/92, effective 6/19/92)

WAC 388-83-033 Children—Eligible to ((eighteen)) nineteen years of age. (1) The department shall find a child who has not yet attained ((eighteen)) nineteen years of age eligible for Medicaid when the child meets citizenship, residence, and Social Security Number requirements under this chapter and the income requirement corresponding to the age levels under the following subsections:

(a) ~~((Effective January 1, 1992,)) A child ((born on or before September 30, 1983, but has not attained eighteen))~~ under nineteen years of age, shall be eligible as categorically needy when the family income is equal to or less than ~~((the AFDC income standards;~~

~~(b) A child six years of age or older born on or after October 1, 1983, shall be eligible as categorically needy when the total family countable income does not exceed one hundred percent of the poverty income guidelines as published and updated by the secretary of health and human services))~~ one hundred percent of the federal poverty level (FPL). One hundred percent of the current federal poverty income guidelines is:

	Family Size	Monthly
(i)	One	\$ 568
(ii)	Two	766
(iii)	Three	965
(iv)	Four	1,163
(v)	Five	1,361
(vi)	Six	1,560
(vii)	Seven	1,758
(viii)	Eight	1,956

(ix) For family units with more than eight members, add \$199 to the monthly income for each additional member.

~~((e))~~ (b) A child ~~((who attains))~~ one year of age, but ~~((has not attained))~~ under six years of age, shall be eligible as categorically needy when the total family countable income does not exceed one hundred thirty-three percent of the federal poverty income guidelines as published and updated by the secretary of health and human services. One hundred thirty-three percent of the current federal poverty income guidelines is:

	Family Size	Monthly
(i)	One	\$ 755
(ii)	Two	1,019
(iii)	Three	1,283
(iv)	Four	1,547
(v)	Five	1,810
(vi)	Six	2,074
(vii)	Seven	2,338
(viii)	Eight	2,602

(ix) For family units with more than eight members, add \$264 to the monthly income for each additional member.

~~((d))~~ (c) An infant under one year of age shall be eligible as categorically needy when the infant is a member of a family whose total family countable income does not exceed one hundred eighty-five percent of the current federal poverty income guidelines. See income guidelines as described under WAC 388-83-032 (3)(a).

(2) The department shall:

(a) ~~((Find an infant under one year of age and born before January 1, 1991, eligible as categorically needy when the infant:~~

(i) ~~Is born to a woman eligible for and receiving medical assistance on the date of the infant's birth; and~~

(ii) ~~Remains a member of the mother's household and the mother remains eligible for medical assistance.~~

~~((b))~~ Find an infant under one year of age ~~((and born on or after January 1, 1991,))~~ eligible as categorically needy when the infant:

(i) Is born to a woman eligible for and receiving medical assistance on the date of the infant's birth; and

(ii) Remains a member of the mother's household.

~~((e))~~ (b) Not consider citizenship, application for, or possession of, a Social Security Number, income, or resource requirements for infants under this subsection.

(3) Effective January 1, 1991, regardless of citizenship or application for, or possession of a Social Security Number, the department shall determine a child from birth to eighteen years of age, eligible for state-funded medical services with the same medical coverage as categorically needy, if the:

(a) Child is not eligible for any federally-funded Medicaid program; and

(b) Child's total family countable income does not exceed one hundred percent of the current federal poverty income guidelines. See income guidelines as described under subsection (1)~~((b))~~(a) of this section.

(4) The department shall determine family income according to AFDC methodology, and apply the special situations as required under WAC 388-83-130.

(5) The department shall not consider resources in determining eligibility of a child under this section.

(6) A child shall remain eligible under this section until the later of the end of the month:

(a) Of the child's birthday that exceeds the age requirement; or

(b) In which the child receives inpatient services if:

(i) The child is receiving inpatient services on the last day of the month of the child's birthday that exceeds the age requirement; and

(ii) The child's stay for inpatient services continues into the following month or months; and

(iii) Except for the age requirement, the child would be eligible for assistance under this section.

(7) A child eligible under subsection (3) of this section if pregnant, shall remain eligible:

(a) Regardless of the changes in family income; and

(b) Through the end of the month including the sixtieth day from the day the pregnancy ends.

AMENDATORY SECTION (Amending Order 3174, filed 5/1/91, effective 6/1/91)

WAC 388-83-130 Eligibility—Special situations. (1) In determining eligibility for medical services, the department shall:

(a) Consider parent's income available whether or not actually contributed, when determining:

(i) Eligibility of a non SSI-related person under ~~((eighteen))~~ nineteen years of age residing in the same family unit with parents; ~~((except))~~ or

(ii) SSI-related eligibility of a person under eighteen years of age residing in the same family unit with parents.

(b) In determining a pregnant minor's medical eligibility, the department shall:

(i) Not consider the income of her natural, adoptive or stepparents unless the income is actually contributed; and

(ii) Consider a pregnant minor as living on her own.

(2) The department shall not allow the AFDC earned income exemption of thirty dollars plus one-third of remainder to clients:

(a) Applying solely for medical assistance, except for families applying for medical assistance who received AFDC or FIP cash assistance in any of the four preceding months; and

(b) After the client receives the thirty dollars plus one-third income disregard for a maximum of four consecutive months. A client is not eligible for the disregard until the client does not receive AFDC or FIP cash assistance for twelve consecutive months.

(3) For family units determined ineligible for AFDC or FIP cash assistance solely due to the requirements of WAC 388-24-050 or 388-77-210 that certain siblings be included in the assistance unit, at the applicant's option, such individuals and their income may be excluded from the assistance unit when determining eligibility of the remaining assistance unit members for categorically needy medical assistance.

(4) For family units determined ineligible for AFDC or FIP financial assistance solely due to the requirements of WAC 388-28-500(4) or 388-77-285 that income of the nonapplying parents of a minor parent be considered

available to the assistance unit of the minor parent and such minor's child or children, such income shall be disregarded when determining eligibility of such minor's child or children.

(5) The department shall consider AFDC and FIP children sixteen and seventeen years of age, terminated from cash assistance, as eligible for Medicaid on the same basis as dependent children when termination was solely due to the:

(a) AFDC or FIP children ceasing to attend school; or
(b) AFDC children refusing to participate in the Job Opportunities and Basic Skills Training program.

(6) The department shall consider a person eligible for Medicaid when the person is denied AFDC or FIP cash assistance solely because:

(a) Of income and resources deemed available from the following person who is not a member of the AFDC or FIP unit, unless actually available to the assistance unit:

(i) Stepparent who is not legally liable for support of stepchildren;

(ii) Grandparent;

(iii) Legal guardian who is not a parent;

(iv) Alien sponsor; or

(v) Sibling.

(b) Of counting a sibling's income or resources or both to determine AFDC or FIP cash assistance when the sibling is residing in the same residence, unless the sibling actually contributes or makes available the income or resources or both to the AFDC or FIP assistance unit; and

(c) After July 1, 1989, a member of the family transferred a resource without receiving adequate compensation. If the family member is institutionalized, refer to chapter 388-95 WAC.

(7) The department shall consider a person eligible for Medicaid when the person is denied SSI cash assistance solely because of income and resources deemed available from an alien sponsor.

AMENDATORY SECTION (Amending Order 3285, filed 11/19/91, effective 12/20/91)

WAC 388-84-105 Medical application. (1) The department shall accept and process applications for medical programs as described under subsections of WAC 388-38-010, 388-38-030, 388-38-040, 388-38-045, and 388-38-050 except as specified under this section.

(2) The department shall accept applications for medical programs without delay.

(a) The department shall provide clients with:

(i) An explanation of the Civil Rights Act;

(ii) Fair hearing information;

(iii) Information about early and periodic screening, diagnosis, and treatment (EPSDT) also known as the healthy kids program, when appropriate; and

(iv) Information about family planning, when appropriate.

(v) Information about the special supplemental food program for women, infants and children's (WIC), when appropriate.

(b) The request for medical programs shall be in writing on a department designated form.

(c) A relative or representative may complete the application on a client's behalf, when the client is unable to complete the application or if the client dies.

(3) The department shall complete the application process by conducting a face-to-face interview in the local community services office CSO, unless the client or their representative:

(a) Requests the office interview be waived and the:

(i) Client is unable to come to the CSO; and

(ii) Client has no representative to complete the interview; or

(iii) Client is unable to name a representative to complete the interview; and

(iv) Department has adequate information to determine eligibility for medical programs without a face-to-face interview.

(b) Is a pregnant woman applying only for a medical program; or

(c) Is a child (~~(up to eighteen)~~) under nineteen years of age and the application is only for a medical program.

(4) If the client meets the requirements of subsection (3)(a), the department may complete the application process through:

(a) A face-to-face home visit;

(b) A telephone interview; or

(c) The mail.

(5) The department shall find clients who receive cash assistance under AFDC, FIP, SSI, or state supplement eligible for medical assistance without a separate application.

(6) A spouse ineligible for SSI benefits solely because of the spouse's income level shall apply individually for a medical program.

(7) A Washington state resident temporarily out of the state may make application directly to the CSO in the resident's area of the state through either a person or agency acting in the client's behalf.

AMENDATORY SECTION (Amending Order 3105, filed 11/30/90, effective 1/1/91)

WAC 388-99-010 Persons eligible for medically needy assistance. The department shall determine as medically needy a resident of the state of Washington who meets the income and resource levels in WAC 388-99-020 and 388-99-035 and is:

(1) Categorically needy as defined under WAC 388-82-010 but for income and/or resources; or

(2) The aged, blind, or disabled ineligible spouse of an SSI beneficiary; or

(3) A child (~~(seventeen)~~) under nineteen years of age (~~(and under)~~) as defined under WAC 388-83-033(1) but for income and resources; or

(4) A pregnant woman who the department considers categorically needy but for income and resource requirements. For the purposes of this subsection, the department shall increase the number in the household by the number of unborns before comparing the pregnant woman's:

(a) Income to the medically needy income level in WAC 388-99-020; and

(b) Resources to the resource level in WAC 388-99-035.

(5) Not an inmate of a public institution.

WSR 93-03-062
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed January 15, 1993, 2:35 p.m.]

WSR 93-03-063
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed January 15, 1993, 2:37 p.m.]

Original Notice.

Title of Rule: Chapter 98-70 WAC, Fees; and WAC 98-70-010 Fees, fees for activities licensed by Cemetery Board.

Purpose: Provide administrative amendments to WAC 98-70-010 to list fees for cremated remains disposition permit and endorsement.

Statutory Authority for Adoption: RCW 68.05.100.

Statute Being Implemented: RCW 68.05.195.

Summary: Implementation of fee program in conjunction with proposed WAC rules on licensing of businesses engaged in scattering and other disposition of cremated remains.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jon Donnellan, 2424 Bristol Court, Olympia, 586-4905.

Name of Proponent: Department of Licensing, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: See Summary above.

Proposal Changes the Following Existing Rules: WAC 98-70-010, proposes fees for application for and renewal of cremated remains disposition permit or endorsement.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

Hearing Location: Host International Auditorium, SeaTac International Airport, on March 1, 1993, at 10:15 a.m.

Submit Written Comments to: Jon Donnellan, Cemetery Board, P.O. Box 9012, Olympia, WA 98502-9012, by February 26, 1993.

Date of Intended Adoption: March 1, 1993.

January 13, 1993

Steven J. Thiele

Assistant Attorney General

AMENDATORY SECTION (Amending Order PM 816, filed 3/1/89)

WAC 98-70-010 Fees. The following fees shall be charged by the Washington state cemetery board:

Title of Fee	Fee
Regulatory charges	
Charge per each preceding (calendar) <u>calendar</u> year interments, entombments and inurnments	\$ 3.00
Prearrangement sales license	
Application	100.00
Renewal	50.00
<u>Cremated remains disposition permit or endorsement</u>	
<u>Application</u>	<u>50.00</u>
<u>Renewal</u>	<u>25.00</u>

Crematory license/endorsement fifty dollars/year plus fifty cents per cremation performed during applicable year.

Original Notice.

Title of Rule: Chapter 98-60 WAC, Disposition of cremated remains; WAC 98-60-010 Definitions, 98-60-020 Permits and endorsements, 98-60-030 Compliance with all laws, 98-60-040 Records and documentation, and 98-60-050 Permits and endorsements—Terms—Fees.

Purpose: Provide procedures and guidelines for licensing individuals and companies engaged in the business of scattering, burying or other disposition of cremated remains outside of cemeteries pursuant to RCW 68.05.195.

Statutory Authority for Adoption: RCW 68.05.100.

Statute Being Implemented: RCW 68.05.195.

Summary: Implementation of licensing program for businesses offering scattering or other disposition of cremated remains.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jon Donnellan, 2424 Bristol Court, Olympia, 586-4905.

Name of Proponent: Department of Licensing, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule will require businesses which offer scattering or other services for the disposition of cremated remains to be licensed. The purpose of the rule is to provide regulation of the industry, ensuring that proper documentation and standards be maintained in the disposition of cremated remains.

Proposal does not change existing rules.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

Hearing Location: Host International Auditorium, SeaTac International Airport, on March 1, 1993, at 10:15 a.m.

Submit Written Comments to: Jon Donnellan, Cemetery Board, P.O. Box 9012, Olympia, WA 98502-9012, by February 26, 1993.

Date of Intended Adoption: March 1, 1993.

January 13, 1993

Steven J. Thiele

Assistant Attorney General

**Chapter 98-60 WAC
DISPOSITION OF CREMATED REMAINS**

NEW SECTION

WAC 98-60-010 Definitions. The following definitions shall apply to this chapter:

(1) "Dedicated cemetery property" as used in this chapter means private cemetery property which has been dedicated in compliance with chapter 68.24 RCW, and cemetery property belonging to a public or religious cemetery as defined by RCW 68.05.400.

(2) "Board" as used in this chapter means the cemetery board.

(3) "Department" as used in this chapter means the department of licensing.

NEW SECTION

WAC 98-60-020 Permits and endorsements. (1)

Anyone not authorized to control the disposition of remains under RCW 68.50.160 must register to obtain a permit or endorsement to bury or otherwise dispose of cremated remains by land, sea, or air, where such disposition is made outside dedicated cemetery property.

(2) Authorization under subsection (1) of this section for those holding licenses issued by the cemetery board or the funeral directors and embalmers board shall be by an endorsement to their existing license. All other authorization shall be in the form of a permit issued by the board.

(3) In the case of a corporate applicant, the corporation shall apply for and hold the endorsement or permit.

NEW SECTION

WAC 98-60-030 Compliance with all laws. Permit and endorsement holders shall comply with all federal, state, and local laws related to the disposition of cremated remains.

NEW SECTION

WAC 98-60-040 Records and documentation. (1)

Permit and endorsement holders must provide a Certificate of Disposition to the person authorizing the cremation. The certificate shall identify the name of the deceased, the location and date of the disposition of the cremated remains, the manner of disposition (boat, air, or other), the name of the authorizing agent, and, if applicable, the name of the funeral home, crematory, or cemetery arranging the service.

(2) Permit and endorsement holders must maintain copies of records required under subsection (1) of this section for seven years from the date of disposition.

(3) Permit and endorsement holders shall report the number of dispositions performed in the previous year in the space provided on the annual renewal form supplied by the department. Failure to provide such a report shall automatically suspend the permit or endorsement. Such permit or endorsement may be restored by making the proper report to the department.

NEW SECTION

WAC 98-60-050 Permits and endorsements—

Terms—Fees. All permits or endorsements issued under this rule shall be issued for the year and shall expire at midnight, the thirty-first day of January of each year, or at whatever time during any year that ownership or control of any permit or endorsement holder is transferred or sold.

The fees shall be as set forth in chapter 98-70 WAC and the department shall collect in advance the fees required for licensing.

WSR 93-03-064
PROPOSED RULES
DEPARTMENT OF
NATURAL RESOURCES

[Order 609—Filed January 15, 1993, 4:00 p.m.]

Original Notice.

Title of Rule: Forest protection zones—Pierce County, identifies lands outside the forest protection zone.

Purpose: Removes land from DNR protection, assigns responsibility for protection to fire districts. Removes protection assessment from lands transferred to fire district protection.

Statutory Authority for Adoption: RCW 76.04.165.

Reasons Supporting Proposal: Fire districts mutually agree to protect former forest lands in the areas identified. This will result in more efficient fire protection for the residents in these areas.

Name of Agency Personnel Responsible for Drafting: Bob Bannon, Olympia, Washington, 902-1300; Implementation and Enforcement: Region Manager, Enumclaw, Washington, 825-1631.

Name of Proponent: Department of Natural Resources, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The purpose of this rule is to identify the forest protection zone. This rule identifies lands outside the zone, mutually agreed with the fire protection districts. This rule will transfer protection responsibility for the lands outside the zone to the fire districts. The rule will remove any further assessments on these lands under RCW 76.04.610 or 76.04.630. The fire districts have contracted the protection responsibility for much of these lands. It has been shown that the fire district is best suited to assume the responsibility for providing protection to these lands.

Proposal does not change existing rules.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

Hearing Location: Graham, Washington, Pierce County Fire District #21, 10012 187th Street East, Puyallup, WA 98373, on February 25, 1993, at 7:00 p.m.

Submit Written Comments to: Bob Bannon, P.O. Box 47037, Olympia, WA 98504-7037, by February 25, 1993.

Date of Intended Adoption: February 26, 1993.

January 5, 1993

James A. Stearns

Supervisor

for Brian J. Boyle

Commissioner of

Public Lands

NEW SECTION

WAC 332-24-720 Forest protection zone—Pierce County (1) It is determined that some forest lands within Pierce County are best protected by fire protection districts. Therefore, the forest lands, situated in the following fire district, are removed from the Department's forest protection zone and become the protection responsibility of the district:

(a) Fire Protection District #21. All forest lands, except State and Federal Forest Lands within the legal description as follows: Township 17 North, Range 3 East, W.M., Sections 1, 2, 11, 12; Township 17 North, Range 4 East, W.M., Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15; Township 17 North, Range 5 East, W.M., Sections 4, 5, 6, 7; Township 18 North, Range 3 East, W.M., Sections 13, 14, 23, 24, 25, 26, 27, 34, 35, 36; Township 18 North, Range 4 East, W.M., Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36; Township 18 North, Range 5 East, W.M., Sections 18, 19, 20, 29, 30, 31, 32, 33; Township 19 North, Range 4 East, W.M., Sections 28, 29, 30, 31, 32, 33, 34

(2) Forest lands removed from the forest protection zone will not be assessed under RCW 76.04.610 or 76.04.630.

WSR 93-03-065
PROPOSED RULES
DEPARTMENT OF ECOLOGY
 [Order 92-34—Filed January 19, 1993, 9:10 a.m.]

Continuance of WSR 92-18-096.

Title of Rule: Chapter 173-400 WAC, General regulations for air pollution sources.

Purpose: To continue adoption date from January 15, 1993, to February 16, 1993.

Date of Intended Adoption: February 16, 1993.

January 19, 1993

Fred Olson

Acting Director

WSR 93-03-066
PROPOSED RULES
DEPARTMENT OF ECOLOGY
 [Order 92-55—Filed January 19, 1993, 9:14 a.m.]

Original Notice.

Title of Rule: Amending chapter 173-216 WAC, State waste discharge permit program; chapter 173-220 WAC, National pollutant discharge elimination system permit program; and new chapter 173-226 WAC, Waste discharge general permit program.

Purpose: Modifies and expands on the process for developing, issuing, and administering wastewater general permits. Rule changes are required to effectively implement recent federal storm water permit requirements.

Statutory Authority for Adoption: Chapter 90.48 RCW.

Statute Being Implemented: Chapter 90.48 RCW.

Summary: Amends chapters 173-216 and 173-220 WAC and creates new chapter 173-226 WAC.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bill Moore, Lacey, Washington, (206) 438-7035.

Name of Proponent: Department of Ecology, governmental.

Rule is necessary because of federal law, 40 CFR Part 122.26.

Explanation of Rule, its Purpose, and Anticipated Effects: These proposed rule amendments and the proposed new chapter define a process for the development, issuance, and administration of wastewater general permits. The effect of these rules will be to clarify and more clearly define how general permits are administered including how individual facilities obtain coverage under a general permit.

Proposal Changes the Following Existing Rules: Chapters 173-216 and 173-220 WAC are both being amended to remove general permit implementation language and to insert language enabling the use of general permits and referencing the new chapter 173-226 WAC.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

A small business economic impact statement is not required for this rulemaking because the rules being amended and adopted govern ecology procedures.

Hearing Location: Central Wastewater Treatment Facility, 2201 Portland Avenue, Tacoma, WA, on Thursday, February 25, 1993, at 1:00 p.m.

Submit Written Comments to: Bill Moore, Department of Ecology, P.O. Box 47696, Olympia, WA 98504-7696, by March 5, 1993.

Date of Intended Adoption: May 5, 1993.

January 19, 1993

Fred Olson

Acting Director

AMENDATORY SECTION (Amending Order 86-03, filed 3/4/86)

WAC 173-216-010 Purpose. (1) The purpose of this chapter is to implement a state permit program, applicable to the discharge of waste materials from industrial, commercial, and municipal operations into ground and surface waters of the state and into municipal sewerage systems. However, this regulation (~~excludes the point source discharge of pollutants into navigable waters of the state which is regulated by National Pollutant Discharge Elimination System (NPDES) Permit Program, chapter 173-220 WAC. This regulation also excludes the injection of fluids through wells which is regulated by underground injection control program, chapter 173-218 WAC~~) does not apply to the following:

(a) The injection of fluids through wells which are regulated by the Underground injection control program, chapter 173-218 WAC.

(b) The point source discharge of pollutants into navigable waters of the state which are regulated by the National Pollutant Discharge Elimination System (NPDES) Permit Program, chapter 173-220 WAC.

(c) The discharge of pollutants into waters of the state which are regulated by the Waste discharge general permit program, chapter 173-226 WAC.

(2) Permits issued under this chapter are designed to satisfy the requirement for discharge permits under the Water Pollution Control Act, chapter 90.48 RCW and to implement applicable pretreatment requirements under section 307 of the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.).

AMENDATORY SECTION (Amending Order 86-03, filed 3/4/86)

WAC 173-216-030 Definitions. For the purposes of this chapter the following definitions shall be applicable:

(1) "Beneficial uses" shall include, but not be limited to, use for domestic water, irrigation, fish, shellfish, game, and other aquatic life, municipal, recreation, industrial water, generation of electric power, and navigation.

(2) "Dangerous wastes" means any discarded, useless, unwanted, or abandoned nonradioactive substances, including but not limited to certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes:

(a) Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or

(b) Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means (Hazardous Waste Disposal Act, chapter 70.105 RCW).

(3) "Department" means department of ecology.

(4) "Domestic wastewater" means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments or other places, together with such ground water infiltration or surface waters as may be present (submission of plans and reports for construction of wastewater facilities, chapter 173-240 WAC).

(5) "Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim, or dispose of domestic wastewater together with such industrial waste as may be present. In case of subsurface sewage treatment and disposal, the term is restricted to mean those facilities treating and disposing of domestic wastewater only from:

(a) A septic tank with subsurface sewage treatment and disposal and an ultimate design capacity exceeding fourteen thousand five hundred gallons per day at any common point; or

(b) A mechanical treatment system or lagoon followed by subsurface disposal with an ultimate design capacity exceeding three thousand five hundred gallons per day at any common point (submission of plans and reports for construction of wastewater facilities, chapter 173-240 WAC).

(6) "FWPCA" means Federal Water Pollution Control Act as amended by 1981 amendment (33 U.S.C. § 466 et seq.).

(7) "General permit" means a permit which covers multiple dischargers within a designated geographical area, in lieu of individual permits being issued to each discharger.

(8) "Industrial wastewater" means water or liquid-carried waste from industrial or commercial processes, as distinct from domestic wastewater. These wastes may result from any process or activity of industry, manufacture, trade or business, from the development of any natural resource, or from animal operations such as feed lots, poultry houses, or dairies. The term includes contaminated stormwater and, also, leachate from solid waste facilities (Submission of

plans and reports for construction of wastewater facilities, chapter 173-240 WAC).

~~((8))~~ (9) "Interfere with" means a discharge by an industrial user which, alone or in conjunction with discharges by other sources, inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal and which is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal by the POTW in accordance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the FWPCA, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D or the SWDA, the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection Research and Sanctuaries Act.

~~((9))~~ (10) "Municipal sewerage system" or "publicly owned treatment works (POTW)" means a publicly owned domestic wastewater facility or a privately owned domestic wastewater facility that is under contract to a municipality.

~~((10))~~ (11) "NPDES" means National Pollutant Discharge Elimination System permit program under section 402 of FWPCA.

~~((11))~~ (12) "New source" means any building, structure, facility, or installation from which there is or may be a discharge, the construction of which commenced; after proposal of Pretreatment Standards under section 307(c) of the FWPCA which are applicable to such sources.

~~((12))~~ (13) "Pass through" means the discharge of pollutants through a municipal sewerage system into waters of the state in quantities or concentrations which are a cause of or significantly contribute to a violation of any requirement of water quality standards for waters of state of Washington, chapter 173-201 WAC, or of the NPDES or state waste discharge permit, including an increase in the magnitude or duration of a violation (section 307 of FWPCA). Failure to obtain approval of an application for a new or increased discharge or change in the nature of the discharge according to WAC 173-216-110(5) would constitute such a violation.

~~((13))~~ (14) "Person" includes any political subdivision, local, state or federal government agency, municipality, industry, public or private corporation, partnership, association, firm, individual, or any other entity whatsoever.

~~((14))~~ (15) "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW.

~~((15))~~ (16) "Pretreatment requirements" means any substantive or procedural state, local, or federal requirements or standards developed under chapter 90.48 RCW and sections 307 and/or 402 of the FWPCA.

~~((16))~~ (17) "Pretreatment standards," "categorical standards," or "standards," means any pollutant discharge limitations, including those developed under section 307(b) and (c) of the FWPCA and implemented through regulations

in 40 CFR Subchapter N, that apply to the discharge of nondomestic wastes to POTWs. This term includes prohibitive discharge limits established pursuant to WAC 173-216-060.

~~((17))~~ (18) "Subsurface sewage treatment and disposal" means the physical, chemical, or biological treatment and disposal of domestic wastewater within the soil profile by placement beneath the soil surface in trenches, beds, seepage pits, mounds, or fills (Submission of plans and reports for construction of wastewater facilities, chapter 173-240 WAC).

~~((18))~~ (19) "Waste materials" means any discarded, abandoned, unwanted or unrecovered material(s), except the following are not waste materials for the purposes of this chapter:

(a) Discharges into the ground or ground water of return flow, unaltered except for temperature, from a ground water heat pump used for space heating or cooling: *Provided*, That such discharges do not have significant potential, either individually, or collectively, to affect ground water quality or uses.

(b) Discharges of stormwater that is not contaminated or potentially contaminated by industrial or commercial sources.

~~((19))~~ (20) "Waters of the state" means all lakes, rivers, ponds, streams, inland waters, ground waters, salt waters, and all other waters and water courses within the jurisdiction of the state of Washington.

~~((20))~~ (21) In the absence of other definitions as set forth herein, the definitions as set forth in 40 CFR Part 403.3 shall be used for circumstances concerning the discharge of waste into sewerage systems.

AMENDATORY SECTION (Amending Order DE 83-29, filed 11/18/83)

WAC 173-216-040 Authorization required. (1) No waste materials may be discharged from any commercial or industrial operation into waters of the state, or into any municipal sewerage system, nor may waste materials be discharged from any municipal sewerage system into waters of the state, except as authorized pursuant to this chapter ~~((of))~~, chapter 173-220 or 173-226 WAC.

(2) Any person who constructs or modifies or proposes to construct or modify wastewater facilities must first comply with the regulations for submission of plans and reports for construction of wastewater facilities, chapter 173-240 WAC.

AMENDATORY SECTION (Amending Order 86-03, filed 3/4/86)

WAC 173-216-050 Discharges not subject to permits. (1) The following discharges are not subject to permits under this chapter:

(a) Discharges to municipal sewerage systems of domestic wastewater from residential, commercial, or industrial structures.

(b) Any industrial or commercial discharge to a municipal sewerage system for which authority to issue permits has been granted to the municipality under RCW 90.48.165.

(c) Any industrial or commercial discharge to a municipal sewerage system operating under, and in compliance with, the applicable requirements of a local pretreatment

program approved under section 307 of FWPCA and WAC 173-216-150. In the event of noncompliance, this exemption no longer applies and the discharger is immediately subject to enforcement action under chapter 90.48 RCW for discharging without a waste discharge permit.

(d) Discharges to municipal sewerage systems of wastes from industrial or commercial sources whose wastewater is similar in character and strength to normal domestic wastewater: *Provided*, That such discharges do not have the potential to adversely affect performance of the system. Examples of this type of discharge sources may include hotels, restaurants, laundries and food preparation establishments.

(e) Discharges for which an NPDES permit from the department is required pursuant to chapter 173-220 WAC.

(f) Discharges which are otherwise subject to the permit requirements of this chapter but which are covered under a general permit issued pursuant to chapter 173-226 WAC.

(g) Discharges of domestic wastewater from a septic tank with subsurface sewage treatment and disposal and an ultimate design capacity less than or equal to fourteen thousand five hundred gallons per day. These systems are governed by on-site sewage disposal systems, chapter ((248-96)) 246-272 WAC which is administered by the Washington state department of ((social-and)) health ((services)).

~~((g))~~ (h) Discharges of domestic wastewater from a mechanical treatment system or lagoon followed by subsurface disposal with an ultimate design capacity less than or equal to three thousand five hundred gallons per day. These systems are governed by on-site sewage disposal systems, chapter ((248-96)) 246-272 WAC which is administered by the Washington state department of ((social-and)) health ((services)).

(2) A permit is required for any source subject to pretreatment standards promulgated under section 307 of FWPCA, unless exempted under subsections (1)(b) and (c) of this section.

(3) These exemptions shall not relieve any discharger from the requirement to apply all known, available, and reasonable methods to prevent and control waste discharges to the waters of the state, nor the requirement to obtain approval of plans and reports for the construction of wastewater facilities. Nothing herein shall limit the authority of the department to take enforcement action for any unlawful discharge of waste materials or other violations of the Water Pollution Control Act, chapter 90.48 RCW.

AMENDATORY SECTION (Amending Order 86-03, filed 3/4/86)

WAC 173-216-070 Application for a permit. (1) Any person not exempt under WAC 173-216-050, who proposes to discharge waste materials into waters of the state or into a municipal sewerage system, must file an application with the department at least sixty days prior to discharging, or in the case of an expiring permit, at least sixty days prior to the expiration of the permit.

(2) Applications for permits shall be on forms as prescribed by the department.

(3) The applicant must pay applicable fees pursuant to Wastewater discharge permit fees, chapter ((173-222)) 173-224 WAC.

(4) The requirement for a permit application will be satisfied, if the discharger files:

(a) A completed permit application;

(b) When applicable, signature of approval by an authorized representative of the municipal sewerage system; and

(c) Any other information determined as necessary by the department.

(5) The application shall be signed in case of:

(a) Corporations, by a principal executive officer of at least the level of vice-president;

(b) A partnership, by a general partner;

(c) A sole proprietorship, by the proprietor;

(d) A municipal, state, federal, or other public facility, by either a principal executive officer or ranking elected official.

(6) In the case of application by a corporation, the principal executive officer shall personally examine the application and certify its truth, accuracy, and completeness.

AMENDATORY SECTION (Amending Order 88-8, filed 5/26/88, effective 7/1/88)

WAC 173-216-130 Modification, suspension, and revocation of permits. (1) Any permit issued under this chapter can be modified, suspended, or revoked, in whole or in part by the department for the following causes:

(a) Violation of any permit term or condition;

(b) Obtaining a permit by misrepresentation or failure to fully disclose all relevant facts;

(c) A material change in quantity or type of waste disposal;

(d) A material change in the condition of the waters of the state; or

(e) Nonpayment of permit fees assessed pursuant to RCW 90.48.610.

(2) The department may modify a permit, including the schedule of compliance or other conditions, if it determines good and valid cause exists, which includes promulgation or revisions of categorical standards.

(3) Any permit issued under this chapter shall remain in effect until terminated in writing by the department, except that continuation of an expired permit (pursuant to RCW 90.48.200), shall terminate upon coverage under a general permit issued pursuant to chapter 173-226 WAC.

AMENDATORY SECTION (Amending Order DE 83-29, filed 11/18/83)

WAC 173-216-140 Relationship with NPDES permits. For a given facility, permit requirements under this chapter and NPDES permit requirements under Water Pollution Control Act, RCW 90.48.260, shall under normal circumstances, be contained in a single permit document(~~(; except for general permits as provided for in NPDES permit program, WAC 173-220-045)).~~

AMENDATORY SECTION (Amending Order 88-9, filed 11/1/88)

WAC 173-220-010 Purpose. The purpose of this chapter is to establish a state individual permit program, applicable to the discharge of pollutants and other wastes and materials to the surface waters of the state, operating under state law as a part of the National Pollutant Discharge Elimination System (NPDES) created by section 402 of the Federal Water Pollution Control Act (FWPCA). Permits issued under this chapter are designed to satisfy the requirements for discharge permits under both section 402(b) of the FWPCA and chapter 90.48 RCW.

AMENDATORY SECTION (Amending Order 88-9, filed 11/1/88)

WAC 173-220-020 Permit required. No pollutants shall be discharged to any surface water of the state from a point source, except as authorized by an individual (~~(or general))~~ permit issued pursuant to this chapter or as authorized by a general permit issued pursuant to chapter 173-226 WAC.

AMENDATORY SECTION (Amending Order 88-9, filed 11/1/88)

WAC 173-220-030 Definitions. For purposes of this chapter, the following definitions shall be applicable:

(1) "Administrator" means the administrator of the United States Environmental Protection Agency.

(2) "Combined waste treatment facility" means any publicly owned waste treatment facility in which the maximum monthly average influent from any one industrial category, or categories producing similar wastes, constitutes over eighty-five percent of the design load for biochemical oxygen demand or suspended solids. Each single industrial category must contribute a minimum of ten percent of the applicable load.

(3) "Department" means department of ecology.

(4) "Director" means the director of the department of ecology or his/her authorized representative.

(5) "Discharge of pollutant" and the term "discharge of pollutants" each means (a) any addition of any pollutant or combination of pollutants to surface waters of the state from any point source, (b) any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source, other than a vessel or other floating craft which is being used as a means of transportation.

(6) "Discharger" means owner or operator of any facility or activity subject to regulation under the NPDES program.

(7) "Domestic wastewater" means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments or other places, together with such groundwater infiltration or surface waters as may be present.

(8) "Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim or dispose of domestic wastewater together with such industrial waste as may be present. This term applies only to facilities discharging to surface water.

(9) "Effluent limitation" means any restriction established by the state or administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into surface waters of the state.

(10) "FWPCA" means the Federal Water Pollution Control Act as amended, 33 U.S.C. 1251 et seq.

(11) "General permit" means ~~((an NPDES))~~ a permit which covers multiple dischargers of a point source category within a designated geographical area, in lieu of individual permits being issued to each discharger.

(12) "Individual permit" means a permit for a single point source or a single facility.

(13) "Major discharger" means any discharger classified as such by the administrator in conjunction with the director and published in the annual state-EPA agreement.

(14) "Minor discharger" means any discharger not designated as major or covered under a general permit.

(15) "NPDES" means the National Pollutant Discharge Elimination System.

(16) "Permit" means an authorization, license, or equivalent control document issued by the director to implement this chapter.

(17) "Person" includes any political subdivision, local, state, or federal government agency, municipality, industry, public or private corporation, partnership, association, firm, individual, or any other entity whatsoever.

(18) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(19) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water. This term does not include sewage from vessels within the meaning of section 312 of the FWPCA nor does it include dredged or fill material discharged in accordance with a permit issued under section 404 of the FWPCA.

(20) "Regional administrator" means the regional administrator of Region X of the Environmental Protection Agency (EPA) or his/her authorized representative.

(21) "Surface waters of the state" means all waters defined as "waters of the United States" in 40 CFR 122.2 that are within the boundaries of the state of Washington. This includes lakes, rivers, ponds, streams, inland waters, wetlands, ocean, bays, estuaries, sounds, and inlets.

(22) "Water quality standards" means the state of Washington's water quality standards for surface waters of the state, which are codified in chapter 173-201 WAC.

AMENDATORY SECTION (Amending Order 88-9, filed 11/1/88)

WAC 173-220-040 Application for permit. (1) Any person presently discharging pollutants to surface waters of the state must file an application with the department on a form prescribed by the department. For the purpose of satisfying the requirements of this subsection, any completed application filed with the Environmental Protection Agency prior to the approval by the administrator under section 402(b) of the FWPCA of this state permit program shall constitute a filing with the department.

(2) Any person proposing to commence a discharge of pollutants to surface waters of the state must file an application with the department on a form prescribed by the department, (a) no less than one hundred eighty days in advance of the date on which it is desired to commence the discharge of pollutants, or (b) in sufficient time prior to commencement of the discharge of pollutants to insure compliance with the requirements of section 306 of the FWPCA and any other applicable water quality standards or effluent standards and limitations.

(3) The applicant must pay any applicable fees required pursuant to RCW 90.48.610.

(4) The requirement for permit application will be satisfied if the discharger files:

(a) A complete application form which is appropriate for the type, category, or size of discharge per 40 CFR 122.21; or

(b) A complete request for coverage ~~((by))~~ under a general permit; and

(c) Any additional information required by the department pertaining to pollutant discharge.

(5) The application form shall bear a certification of correctness to be signed:

(a) In the case of corporations, by a responsible corporate officer.

(b) In the case of a partnership, by a general partner.

(c) In the case of sole proprietorship, by the proprietor.

(d) In the case of a municipal, state, or other public facility, by either a principal executive officer or ranking elected official.

(6) Applications for permits for domestic wastewater facilities that are either owned or operated by, or under contract to, a public entity shall be submitted by the public entity.

(7) No discharge of pollutants into the surface waters of the state is authorized until such time as a permit has been issued consistent with the terms and conditions of this chapter.

AMENDATORY SECTION (Amending Order 88-9, filed 11/1/88)

WAC 173-220-050 Public notice. (1) Public notice of every draft permit determination regarding an individual permit ~~((or general permit, and request for coverage by a general permit,))~~ shall be circulated in a manner designed to inform interested and potentially affected persons of the proposed discharge and of the proposed determination to

issue or deny a permit for the proposed discharge, as follows:

(a) ~~((For individual permits,))~~ Notice shall be circulated within the geographical area of the proposed discharge; such circulation may include any or all of the following, as directed by the department:

(i) Posting by the applicant for a period of thirty days in the post office, public library, and public places of the municipality nearest the premises of the applicant in which the effluent source is located;

(ii) Posting by the applicant for a period of thirty days near the entrance of the applicant's premises and nearby places;

(iii) Publishing by the applicant, at his own cost within such time as the director shall prescribe, through a notice form provided by the department, in major local newspapers of general circulation serving the area in which the discharge occurs: *Provided*, That if an applicant fails to publish notice within thirty days of the time prescribed by the director, the department may publish the notice and bill the applicant for the cost of publication;

(iv) Publishing by the applicant of paid advertisements;

(v) Publishing by the department of news releases or newsletter articles.

(b) ~~((For general permits, such circulation shall include the following:~~

(i) ~~Publishing by the department of a notice of intent to issue a general permit in a major local newspaper of general circulation in each affected area; and~~

(ii) ~~Posting or publishing by the applicant of a request for coverage by a general permit in accordance with any or all methods listed in (a)(i), (ii), (iii), (iv), or (v) of this subsection, as directed by the department.~~

(e)) Notice shall be mailed to any person upon request; and

~~((d))~~ (c) The department shall add the name of any person upon request to a mailing list to receive copies of notices within the state or within a certain geographical area.

(2) The department shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written views on a draft permit determination ~~((or a request for coverage by a general permit))~~. All written comments submitted during the thirty-day comment period shall be retained by the department and considered in the formulation of its final determination with respect to the application. The period for comment may be extended at the discretion of the department.

(3) The department shall prepare the contents of the public notice, which shall, at a minimum, summarize the following:

(a) Name, address, phone number of agency issuing the public notice;

(b) ~~((Except when unknown in the case of general permit issuance,))~~ Name and address of each applicant, and if different, of the facility or activity to be regulated;

(c) Each applicant's activities or operations which result in a discharge (e.g., municipal waste treatment, steel manufacturing, drainage from mining activities);

(d) ~~((Except in the case of general permit issuance,))~~ Name of waterway to which each discharge is made and the

location of each discharge on the waterway, indicating whether such discharge is a new or an existing discharge;

(e) The tentative determination to issue or deny a permit for the discharge;

(f) ~~((Where coverage by a general permit is replacing a current individual permit, notice of termination of the individual permit;~~

~~(g))~~ The procedures for the formulation of final determinations, including the thirty-day comment period required by subsection (2) of this section and any other means by which interested persons may comment upon those determinations; and

~~((h))~~ (g) Address and phone number of state premises at which interested persons may obtain further information.

(4) The department shall provide copies of permit applications, draft permit determinations, ~~((requests for coverage, and general permits upon request))~~ and final permits.

(5) The department shall notify the applicant and persons who have submitted written comments or requested notice of the final permit decision. This notification shall include response to comments received and reference to the procedures for contesting the decision.

AMENDATORY SECTION (Amending Order 88-9, filed 11/1/88)

WAC 173-220-060 Fact sheets. (1) The department shall prepare a fact sheet for every draft permit determination ~~((regarding major dischargers, minor dischargers, and general permits))~~. Such fact sheets shall, at a minimum, summarize the following:

(a) The type of facility or activity which is the subject of the application;

(b) The location of the discharge in the form of a sketch or detailed description;

(c) The type and quantity of the discharge, including at least the following:

(i) The rate or frequency of the proposed discharge;

(ii) For thermal discharges, the average summer and winter temperatures; and

(iii) The average discharge in pounds per day, or other appropriate units, of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under RCW 90.48.010, 90.52.040, 90.54.020 and sections 301, 302, 306, or 307 of the FWPCA and regulations published thereunder;

(d) The conditions in the proposed permit;

(e) The legal and technical grounds for the draft permit determination, including an explanation of how conditions meet both the technology-based and water quality-based requirements of the FWPCA and chapters 90.48, 90.52, and 90.54 RCW;

(f) The effluent standards and limitations applied to the proposed discharge;

(g) The applicable water quality standards, including identification of the uses for which receiving waters have been classified;

(h) How the draft permit addresses use or disposal of residual solids generated by wastewater treatment; and

(i) The procedures for the formulation of final determinations (in more detailed form than that given in the public notice) including:

(i) The thirty-day comment period required by WAC 173-220-050(2);

(ii) Procedures for requesting a public hearing and the nature thereof; and

(iii) Any other procedures by which the public may participate in the formulation of the final determinations.

(2) The department shall send a fact sheet to the applicant and, upon request, to any other person.

(3) The department shall add the name of any person upon request to a mailing list to receive copies of fact sheets.

AMENDATORY SECTION (Amending Order 88-9, filed 11/1/88)

WAC 173-220-070 Notice to other government agencies. The department shall notify other appropriate government agencies of each draft permit determination (~~or request for coverage~~) and shall provide such agencies an opportunity to submit their written views and recommendations. Such notification shall include the following:

(1) Unless the regional administrator has agreed to waive review, transmission of an application, fact sheet, and draft permit to the regional administrator for comment or objection within thirty days (~~((ninety days for general permits))),~~ or a longer period if requested up to a maximum of ninety days.

(2) At the time of issuance of public notice pursuant to WAC 173-220-050, transmission of the public notice to any other states whose waters may be affected by the issuance of a permit. Each affected state shall be afforded an opportunity to submit written recommendations to the department and to the regional administrator which the department may incorporate into the permit if issued. Should the department fail to incorporate any written recommendations thus received, it shall provide to the affected state or states (and to the regional administrator) a written explanation of its reasons for failing to accept any of the written recommendations.

(3) Unless waived by the respective agency, the public notice shall be sent to the appropriate district engineer of the Army Corps of Engineers, the United States Fish and Wildlife Service, the National Marine Fisheries Service, the state departments of fisheries, natural resources, wildlife, and social and health services, the archaeology and historic preservation office, the agency responsible for the preparation of an approved plan pursuant to section 208(b) of the FWPCA, applicable Indian tribes and any other applicable government agencies.

(4) A copy of any written agreement between the department and an agency identified in subsection (3) of this section which waives the receipt of public notices shall be forwarded to the regional administrator and shall be made available to the public for inspection and copying.

(5) Copies of public notices shall be mailed to any other federal, state, or local agency, Indian tribe or any affected country, upon request. Such agencies shall have an opportunity

to respond, comment, or request a public hearing pursuant to WAC 173-220-090.

AMENDATORY SECTION (Amending Order 88-9, filed 11/1/88)

WAC 173-220-090 Public hearings. The applicant, any affected state, any affected interstate agency, any affected country, the regional administrator, or any interested agency or person may request a public hearing with respect to a draft permit determination (~~or request for coverage by a general permit~~). Any such request for a public hearing shall be filed within the thirty-day period prescribed in WAC 173-220-050(2) and shall indicate the interest of the party filing such request and the reasons why a hearing is warranted. The department shall hold a hearing if it determines there is a significant public interest. Instances of doubt will be resolved in favor of holding the hearing. Any hearing brought pursuant to this subsection shall be held at a time and place deemed appropriate by the department.

AMENDATORY SECTION (Amending Order 88-9, filed 11/1/88)

WAC 173-220-100 Public notice of public hearings.

(1) The department shall circulate public notice of any hearing held pursuant to WAC 173-220-090 at least as widely as was the notice pursuant to WAC 173-220-050. Procedures for the circulation of public notice for hearings held under WAC 173-220-090 shall include at least the following:

(a) Notice shall be published in at least one major local newspaper of general circulation within the geographical area of the discharge;

(b) Notice shall be sent to all persons and government agencies who received a copy of the notice pursuant to WAC 173-220-050 or the fact sheet;

(c) Notice shall be mailed to any person upon request; and

(d) Notice shall be effected pursuant to (a) and (c) of this subsection at least thirty days in advance of the hearing.

(2) The contents of public notice of any hearing held in pursuant to WAC 173-220-090 shall include at least the following:

(a) Name, address, and phone number of agency holding the public hearing;

(b) A reference to the public notice issued pursuant to WAC 173-220-050, including identification number and date of issuance;

(c) The time and location for the hearing;

(d) The purpose of the hearing;

(e) Address and phone number of premises at which interested persons may obtain information;

(f) The nature of the hearing;

(g) The issues raised by the persons requesting the hearing, and any other appropriate issues which may be of interest to the public;

~~((i) Except when unknown in the case of general permit determinations,)) (h) The name and address of each applicant whose proposed discharge will be considered at the hearing;~~

~~((ii) Except when unknown in the case of general permit determinations,)) (i) The name of waterway to which~~

each discharge is made and the location of each discharge on the waterway.

AMENDATORY SECTION (Amending Order DE 82-39, filed 12/1/82)

WAC 173-220-110 Permit preparation. The department will prepare tentative staff determinations with respect to a permit application (~~(or a determination that a class of dischargers is appropriately covered by a general permit,))~~ in advance of public notice of the proposed issuance or denial of a permit. Such tentative determinations shall include at least the following:

- (1) A proposed determination to issue or deny a permit for the discharge described in the application; and
- (2) If the determination is to issue the permit, the following shall be included in a draft permit:
 - (a) Proposed effluent limitations for those pollutants proposed to be limited;
 - (b) A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations; and
 - (c) A brief description of any other proposed special conditions which will have a significant impact upon the discharge described in the application.

AMENDATORY SECTION (Amending Order 88-9, filed 11/1/88)

WAC 173-220-225 Appeals. ~~((+))~~ Individual permits are subject to appeals as specified in chapter 43.21B RCW.

~~((2) For general permits: (a) The terms and conditions of a general permit as they apply to the appropriate class of dischargers is subject to appeal within thirty days of issuance of a general permit in accordance with chapter 43.21B RCW; (b) the terms and conditions of a general permit as they apply to an individual discharger are subject to appeal in accordance with chapter 43.21B RCW within thirty days of the effective date of coverage of that discharger. Consideration of an appeal of general permit coverage of an individual discharger is limited to the general permit's applicability or nonapplicability to that discharger. Appeal of general permit coverage of an individual discharger does not affect any other individual dischargers. If the terms and conditions of a general permit are found to be inapplicable to any discharger, the matter shall be remanded to the department for consideration of issuance of an individual permit.))~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 173-220-045 General permits.

Chapter 173-226 WAC WASTE DISCHARGE GENERAL PERMIT PRO- GRAM

NEW SECTION

WAC 173-226-010 Purpose. The purpose of this chapter is to establish a state general permit program, applicable to the discharge of pollutants, wastes, and other materials to waters of the state. Permits issued under this chapter are designed to satisfy the requirements for discharge permits under sections 307 and 402(b) of the federal Water Pollution Control Act (33 U.S.C. §1251) and the state law governing water pollution control (chapter 90.48 RCW).

NEW SECTION

WAC 173-226-020 Permit required. No pollutants shall be discharged to waters of the state from any point source, except as authorized by an individual permit issued pursuant to chapters 173-216 and 173-220 WAC, or as authorized through coverage under a general permit issued pursuant to this chapter. Coverage under a valid general permit issued prior to the existence of this chapter will satisfy the permit requirements of this section.

NEW SECTION

WAC 173-226-030 Definitions. For purposes of this chapter, the following definitions shall be applicable:

(1) "Administrator" means the administrator of the United States Environmental Protection Agency.

(2) "Application for coverage" means a form developed by, or approved by the department, which is used by a discharger to apply for coverage under a general permit.

(3) "Best management practices" (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(4) "Department" means the Washington state department of ecology.

(5) "Director" means the director of the department of ecology or the director's authorized representative.

(6) "Discharge of pollutant" and "discharge of pollutants" mean the addition of any pollutant or combination of pollutants to waters of the state, respectively.

(7) "Discharger" means the owner or operator of any operation, facility, or activity subject to regulation under chapter 90.48 RCW.

(8) "Domestic wastewater" means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments, or other places, together with such ground water infiltration or surface waters as may be present.

(9) "Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim, or dispose of domestic wastewater, together with such industrial waste as may be present.

(10) "Effluent limitation" means any restriction established by the department or the administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents discharged from point sources into waters of the state.

(11) "FWPCA" means the federal Water Pollution Control Act, as amended, 33 U.S.C. §1251 et seq.

(12) "Existing operation" means an operation that is not a new operation.

(13) "General permit" means a permit that covers multiple dischargers of a point source category within a designated geographical area, in lieu of individual permits being issued to each discharger.

(14) "Individual permit" means a permit for a single point source or a single facility.

(15) "Municipal sewerage system" means a publicly owned domestic wastewater facility or privately owned domestic wastewater facility that is under contract to a municipality.

(16) "New operation" means an operation that begins activities that result in a discharge, or a potential discharge to waters of the state on or after the effective date of the general permit.

(17) "Notice of intent" means an application for a general permit, a request for coverage under a general permit, or a registration form for a general permit.

(18) "NPDES" means the National Pollutant Discharge Elimination System.

(19) "Permit" means an authorization, license, or equivalent control document issued by the director to implement this chapter.

(20) "Person" includes any political subdivision, local, state, or federal government agency, municipality, industry, public or private corporation, partnership, association, firm, individual, or any other entity whatsoever.

(21) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(22) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. This term does not include sewage from vessels within the meaning of section 312 of the FWPCA nor does it include dredged or fill material discharged in accordance with a permit issued under section 404 of the FWPCA.

(23) "Regional administrator" means the regional administrator of Region X of the Environmental Protection Agency (EPA) or his/her authorized representative.

(24) "Small business" has the meaning given in RCW 43.31.025(4).

(25) "Surface waters of the state" means all waters defined as "waters of the United States" in 40 CFR 122.2 that are within the boundaries of the state of Washington. This includes lakes, rivers, ponds, streams, inland waters, wetlands, ocean, bays, estuaries, sounds, and inlets.

(26) "Waters of the state" means all waters defined as "surface waters of the state" and all waters defined as "waters of the state" in RCW 90.48.020.

(27) "Water quality standards" means the state of Washington's water quality standards for ground waters of the state (chapter 173-200 WAC) and the state of Washington's water quality standards for surface waters of the state (chapter 173-201 WAC).

NEW SECTION

WAC 173-226-040 Relationship to chapters 173-216 and 173-220 WAC. This chapter defines a waste discharge general permit program within Washington state. Chapters 173-216 and 173-220 WAC define and establish permit programs for the development and issuance of individual permits.

NEW SECTION

WAC 173-226-050 General permit coverage. (1) The director may issue general permits to satisfy any or all of the waste water discharge permit requirements of chapter 90.48 RCW and the FWPCA.

(2) The director may issue general permits to cover categories of dischargers for geographic areas as described under subsection (3) of this section. The area shall correspond to existing geographic or political boundaries, such as:

- (a) Designated planning areas under section 208 or 303 of the FWPCA;
- (b) Sewer districts or other special purpose districts;
- (c) City, county, or state political boundaries;
- (d) State or county highway systems;
- (e) Standard metropolitan statistical areas as defined by the federal Office of Management and Budget;
- (f) Urbanized areas as designated by the Bureau of the Census; or

(g) Any other appropriate division or combination of boundaries.

(3) General permits may be written to cover the following within a described area:

- (a) Storm water sources; or
- (b) Categories of dischargers that meet all of the following requirements:
 - (i) Involve the same or substantially similar types of operations;
 - (ii) Discharge the same or substantially similar types of wastes;
 - (iii) Require the same or substantially similar effluent limitations or operating conditions, and require similar monitoring; and
 - (iv) In the opinion of the director are more appropriately controlled under a general permit than under individual permits.

NEW SECTION

WAC 173-226-060 General permit preparation—Preliminary determination. (1) For all general permits, the department shall make a preliminary determination to develop a general permit. Interested persons may petition the director requesting that a category of dischargers be considered for the development of a general permit. The department shall respond to such a petition within ninety days of receipt.

(2) The department shall provide public notice of all preliminary determinations to develop a general permit pursuant to WAC 173-226-130(1).

(3) In the event that the department determines not to develop a general permit after publishing a preliminary determination pursuant to WAC 173-226-130(2), the department shall provide public notice to that effect in the same manner as the preliminary determination public notice was provided.

NEW SECTION

WAC 173-226-070 Permit effluent limitations. Any general permit issued by the department shall apply and insure compliance with all of the following, whenever applicable:

(1) Technology-based treatment requirements and standards reflecting all known, available, and reasonable methods of prevention, treatment, and control required under RCW 90.48.010, 90.48.520, 90.52.040, and 90.54.020 may be imposed through any or all of the following methods:

(a) Effluent limitations and standards promulgated pursuant to sections 301, 302, 306, and 307 of the FWPCA;

(b) Discharge standards contained in chapters 173-221 and 173-221A WAC;

(c) On a case-by-case basis under section 402 of the FWPCA; and/or

(d) Through the use of best management practices.

(2) Water quality-based effluent limitations.

(a) Water quality-based effluent limitations shall be incorporated into a general permit if such limitations are necessary to comply with chapter 173-200 and/or 173-201 WAC for the majority of the dischargers intended to be covered under the general permit and:

(i) The department determines that the use of a general permit rather than individual permits is appropriate; and

(ii) The conditions of coverage contained in WAC 173-226-050 are met.

(b) Water quality-based effluent limitations shall be developed for all pollutants or pollutant parameters which the department determines are or may be discharged at a level which will cause, have the potential to cause, or contribute to an exceedance of state ground or surface water quality standards.

(3) Any more stringent limitations or requirements, including those necessary to:

(a) Meet water quality standards, sediment quality standards, treatment standards, or schedules of compliance established pursuant to any state law or regulation under authority preserved to the state by section 510 of the FWPCA;

(b) Meet any federal law or regulation other than the FWPCA or regulations thereunder;

(c) Implement any legally applicable requirements necessary to implement total maximum daily loads established pursuant to section 303(d) and incorporated in the continuing planning process approved under section 303(e) of the FWPCA and any regulations and guidelines issued pursuant thereto;

(d) Prevent or control pollutant discharges from plant site runoff, spillage or leaks, sludge or waste disposal, or materials handling or storage;

(e) Meet the permit by rule provisions of the state dangerous waste regulation, WAC 173-303-802 (4) or (5);

(f) Comply with a plan approved pursuant to section 208(b) of the FWPCA; and/or

(g) Meet such conditions as the department determines are necessary to carry out the provisions of the FWPCA, prior to promulgation by the administrator of applicable effluent standards and limitations pursuant to sections 301, 302, 306, and 307 of the FWPCA.

(4) In addition to the other applicable requirement of this chapter, general permits authorizing the discharge into a municipal sewerage system shall satisfy the applicable pretreatment requirements of the FWPCA.

(5) Requirements pursuant to other laws, including the state's Hazardous Waste Management Act (chapter 70.105 RCW), the Solid Waste Management—Reduction and Recycling Act (chapter 70.95 RCW), the Resource Conservation and Recovery Act of 1976 (Public Law 95.190), or any other applicable local ordinances, state or federal statute, to the extent that they pertain to the prevention or control of waste discharges into the waters of the state;

(6) In the application of effluent standards and limitations, water quality standards and other legally applicable requirements pursuant to subsections (1) through (4) of this section, each general permit shall specify:

(a) For industrial wastewater facilities, average monthly and maximum daily quantitative mass and/or concentration limitations, or other such appropriate limitations for the level of pollutants and the authorized discharge;

(b) For domestic wastewater facilities, average weekly and monthly quantitative concentration and mass limitations, or other such appropriate limitations for the level of pollutants and the authorized discharge; and

(c) If a dilution zone is authorized within which water quality standards are modified, the dimensions of such dilution zone.

NEW SECTION

WAC 173-226-080 Other terms and conditions. (1) In addition to the requirements of WAC 173-226-070, 173-226-090, and 173-226-180, each general permit shall require:

(a) All discharges authorized by the general permit shall be consistent with the terms and conditions of the permit.

(b) Any facility expansions, production increases, or process modifications that would result in new or increased discharges of pollutants causing effluent limitations in the general permit to be exceeded or beyond which was reported in the application for coverage, must be reported to the department by submission of a new application or supplement thereto.

(c) Unless notified to the contrary by the department all notices submitted pursuant to (b) of this subsection shall comply with the application requirements of WAC 173-226-200(3).

(d) Any discharge of any pollutant more frequent than or at a level in excess of that identified and authorized by

the general permit shall constitute a violation of the terms and conditions of the general permit.

(e) The director may terminate coverage under a general permit for cause. Cases where coverage under a general permit may be terminated include, but are not limited to, those contained in WAC 173-226-240(1).

(f) The director may require any discharger to apply for and obtain an individual permit, or to apply for and obtain coverage under another more specific general permit.

(g) General permits may be issued, modified, revoked and reissued, or terminated in accordance with the other provisions of this chapter. Grounds for modification or revocation and reissuance include but are not limited to those contained in WAC 173-226-230.

(h) The permittee shall allow the department or its authorized representative, upon the presentation of credentials and such other documents as may be required by law, at reasonable times:

(i) To enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the permit;

(ii) To have access to, and to copy at reasonable cost, any records required to be kept under terms and conditions of the permit;

(iii) To inspect any monitoring equipment or method required in the permit; and/or

(iv) To sample any discharge of pollutants.

(i) The permittee shall at all times properly operate and maintain any facilities or systems of control to achieve compliance with the terms and conditions of the general permit. Where design criteria have been established, the permittee shall not allow flows or waste loadings to exceed approved design criteria, or approved revisions thereto.

(j) The discharge of pollutants resulting from activities not covered under the general permit for which the discharger has requested coverage, shall be a violation of the terms and conditions of the general permit.

(2) General permits shall specify the contents of the application for coverage, the deadlines for submitting applications for coverage, the date(s) and/or the process by which coverage is granted, and the criteria for coverage.

(3) Any discharger authorized by a general permit may request to be excluded from coverage under the general permit by applying for and being issued an individual permit. The discharger shall submit to the director an application as described in WAC 173-220-040, with reasons supporting the request. The director shall either issue an individual permit or deny the request with a statement explaining the reason for denial.

(4) When an individual permit is issued to a discharger otherwise subject to a general permit, the applicability of the general permit to that permittee is automatically terminated on the effective date of the individual permit.

NEW SECTION

WAC 173-226-090 Monitoring, recording, and reporting. (1) Monitoring.

(a) Any discharge authorized by a general permit may be subject to such monitoring requirements as may be reasonably required by the department, including the installa-

tion, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods). These monitoring requirements would normally include but are not limited to:

(i) Flow (in gallons per day or other appropriate units);

(ii) All pollutants on which limitations have been placed pursuant to WAC 173-226-070;

(iii) Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) that are subject to reduction or elimination under the terms and conditions of the permit;

(iv) Pollutants that the department finds could have a significant impact on the quality of waters and sediments of the state; and

(v) Pollutants specified by the administrator, in regulations issued pursuant to the FWPCA, as subject to monitoring.

(b) Each effluent flow or pollutant required to be monitored pursuant to (a) of this subsection shall be monitored at intervals sufficiently frequent to yield data that reasonably characterizes the nature of the discharge of the monitored effluent flow or pollutant.

(c) Monitoring for compliance with limitations imposed pursuant to WAC 173-226-070 shall be no less than once per year.

(d) Variable effluent flows and pollutant levels may be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels, which may be monitored at less frequent intervals.

(e) Monitoring of intake water, influent to treatment facilities, internal waste streams, and/or receiving waters may be required by the department, to verify compliance with net discharge limitations or removal requirements, to verify that proper waste treatment or control practices are being maintained, or to determine the effects of the discharge on the waters and sediments of the state.

(2) Recording of monitoring activities and results. Any general permit which requires monitoring of an authorized discharge shall require that:

(a) The permittee maintain records of all information resulting from any monitoring activities required as a condition of the application for, or as a condition of coverage under a general permit;

(b) Any records of monitoring activities and results shall include for all samples:

(i) The date, exact place, and time of sampling;

(ii) The dates analyses were performed;

(iii) Who performed the analyses;

(iv) The analytical techniques/methods used; and

(v) The results of such analyses; and

(c) The permittee retain for a minimum of five years any records of monitoring activities and all results of those activities including all original strip chart recording for continuous monitoring instrumentation and calibration and maintenance records. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee, or when requested by the department or regional administrator.

(3) Reporting of monitoring results.

(a) The department may require the permittee to periodically report on the proper reporting form, the monitor-

ing results obtained pursuant to monitoring requirements in a general permit. In addition to the required reporting form, the department may require submission of such other reports as it determines to be necessary.

(b) Monitoring reports shall be signed by:

(i) In the case of corporations, a responsible corporate officer or duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge originates.

(ii) In the case of a partnership, a general partner.

(iii) In the case of a sole proprietorship, the proprietor.

(iv) In the case of a municipal, state, or other public facility, either a principal executive officer, ranking elected official, or other duly authorized employee.

(4) Except for flow, temperature, and internal process control parameters, all monitoring data required as a condition of a general permit, or required as part of an application for coverage under a general permit shall be prepared by a laboratory accredited under the provisions of chapter 173-50 WAC no later than:

(a) July 1, 1992, for major dischargers;

(b) July 1, 1993, for permittees with a permitted average flow rate greater than five million gallons per day;

(c) July 1, 1994, for all other permittees.

NEW SECTION

WAC 173-226-100 Prohibited discharges. (1) No general permit issued by the department shall authorize any person to:

(a) Discharge any radiological, chemical, or biological warfare agent or high-level radioactive waste into waters of the state;

(b) Discharge any pollutants that the Secretary of the Army acting through the Chief, Corps of Engineers, finds would substantially impair anchorage and navigation;

(c) Discharge any pollutant which the regional administrator, not having waived his/her right to object pursuant to section 402(e) of the FWPCA, has objected in writing pursuant to section 402(d) of the FWPCA;

(d) Discharge any pollutant in conflict with plans or amendment thereto approved pursuant to section 208(b) of the FWPCA;

(e) Discharge any pollutant subject to a toxic pollutant discharge prohibition under section 307 of the FWPCA; or

(f) Discharge any dangerous waste as defined in the Dangerous waste regulations, chapter 173-303 WAC, into a subsurface disposal system such as a well or drainfield.

(2) The following discharges to municipal sewerage systems are also prohibited:

(a) Waste materials that pass through the treatment works untreated or interfere with its operation or performance;

(b) Liquids, solids, or gases that, by reason of their nature or quantity, are or may be sufficient either alone or by interaction to:

(i) Cause fire or explosion;

(ii) Create a public nuisance or hazard to life;

(iii) Prevent entry into the sewers for their maintenance and repair; or

(iv) Be injurious in any other way to the operation of the system or the operating personnel;

(c) Solid or viscous substances which may cause obstruction to the flow in a sewer or other interference with the operation of the system;

(d) Any wastewater having a pH less than 5.0 or greater than 11.0, or having any other corrosive property capable of causing damage or hazard to structures, equipment, or personnel of the system, unless the system is specifically designed to accommodate such discharge and the discharge is authorized by a permit under this chapter;

(e) Wastewater that would cause the influent temperature to exceed 40°C (104°F), unless the system is specifically designed to accommodate such discharge and the discharge is authorized by a permit under this chapter. In any case, any wastewater having a temperature which will interfere with the biological activity in the system is prohibited;

(f) Waste materials, including, but not limited to, oxygen demanding waste materials (BOD, etc.) released in either a slug load or continuous discharge of such volume or strength as to cause interference to the system;

(g) Any other discharge prohibited by federal or state law or regulation; and

(h) Any of the following discharges, unless approved by the department under extraordinary circumstances (such as lack of direct discharge alternatives due to combined sewer service or need to augment sewage flows due to septic conditions):

(i) Noncontact cooling water in significant volumes;

(ii) Storm water and other direct inflow sources;

(iii) Waste waters significantly affecting system hydraulic loading that do not require treatment or would not be afforded a significant degree of treatment by the system.

NEW SECTION

WAC 173-226-110 Fact sheets. (1) The department shall prepare a fact sheet for every draft general permit determination. Such fact sheets shall summarize the following:

(a) The type of facility or activity which is the subject of the general permit;

(b) The geographical area for which the general permit is valid;

(c) The criteria for which coverage under a general permit will be approved;

(d) A listing or some other means of identifying the facilities proposed to be covered under the general permit;

(e) The information required by WAC 173-226-200(3), to be submitted as part of the application for coverage under the general permit;

(f) The effluent characteristics for the category of dischargers being authorized under the general permit, including the following:

(i) The average rate or frequency of the proposed discharge;

(ii) For thermal discharges, the average summer and winter temperatures; and

(iii) The average and estimated range in pounds per day, or other appropriate units, of any pollutants which are

present in significant quantities or which are subject to limitations or prohibition under RCW 90.48.010, 90.52.040, 90.54.020, and sections 301, 302, 306, or 307 of the FWPCA and regulations published thereunder;

- (g) The effluent standards and limitations applied;
- (h) The applicable water quality standards, including identification of the uses for which receiving waters have been classified;
 - (i) The conditions in the proposed general permit;
 - (j) The legal and technical grounds for the conditions contained in the general permit, including:
 - (i) An explanation of how conditions meet both the technology-based and water quality-based requirements of the FWPCA and chapters 90.48, 90.52, and 90.54 RCW;
 - (ii) An explanation of how the conditions meet the water quality standards of chapters 173-200 and 173-201 WAC; and
 - (iii) An explanation of how the conditions meet the sediment standards contained in chapter 173-204 WAC;
 - (k) If a dilution zone is authorized, pursuant to chapter 173-201 WAC, within which water quality standards are modified:
 - (i) A description of the allowed dilution zone;
 - (ii) The legal basis for providing a dilution zone; and
 - (iii) The technical basis for allowing a dilution zone and the basis for determining the size of the dilution zone;
 - (l) Any compliance schedules proposed as part of the general permit or as a part of the application process pursuant to WAC 173-226-180 and 173-226-200;
 - (m) How the draft permit addresses use or disposal of residual solids generated by wastewater treatment; and
 - (n) The procedures for the formulation of final determinations (in more detailed form than that given in the public notice) including:
 - (i) The thirty-day comment period required by WAC 173-226-130(3);
 - (ii) The time and place of the public hearing(s); and
 - (iii) Any other procedures by which the public may participate in the formulation of the final determination.
- (2) The department shall provide copies of general permit fact sheets to any interested person upon request.

NEW SECTION

WAC 173-226-120 Economic impact analysis. (1) The department shall prepare an economic impact analysis on all draft general permits developed and intended for issuance pursuant to this chapter. The economic impact analysis shall be prepared on the draft general permit for which public notice is being provided pursuant to WAC 173-226-130(3).

(2) The purpose of the economic impact analysis is to reduce the economic impact of the general permit on small business by doing one or more of the following when it is legal and feasible in meeting the stated objectives of the FWPCA and chapter 90.48 RCW:

- (a) Establishing differing compliance or reporting requirements or timetables for small businesses;
- (b) Clarifying, consolidating, or simplifying the compliance and reporting requirements under the general permit for small businesses;

(c) Establishing performance rather than design standards;

(d) Exempting small businesses from parts of the general permit.

(3) The contents of an economic impact analysis of a proposed general permit shall include, at a minimum, the following:

(a) A brief description of the compliance requirements of the general permit, including:

- (i) The minimum technology based treatment requirements identified as necessary under WAC 173-226-070;
- (ii) The monitoring requirements contained in the general permit;
- (iii) The reporting and recordkeeping requirements; and
- (iv) Any plan submittal requirements;

(b) The estimated costs of compliance, based upon existing data for facilities intended to be covered under the general permit. Costs shall include, consistent with subsection (2) of this section the following:

- (i) The costs associated with (a) of this subsection; and
- (ii) The costs of equipment, supplies, labor, and any increased administrative costs;

(c) A comparison, to the greatest extent possible, of the cost of compliance for small businesses with the cost of compliance for the largest ten percent of the facilities intended to be covered under the general permit. The economic impact analysis shall use one or more of the following as a basis for comparing costs:

- (i) Cost per employee;
- (ii) Cost per hour of labor;
- (iii) Cost per one hundred dollars of sales.

(4) The following compliance costs associated with a general permit shall not be included in the economic impact analysis:

(a) The costs necessary to comply with chapters 173-200, 173-201, 173-204, and 173-224 WAC; and

(b) The costs associated with requirements of the general permit which result from conformity or compliance, or both, with federal law or regulations.

NEW SECTION

WAC 173-226-130 Public notice. The department shall provide public notice of all preliminary determinations to develop a general permit, all determinations not to develop a general permit after publishing such a preliminary determination, all draft general permit determinations, and the issuance of a final general permit. All public notices shall be circulated in a manner designed to inform interested and potentially affected persons of the proposed general permit.

(1) The department shall provide public notice of all preliminary determinations to develop a general permit as follows:

(a) The public notice shall be circulated within the geographical area of the proposed general permit. Such notice may include any or all of the following:

- (i) Publishing, as a paid advertisement or legal notice, the department's preliminary determination in one or more major local newspapers throughout the area of proposed coverage;

(ii) Issuance of news releases, focus sheets, or newsletters;

(b) The department shall request comments on whether a general permit is appropriate for the proposed category of dischargers or whether individual permits are necessary;

(c) The public notice shall provide an opportunity for any interested or potentially affected party to submit information on dischargers proposed to be covered under a general permit including:

(i) Any documented information on the characteristics of the discharge including effluent quantity, quality, and any receiving water impacts. Information may be from an individual facility or be representative of the category as a whole; and

(ii) Any other relevant information;

(d) The department shall add the name of any person upon request to a general permit specific mailing list to receive information and notices related to the development of the general permit.

(2) In the event that the department determines not to develop a general permit after publishing a preliminary determination pursuant to subsection (1) of this section, the department shall provide public notice to that effect in the same manner as the preliminary determination public notice was provided.

(3) The department shall provide public notice of every draft general permit as follows:

(a) The notice shall be circulated throughout the geographical area covered by the general permit. Such circulation may include any or all of the following:

(i) Posting for a period of thirty days in post offices, public libraries, and public places within the geographical area covered by the general permit;

(ii) Publishing the notice as a paid advertisement, display advertisement, or legal notice, in one or more major local newspapers of general circulation serving the area covered by the general permit;

(iii) Issuance of news releases, focus sheets, or newsletters.

(b) Notice shall be mailed to any person upon request, including all persons on the general permit specific mailing list established pursuant to subsection (1)(d) of this section and all persons on the mailing lists established pursuant to WAC 173-220-050 (1)(d).

(c) At least thirty days before the public hearing on the general permit the department shall have the following published in the State Register:

(i) The public notice contents contained in (f) of this subsection;

(ii) A reference to the relevant sections of chapter 90.48 RCW as the statutory authority for issuing the general permit;

(iii) The date on which the agency intends to issue the general permit;

(iv) A short explanation of the permit, its purpose, and anticipated effects; and

(v) A summary of the economic impact analysis required in WAC 173-226-120.

(d) The department shall provide a period of not less than thirty days following the last publication of the public notice, during which time interested persons may submit

their written views on a draft general permit determination. All written comments submitted during the comment period shall be retained by the department and considered in the formulation of its final determination with respect to the draft general permit. The period for comment may be extended at the discretion of the department.

(e) The department shall make available during the public comment period:

(i) The draft general permit;

(ii) The fact sheet on the draft general permit required pursuant to WAC 173-226-110;

(iii) The economic impact analysis required pursuant to WAC 173-226-120; and

(iv) A copy of the proposed application for coverage.

(f) The contents of the draft general permit public notice shall, at a minimum, summarize the following:

(i) The name, address, and phone number of the agency issuing the public notice;

(ii) The type of facilities and activities which are the subject of the general permit;

(iii) The geographical area for which the general permit is valid;

(iv) The criteria for which coverage under a general permit will be approved;

(v) A listing or some other means of generally identifying the facilities proposed to be covered under the general permit;

(vi) The tentative determination to issue a general permit;

(vii) The procedures for the formulation of final determinations, including the thirty-day comment period required by (d) of this subsection and any other means by which interested persons may comment upon those determinations;

(viii) The date, time, and place when public hearings will be held on the draft general permit;

(ix) The address and phone number of state premises at which interested persons may obtain further information; and

(x) The date and time after which comments will not be considered by the department in formulating the final determination on the draft general permit.

(4) The department shall provide public notice of the issuance of a final general permit as follows:

(a) The notice of general permit issuance shall be circulated in a manner similar to that used to circulate the notice on the draft general permit in subsection (3)(a) of this section and shall be published in the State Register; and

(b) The notice of general permit issuance shall be provided to all persons on the general permit specific mailing list established pursuant to subsection (1)(d) of this section and all persons on the mailing lists established pursuant to WAC 173-220-050 (1)(d).

(c) The public notice of the issuance of a general permit shall contain:

(i) The name, address, and phone number of the agency issuing the public notice;

(ii) The type of facilities and activities which are the subject of the general permit;

(iii) The geographical area for which the general permit is valid;

(iv) The criteria for which coverage under a general permit will be approved;

(v) A listing or some other means of generally identifying the facilities proposed to be covered under the general permit;

(vi) A summary of the application process by which eligible dischargers may obtain coverage under the general permit;

(vii) A notice that the terms and conditions of the general permit may be appealed only by filing an appeal with the pollution control hearings board and by serving it upon the department within thirty days, and the process for doing so as contained in RCW 43.21B.310; and

(viii) The date after which the general permit shall be effective. The effective date of a general permit shall be no sooner than thirty days after the publication in the State Register of the public notice required pursuant to (a) of this subsection.

(5) For new operations, or for operations previously under permit for which an increase in volume or change in the character of the effluent is requested over that which was previously authorized, only:

(a) The applicant for coverage under a general permit shall cause notice to be circulated within the geographical area of the proposed discharge. Such circulation shall include:

(i) Publishing twice a notice in a newspaper of general circulation within the county in which the discharge is proposed to be made; and

(ii) Any other method the department may direct.

(b) The notice published pursuant to (a) of this subsection shall contain:

(i) The name, address, and location of the facility requesting coverage under the general permit;

(ii) The applicant's activities or operations that result in a discharge (e.g., storm water, fish farming, gravel washing);

(iii) The name of the general permit under which coverage is being requested; and

(iv) The statement: "Any person desiring to present their views to the department of ecology regarding this application may do so in writing within thirty days of the last date of publication of this notice. Comments shall be submitted to the department of ecology. Any person interested in the department's action on this application may notify the department of their interest within thirty days of the last date of publication of this notice."

NEW SECTION

WAC 173-226-140 Notice to other government agencies. The department shall notify other appropriate government agencies of each draft general permit determination and shall provide such agencies an opportunity to submit their written views and recommendations. Such notification for NPDES and combined NPDES/state waste discharge general permits only, shall include the following:

(1) Transmission of the fact sheet, application form, and draft general permit to the regional administrator for comment or objection. The regional administrator shall be provided ninety days to comment on the draft permit prior to issuance by the department unless an alternative time

period is mutually agreed on by the director and the regional administrator.

(2) Immediately following issuance, the department shall transmit a copy of every fact sheet, application form, and general permit along with any and all terms, conditions, requirements, or documents which are a part of the general permit or which affect the authorization by the general permit, of the discharge of pollutants, to the regional administrator.

(3) At the time of issuance of the public notices pursuant to WAC 173-226-130 (1)(a), (3)(a), and (4)(a) the department shall transmit the public notices to any other states whose waters may be affected by the issuance of the general permit. Each affected state shall be afforded an opportunity to submit written comments pursuant to WAC 173-226-130 (1)(b) and (3)(d), to the department and to the regional administrator, which the department may incorporate into the permit if issued. Should the department fail to incorporate any written recommendations thus received, it shall provide to the affected state or states (and to the regional administrator) a written explanation of its reasons for failing to accept any of the written recommendations or comments.

(4) Unless waived by the respective agency, the public notices issued pursuant to WAC 173-226-130 (1)(a), (2), (3)(a), and (4)(a) shall be sent to the appropriate district engineer of the Army Corps of Engineers, the United States Fish and Wildlife Service, the National Marine Fisheries Service, the state departments of fisheries, health, natural resources, wildlife, and social and health services, the office of archaeology and historic preservation, the agency responsible for the preparation of an approved plan pursuant to section 208(b) of the FWPCA, applicable Indian tribes, and any other applicable government agencies.

(5) A copy of any written agreement between the department and an agency identified in subsection (4) of this section which waives the receipt of public notices shall be forwarded to the regional administrator and shall be made available upon request to the public for inspection and copying.

(6) Copies of public notices issued pursuant to WAC 173-226-130 (1)(a), (2), (3)(a), and (4)(a) shall be mailed to any other federal, state, or local agency, Indian tribe, or any affected country, upon request. Such agencies shall have an opportunity to respond or comment on the draft general permit pursuant to WAC 173-226-130 (1)(b) and (3)(d).

NEW SECTION

WAC 173-226-150 Public hearings. (1) The department shall hold one or more public hearing(s) on all draft general permits. The public hearing shall be held during the public comment period provided pursuant to WAC 173-226-130 (3)(d).

(2) The date, time, and place will be at the discretion of the department provided:

(a) At least thirty days is provided between the time the public notice is published pursuant to WAC 173-226-130 (3)(a) and (c), and the time the hearing is held; and

(b) The hearing location is within the geographical area covered by the general permit.

(3) For new operations or for operations previously under permit for which an increase in volume or change in the character of the effluent has occurred only, any interested person may request a public hearing within thirty days of the last date of publication of the public notice required pursuant to WAC 173-226-130(5).

(a) All requests for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing.

(b) The department shall only consider issues regarding the general permits applicability or nonapplicability to the discharger when considering the need to hold a public hearing.

NEW SECTION

WAC 173-226-160 Public access to information. (1) In accordance with chapter 42.17 RCW and its published policy describing disclosure of public records, the department shall make identifiable public records relating to all general permits available to the public for inspection and copying.

(2) The department shall provide, upon request, the names and any other information submitted as part of an application for coverage under a general permit.

(3) The department shall add the name of any person, upon request, to a mailing list to receive copies of applications for coverage under a general permit.

(4) The department shall provide facilities for the inspection of information relating to general permits and shall insure that employees honor requests for such inspection promptly without undue requirements or restrictions. The department shall either:

(a) Insure that a machine or device for the copying of papers and documents is available for a reasonable fee; or

(b) Otherwise provide for, or coordinate with copying facilities or services such that requests for copies of nonconfidential, identifiable public records be honored promptly.

(5) Pursuant to chapters 42.17, 43.21A, 70.105, and 90.52 RCW, the department shall protect any information (other than information on the effluent) contained in applications as confidential upon a showing by any person that such information, if made public, would divulge methods or processes entitled to protection as trade secrets of such person.

(6) Any information accorded confidential status, whether or not contained in an application form, shall be disclosed, upon request, to the regional administrator.

NEW SECTION

WAC 173-226-170 Issuance of general permits. (1) At the close of the public comment period required pursuant to WAC 173-226-130 (3)(d) the department shall prepare a response to all relevant comments received and shall briefly describe any changes, other than editing changes, and the principal reasons for making the changes to the draft general permit.

(2) General permits shall be deemed issued upon signing by the director or by a person delegated the authority to issue general permits pursuant to chapter 173-06 WAC.

(3) The department shall provide public notice of the issuance of all final general permits pursuant to WAC 173-226-130 (4)(a).

(4) General permits become effective thirty days after the date of publication in the State Register of the public notice required pursuant to WAC 173-226-130 (4)(a) unless a later date is specified by the department.

NEW SECTION

WAC 173-226-180 Compliance schedules. (1) The department may establish schedules and permit conditions as necessary to achieve compliance with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements contained in a general permit in any or all of the following ways:

(a) As a condition or schedule in a general permit;

(b) In an administrative order issued pursuant to chapter 90.48 RCW; and

(c) By any other method deemed appropriate by the department.

(2) Schedules of compliance shall reflect the shortest reasonable period of time necessary to achieve compliance consistent with the guidelines and requirements of the FWPCA.

(3) In any case where the period of time for compliance specified in subsection (1)(a) of this section exceeds one year, a schedule of compliance shall be specified that will set forth interim requirements and the dates for their achievement; however, in no event shall more than one year elapse between interim dates. If the time necessary for completion of the interim requirement (such as construction of a treatment facility) is more than one year and is not readily divided into stages of completion, interim dates shall be specified for the submission of reports of progress toward completion of the interim requirement.

(4) Either before or up to fourteen days following each interim date and the final date of compliance, the permittee shall provide the department with written notice of the permittee's compliance or noncompliance with each interim or final requirement.

(5) If a permittee fails or refuses to comply with an interim or final requirement contained in a general permit, or as submitted as part of an application for coverage under a general permit, such noncompliance shall constitute a violation of the general permit for which the department may revoke coverage under the general permit or take direct enforcement action pursuant to chapter 90.48 RCW.

NEW SECTION

WAC 173-226-190 Appeals. (1) The terms and conditions of a general permit as they apply to the appropriate class of dischargers are subject to appeal within thirty days of issuance of a general permit in accordance with chapter 43.21B RCW.

(2) The terms and conditions of a general permit, as they apply to an individual discharger, are appealable, within thirty days of the effective date of coverage of that discharger, in accordance with chapter 43.21B RCW. This appeal is limited to the general permit's applicability or nonapplicability to that individual discharger.

(3) The appeal of general permit coverage of an individual discharger does not affect any other dischargers covered under the general permit. If the terms and conditions of a general permit are found to be inapplicable to any individual discharger(s), the matter shall be remanded to the department for consideration of issuance of an individual permit or permits.

NEW SECTION

WAC 173-226-200 Applications for coverage under a general permit. (1) Following the public notice by the department of the issuance of a general permit, or at an alternate date as designated by the department, all dischargers who desire to be covered under the general permit shall notify the department of that fact on a form prescribed by the department no later than the following, unless a shorter application period is allowed in the general permit under which coverage is requested:

(a) For existing operations, applications for coverage shall be submitted no later than ninety days after the issuance date of the general permit under which coverage is requested;

(b) For new operations, applications for coverage shall be submitted no later than one hundred eighty days prior to the commencement of the activity that may result in the discharge to waters of the state.

(2) Unless specified otherwise in the general permit under which coverage is requested or the department responds in writing, coverage of a discharger under a general permit will automatically commence on the later of the following:

(a) The effective date of the general permit;

(b) The thirty-first day following the end of the thirty-day comment period required by WAC 173-226-130(4);

(c) The thirty-first day following receipt by the department of a completed application for coverage under a general permit; or

(d) A date specified by the department in the general permit.

(3) All applications for coverage under a general permit shall:

(a) Contain information necessary for adequate program implementation;

(b) Contain the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving streams;

(c) Bear a certification of correctness;

(d) Be signed:

(i) In the case of corporations, by a responsible corporate officer.

(ii) In the case of a partnership, by a general partner.

(iii) In the case of sole proprietorship, by the proprietor.

(iv) In the case of a municipal, state, or other public facility, by either a principal executive officer or ranking elected official; and

(e) Include any other information deemed relevant by the department.

(f) For new operations, or for operations for which an increase in volume of wastes or change in character of

effluent is requested over that previously authorized, applications for coverage shall also contain:

(i) A certification by the applicant that the public notice requirements of WAC 173-226-130(5) have been met; and

(ii) A certification by the applicant that the applicable SEPA requirements under chapter 197-11 WAC have been met.

(4) The department shall develop an application form for each general permit and shall make the application form available during the draft general permit public notice period. The department shall provide the application form to the regional administrator along with the draft and final general permit as required in WAC 173-226-140.

(5) Any previously issued individual permit shall remain in effect until terminated in writing by the department, except that continuation of an expired individual permit, pursuant to WAC 173-220-180(5), shall terminate upon coverage by the general permit.

(6) Where the department has determined that a discharger should not be covered under a general permit, it shall respond in writing within sixty days of receipt of an application for coverage stating the reason(s) why coverage cannot become effective and any actions needed to be taken by the discharger in order for coverage under the general permit to become effective.

(7) When an individual permit is issued to a discharger otherwise subject to a general permit, the applicability of the general permit to that permittee is automatically terminated on the effective date of the individual permit.

(8) Coverage under a general permit for domestic wastewater facilities shall be issued only to a public entity, except in the following circumstances:

(a) Facilities existing or approved for construction with private operation on or before the effective date of this chapter, until such time as the facility is expanded; or

(b) Facilities that serve a single nonresidential, industrial, or commercial establishment. Commercial/industrial complexes serving multiple owners or tenants and multiple residential dwelling facilities, such as mobile home parks, apartments, and condominiums, are not considered single commercial establishments for the purpose of this subsection.

(9) Coverage under a general permit for domestic wastewater facilities that are owned by nonpublic entities and under contract to a public entity, shall be issued to the public entity.

NEW SECTION

WAC 173-226-210 Transfer of permit coverage. Coverage under a general permit is automatically transferred to a new discharger if:

(1) A written, signed agreement between the old and new discharger containing a specific date for transfer of permit responsibility, coverage, and liability is submitted to the director; and

(2) The director does not notify the old and new discharger of the director's intent to revoke coverage under the general permit. If this notice is not given, the transfer is effective on the date specified in the agreement mentioned in subsection (1) of this section.

NEW SECTION

WAC 173-226-220 Duration and replacement of permits. (1) General permits shall be issued for fixed terms not exceeding five years from the effective date.

(2) All permittees covered under a general permit shall submit a new application for coverage under a general permit or an application for an individual permit at least one hundred eighty days prior to the expiration date of the general permit under which the permittee is covered.

(3) When a permittee has made timely and sufficient application for the renewal of coverage under a general permit, an expiring general permit remains in effect and enforceable until:

(a) The application has been denied;

(b) A replacement permit has been issued by the department; or

(c) The expired general permit has been canceled by the department.

(4) Coverage under an expired general permit for permittees who fail to submit a timely and sufficient application shall expire on the expiration date of the general permit.

NEW SECTION

WAC 173-226-230 Modification and revocation of general permits. (1) A general permit may be modified, revoked and reissued, or terminated, during its term for cause including, but not limited to, the following:

(a) A change occurs in the technology or practices for control or abatement of pollutants applicable to the category of dischargers covered under the general permit;

(b) Effluent limitation guidelines or standards are promulgated pursuant to the FWPCA or chapter 90.48 RCW, for the category of dischargers covered under the general permit;

(c) A water quality management plan containing requirements applicable to the category of dischargers covered under the general permit is approved;

(d) Information is obtained which indicates that cumulative effects on the environment from dischargers covered under the general permit are unacceptable; or

(e) A toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of the FWPCA for a toxic pollutant which is more stringent than any limitation upon such pollutant in the permit.

(2) In the event that the director has determined to modify or revoke, in whole or in part, a general permit pursuant to subsection (1) of this section the director shall notify, in writing, all dischargers covered under the general permit. The notification shall include:

(a) The reason(s) why the general permit is being revoked or modified;

(b) The process for appealing the determination pursuant to RCW 43.21B.310;

(c) An application form and a time limit for submitting the application; and

(d) Any other information determined to be relevant by the department.

NEW SECTION

WAC 173-226-240 Revocation of coverage under a general permit. (1) The director may terminate coverage under a general permit for cause. Cases where coverage under a general permit may be terminated include, but are not limited to, the following:

(a) Violation of any term or condition of the general permit;

(b) Obtaining coverage under a general permit by misrepresentation or failure to disclose fully all relevant facts;

(c) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

(d) A determination that the permitted activity endangers human health, safety, or the environment, or contributes to water or sediment quality standards violations;

(e) Incorporation of an approved local pretreatment program into a municipality's permit;

(f) Failure of the permittee to satisfy the public notice requirements of WAC 173-226-130(5);

(g) Failure or refusal of the permittee to allow entry as required in RCW 90.48.090; or

(h) Nonpayment of permit fees assessed pursuant to RCW 90.48.465.

(2) The director may require any discharger to apply for and obtain an individual permit, or to apply for and obtain coverage under another more specific general permit. In cases where the director requires any discharger to apply for an individual permit, or for another general permit, the discharger must be notified in writing that another permit is required. This notice shall include a statement of why another permit is being required, an application form, and a time limit for submitting the application.

(3) Any interested person may petition the director to require a discharger authorized by a general permit to apply for and obtain an individual permit.

(4) Any discharger authorized by a general permit may request to be excluded from coverage under a general permit by applying for an individual permit. The discharger shall submit to the director an application as described in WAC 173-220-040 with reasons supporting the request. The director shall either issue an individual permit or deny the request with a statement explaining the reason for denial.

(5) Where the department has determined that a discharger should no longer be covered under a general permit it shall notify the discharger in writing stating the reason(s) why coverage is no longer appropriate, and any actions required of the discharger in order for coverage under the general permit to remain effective.

(6) The discharger shall have thirty days to respond to any notification provided pursuant to subsection (5) of this section before coverage under a general permit shall be automatically revoked.

NEW SECTION

WAC 173-226-250 Enforcement. (1) The department, with the assistance of the attorney general, may sue in courts of competent jurisdiction to enjoin any threatened or continuing violations of any general permits or conditions thereof

without the necessity of a prior revocation of coverage under the general permit.

(2) The department may enter any premises in which an effluent source is located or in which records are required to be kept under terms or conditions of a general permit, and otherwise be able to investigate, inspect, or monitor any suspected violations of water quality standards, or effluent standards and limitations, or of general permit terms or conditions thereof.

(3) The department may assess or, with the assistance of the attorney general, sue to recover in court, such civil fines, penalties, and other civil relief as may be appropriate for the violation by any person of:

- (a) Any effluent standards and limitations or water quality standards;
- (b) Any general permit or term or condition thereof;
- (c) Any filing requirements;
- (d) Any duty to permit or carry out inspection, entry, or monitoring activities; or
- (e) Any rules, regulations, or orders issued by the department.

(4) The department may request the prosecuting attorney to seek criminal sanctions for the violation by such persons of:

- (a) Any effluent standards and limitations or water quality standards;
- (b) Any permit or term or condition thereof; or
- (c) Any filing requirements.

(5) The department, with the assistance of the prosecuting attorney, may seek criminal sanctions against any person who knowingly makes any false statement, representation, or certification in any form or any notice or report required by the terms and conditions of any issued permit or knowingly renders inaccurate any monitoring device or method required to be maintained by the department.

WSR 93-03-082
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Public Assistance)

[Filed January 19, 1993, 2:38 p.m.]

Original Notice.

Title of Rule: WAC 388-70-520 Adoption support for children—Definitions.

Purpose: Allows special needs adoptive children and their adoptive families to access necessary services from the program of adoption support at an earlier date. The children would no longer be carried as foster children, but would be identified as children in adoptive placement. Foster care budget costs would be reduced with an overall savings in budget due to the low average costs per child on adoption support.

Statutory Authority for Adoption: RCW 43.20A.550.

Statute Being Implemented: RCW 43.20A.550.

Summary: This amendment will change the date for starting the adoption support program. Services for the child will be initiated following complete signing of the adoption

support agreement rather than waiting until after the adoption is finalized.

Reasons Supporting Proposal: Allows special needs adoptive children and their adoptive families to access necessary services from the program of adoption support at an earlier date. The children would no longer be carried as foster children, but would be identified as children in adoptive placement. Foster care budget costs would be reduced with an overall savings in budget due to the low average costs per child on adopting support.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Betty Cena, Division of Family Support, 586-6070.

Name of Proponent: Department of Social and Health Services, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Same as above.

Proposal Changes the Following Existing Rules: See above.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

Hearing Location: OB-2 Auditorium, 14th and Franklin, Olympia, Washington, on March 9, 1993, at 10:00 a.m.

Submit Written Comments to: Troyce Warner, Chief, Office of Issuances, Mailstop 5805, Department of Social and Health Services, Olympia, 98504, FAX 664-0118 or SCAN 366-0118, by March 9, 1993.

Date of Intended Adoption: March 10, 1993.

January 19, 1993

Rosemary Carr

Acting Director

Administrative Services

AMENDATORY SECTION (Amending Order 3101, filed 11/20/90, effective 12/21/90)

WAC 388-70-520 Adoption support for children—Definitions. As used in these rules:

(1) "Adoption" means the granting of the adoption decree consistent with chapter 26.33 RCW.

(2) "Adoption support payment" means the financial remuneration resulting from an agreement whereby the department continues financial responsibility beyond the legal consummation of the adoption.

(3) "Agreement" means a contract between the prospective adoptive parent and the department providing adoption support payments following the ((granting of a decree)) completion of the adoption support agreement signed by all parties.

(4) "Corrective-rehabilitative services" shall include, but not be limited to:

- (a) Medical care;
- (b) Psychological services;
- (c) Physical therapy;
- (d) Prosthesis;
- (e) Speech and hearing therapy;
- (f) Cosmetic surgery; or
- (g) Orthodontia.

(5) "Department" means the department of social and health services.

(6) "Family" means any prospective parent having the character, judgment, sense of responsibility, and disposition making the prospective parent suitable as an adoptive parent of a child, but lacking the necessary resources to care for a hard-to-place for adoption child.

(7) "Hard-to-place for adoption child" means a child registered for three months with the Washington Adoption Resource Exchange (WARE) or the Northwest Adoption Exchange (NWAE) without identifying a nonsubsidized adoptive family resource. The child's registration with the exchanges (~~shall~~) is not (~~be~~) necessary when:

(a) A foster parent desires to adopt a child having been in the foster parent's home for six months or more before a child is legally free for adoption;

(b) The child has close emotional ties to the current foster family which, if severed, may cause emotional damage to the child; and

(c) The foster family is identified as the adoptive family of choice by the agency staff having responsibility for the child.

(8) "Secretary" means the secretary of department or the secretary's designee.

(9) "Special needs" is the department's designation given to a child (~~by the department~~) when the child presents a specific factor or condition the department reasonably concludes may prevent the child's placement with an adoptive parent without providing adoption support. The child's special need factors or conditions may include but are not limited to:

(a) Ethnic background;

(b) Age;

(c) Inclusion in a sibling group;

(d) Medical diagnosis; or

(e) Physical, mental, or emotional handicap.

(10) "The act" means the statutes authorizing adoption support codified as RCW 74.13.100 through 74.13.145.

WSR 93-03-084
PROPOSED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed January 19, 1993, 2:41 p.m.]

Continuance of WSR 92-21-031.

Title of Rule: WAC 139-05-242 Readmission to basic law enforcement academy.

Hearing Location: Washington State Conference and Training Center, 19010 First Avenue South, Seattle, WA 98148, on March 18, 1993, at 10:00 a.m.

Submit Written Comments to: Garry E. Wegner, Assistant Director, Criminal Justice Training Commission, P.O. Box 40905, Olympia, WA 98504-0905, by April 17, 1993.

Date of Intended Adoption: April 18, 1993.

January 15, 1993

James C. Scott

Executive Director

NEW SECTION

WAC 139-05-242 Readmission to basic law enforcement academy No person may be readmitted to the basic law enforcement training academy except as provided in this section.

(1) Any request for readmission to any academy shall be made and submitted by the individual's employing or sponsoring agency.

(2) Any individual terminated from any academy for academic failure or who has voluntarily withdrawn from any academy for any reason, may be readmitted to a subsequent academy session only if:

(a) the head of the individual's current employing agency submits to the Commission a written request for readmission of the individual to the academy program, and

(b) the executive director of the commission, or his or her designee, is satisfied that any conditions to the individual's readmission specified by the director or his or her designee have been met.

(3) Any individual dismissed from any academy for disciplinary reasons other than those specified by section (4), below, may be readmitted to a subsequent academy program only if:

(a) the head of the individual's current employing agency submits to the commission a written request for readmission, and

(b) The executive director of the commission, or his or her designee, is satisfied that any conditions to the individual's readmission specified by the director or his or her designee have been met, and determines there no longer exists "good cause" to exclude the individual from the academy program.

(4) Any person dismissed from any academy for an integrity violation, including but not limited to cheating, the making of materially false statements, or the commission of any crime involving moral turpitude, shall not be eligible for readmission to any subsequent academy within twenty-four (24) months from the date of dismissal. Such ineligibility shall not be affected by any new employment or reemployment during the period of ineligibility specified in the preceding sentence of this subsection.

(5) An exception to the ineligibility period specified in subsection (4) may be granted in the sole discretion of the director, based upon mitigating circumstances. However, no person may be considered for such early readmission after an integrity violation dismissal unless a written request is made on his or her behalf by the head of the agency employing the individual at the time of the request. Such request may be granted by the director upon hearing the matter in a proceeding conducted in accordance with the applicable procedures of the commission. The director's decision under this subsection shall be subject to further review only for abuse of discretion.

(6) After the ineligibility period specified in subsection (4) has passed, or after an exception thereto has been granted by the commission under subsection (5), the person previously dismissed for an integrity violation may be readmitted to a subsequent academy session only if:

(a) The head of the individual's current employing agency submits to the commission a written request for readmission, and

(b) the executive director of the commission, or his or her designee, is satisfied that any conditions to the individual's readmission specified by the director or his or her designee have been met, and determines there no longer exists "good cause" to exclude the individual from the academy program.

(7) Any and all information deemed to be relevant to the eligibility for readmission under this section of any law enforcement or corrections trainee or prospective trainee may be disseminated without restriction between the commission staff and any employer or prospective employer.

(8) For purposes of this section, reserves and volunteers will be deemed to be employees of the agencies which sponsor them for participation in a training academy.

WSR 93-03-085
PROPOSED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION
 [Filed January 19, 1993, 2:42 p.m.]

Continuance of WSR 92-21-032.

Title of Rule: WAC 139-10-222 Readmission to corrections academies.

Hearing Location: Washington State Conference and Training Center, 19010 First Avenue South, Seattle, WA 98148, on March 18, 1993, at 10:00 a.m.

Submit Written Comments to: Garry E. Wegner, Assistant Director, Criminal Justice Training Commission, P.O. Box 40905, Olympia, WA, 98504-0905, by March 17, 1993.

Date of Intended Adoption: March 18, 1993.

January 15, 1993

James C. Scott
 Executive Director

NEW SECTION

WAC 139-10-222 Readmission to corrections academies No person may be readmitted to any corrections training academy except as provided in this section.

(1) Any request for readmission to any academy shall be made and submitted by the individual's employing or sponsoring agency.

(2) Any individual terminated from any academy for academic failure or who has voluntarily withdrawn from any academy for any reason, may be readmitted to a subsequent academy session only if:

(a) the head of the individual's current employing agency submits to the Commission a written request for readmission of the individual to the academy program, and

(b) the executive director of the commission, or his or her designee, is satisfied that any conditions to the individual's readmission specified by the director or his or her designee have been met.

(3) Any individual dismissed from any academy for disciplinary reasons other than those specified by section (4),

below, may be readmitted to a subsequent academy program only if:

(a) the head of the individual's current employing agency submits to the commission a written request for readmission, and

(b) The executive director of the commission, or his or her designee, is satisfied that any conditions to the individual's readmission specified by the director or his or her designee have been met, and determines there no longer exists "good cause" to exclude the individual from the academy program.

(4) Any person dismissed from any academy for an integrity violation, including but not limited to cheating, the making of materially false statements, or the commission of any crime involving moral turpitude, shall not be eligible for readmission to any subsequent academy within twenty-four (24) months from the date of dismissal. Such ineligibility shall not be affected by any new employment or reemployment during the period of ineligibility specified in the preceding sentence of this subsection.

(5) An exception to the ineligibility period specified in subsection (4) may be granted in the sole discretion of the director, based upon mitigating circumstances. However, no person may be considered for such early readmission after an integrity violation dismissal unless a written request is made on his or her behalf by the head of the agency employing the individual at the time of the request. Such request may be granted by the director upon hearing the matter in a proceeding conducted in accordance with the applicable procedures of the commission. The director's decision under this subsection shall be subject to further review only for abuse of discretion.

(6) After the ineligibility period specified in subsection (4) has passed, or after an exception thereto has been granted by the commission under subsection (5), the person previously dismissed for an integrity violation may be readmitted to a subsequent academy session only if:

(a) the head of the individual's current employing agency submits to the commission a written request for readmission, and

(b) the executive director of the commission, or his or her designee, is satisfied that any conditions to the individual's readmission specified by the director or his or her designee have been met, and determines there no longer exists "good cause" to exclude the individual from the academy program.

(7) Any and all information deemed to be relevant to the eligibility for readmission under this section of any law enforcement or corrections trainee or prospective trainee may be disseminated without restriction between the commission staff and any employer or perspective employer.

(8) For purposes of this section, reserves and volunteers will be deemed to be employees of the agencies which sponsor them for participation in a training academy.

WSR 93-03-087
PROPOSED RULES
HIGHER EDUCATION
COORDINATING BOARD
 [Filed January 19, 1993, 3:05 p.m.]

Original Notice.

Title of Rule: State need grant program.

Purpose: Adopt revised student eligibility criteria; and adopt various technical corrections made necessary by the reauthorization of the Federal Higher Education Act.

Statutory Authority for Adoption: Chapter 28B.80 RCW.

Statute Being Implemented: RCW 28B.10.800-[28B.10].822.

Summary: These rules establish student eligibility criteria based on income alone and update names and references to federal programs and federal student aid rules.

Reasons Supporting Proposal: The proposed rules will improve public understanding of the state need grant program as well as simplify administration.

Name of Agency Personnel Responsible for Drafting and Implementation: John Klacik, 917 Lakeridge Way, Olympia, WA, 586-1405; and Enforcement: Shirley Ort, 917 Lakeridge Way, Olympia, WA, 586-6404.

Name of Proponent: Higher Education Coordinating Board, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Establish a new student eligibility criteria based on income alone. Eliminates the need to collect asset information to determine eligibility. The anticipated effect is to improve public understanding of the state need grant program and to simplify institutional administration.

Proposal Changes the Following Existing Rules: Eliminates the need to collect asset information to determine student eligibility, and updates names of various federal programs and accrediting organizations.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

Hearing Location: Conference Room, Third Floor, Higher Education Coordinating Board, 917 Lakeridge Way, Olympia, WA, on February 23, 1993, at 1:00 p.m. - 3:00 p.m.

Submit Written Comments to: John Klacik, Higher Education Coordinating Board, 917 Lakeridge Way, P.O. Box 43430, Olympia, WA 98504-3430, by February 23, 1993.

Date of Intended Adoption: March 10, 1993.

January 19, 1993

John Klacik

Associate Director for
Student Financial Aid

AMENDATORY SECTION (Amending WSR 90-04-067, filed 2/5/90, effective 7/1/90)

WAC 250-20-011 Student eligibility. For a student to be eligible for a state need grant he or she must:

(1) Be a "needy student" or "disadvantaged student" as determined by the higher education coordinating board in accordance with RCW 28B.10.802.

(2) Be a resident of the state of Washington.

(3) Be enrolled or accepted for enrollment as an undergraduate student at a participating postsecondary institution or be a student under an established program designed to qualify him or her for enrollment as a full-time student at a postsecondary institution in the state of Washington.

(a) For purposes of need grant eligibility, the student must be enrolled, at time of disbursement, in a course load of at least six credits per quarter or semester or, in the case of institutions which do not use credit hours, twelve clock hours per week.

(b) A student enrolled less than half time may not receive this grant for the term in question, but is eligible for reinstatement or reapplication for a grant upon return to at least a half-time status. Correspondence courses may not comprise more than one-half of the student's minimum credit load for which aid is being considered.

(4) ~~((The state need grant recipient is expected to))~~ Maintain satisfactory progress as defined in WAC 250-20-021(19).

(5) Not be pursuing a degree in theology.

(6) Not have received a state need grant for more than the equivalent of ten full-time semesters or fifteen full-time quarters or equivalent combination of these two. Upon receipt of a bachelor's degree, a student is no longer eligible.

(7) Have made a bona fide application for a Pell grant.

(8) Certify that he or she does not owe a refund on a state need grant, a Federal Pell Grant or a Federal Supplemental Educational Opportunity Grant, and is not in default on a loan made, insured, or guaranteed under the ~~((National Direct Student-))~~ Federal Family Education Loan Program, the Federal Perkins((:)) Loan Program, or ((Guaranteed Student, and Income-Contingent Loan)) the Federal Direct Loan Demonstration Program((s)).

AMENDATORY SECTION (Amending WSR 90-04-067, filed 2/5/90, effective 7/1/90)

WAC 250-20-015 Agreement to participate. In order to participate in the program a postsecondary institution must ~~((annually))~~ file an "agreement to participate" supplying the following information as appropriate: Name and address of school (including central office and all campus sites), name and address of owner(s), or if a corporation the name and addresses of stockholders holding more than twenty-five percent of the stock and percentage of stock held, the date on which the school officially began instruction if in the last five years, type and date of last accreditation, enrollment information (unless reported to the state of Washington or in the integrated postsecondary education data system) ~~((and such other information as may be required to assure proper administration of the program. Along with the "agreement," all)).~~ The institutions must also submit each year, for approval, a copy of their refund/repayment policy, student budgets, gift equity packaging policy and their satisfactory progress policy for state need grant recipients and such other information as may be required to assure proper administra-

tion of the program. In addition the "agreement to participate" will also indicate the institution's agreement to abide by all program rules, regulations, and guidelines, to maintain and provide all pertinent information, records, and reports requested by the board, and to notify the board within thirty days of any change (other than student enrollment) to information reported on the agreement form.

AMENDATORY SECTION (Amending WSR 92-11-022, filed 5/13/92, effective 6/13/92)

WAC 250-20-021 Program definitions. (1) The term "needy student" shall mean a post-high school student of an institution of postsecondary education who demonstrates to the higher education coordinating board the financial inability, either parental, familial, or personal, to bear the total cost of education for any semester or quarter. The determination of need shall be made in accordance with federal needs analysis formulas and provisions as recognized and modified by the board.

(2) The term "disadvantaged student" shall mean a post-high school student who by reason[s] of adverse cultural, educational, environmental, experiential[,], or familial circumstance is unable to qualify for enrollment as a full-time student in a postsecondary institution, and who otherwise qualifies as a needy student and who is attending a postsecondary educational institution under an established program designed to qualify him or her for enrollment as a full-time student.

(3) The term "postsecondary institution" shall mean any public university, college, community college, or vocational-technical institute operated by the state of Washington political subdivision thereof, or any other university, college, school or institute in the state of Washington offering instruction beyond the high school level which is a member institution of one of the following accrediting associations: The Northwest Association of Schools and Colleges, the Career College Association (~~(of Independent Colleges and Schools)~~), or the Cosmetology Accrediting Commission, (~~or the National Association of Trade and Technical Schools,~~) and if such institution agrees to participate in the program in accordance with all applicable rules and regulations. Any institution, branch, extension or facility operating within the state of Washington which is affiliated with an institution operating in another state must be a separately accredited member institution of one of the above named accrediting associations.

(4) "Washington resident" shall be defined as an individual who satisfies the requirements of RCW 28B.15.011 through 28B.15.013 and board-adopted rules and regulations pertaining to the determination of residency.

(5) "Dependent student" shall mean any post-high school student who does not qualify as an independent student in accordance with WAC 250-20-021(6).

(6) "Independent student" shall mean any student who qualifies as an independent student for the receipt of federal aid. These qualifications include a student who has either:

- (a) Reached his or her twenty-fourth birthday before January 1st of the aid year; or,
- (b) Is a veteran of the U.S. Armed Forces; or,
- (c) Is an orphan or ward of the court; or,

- (d) Has legal dependents other than a spouse; or,
- (e) Is a married student or a graduate/professional student (~~(and will not be claimed by parents as a U.S. income tax exemption in the aid year)~~); or,

(f) (~~Was not claimed by parents as a U.S. income tax exemption in either of the two calendar years prior to the academic year for which aid is being considered and had a total income and benefits for those two years sufficient to support his or herself; or,~~

(g)) Is determined to be independent for the receipt of federal aid on the basis of the professional judgment of the aid administrator.

(7) Definitions of "undergraduate students" will be in accord with definitions adopted for institutional use by the board.

(8) "Student budgets" shall consist of that amount required to support an individual as a student for nine months and may take into consideration cost factors for maintaining the student's dependents. This should be the amount used to calculate the student's total need for all state and federal funds.

(9) "State need grant cost-of-attendance" is (~~([a] [the])~~) the standard student cost per sector, as developed by the board (~~(, to determine the eligible [students'] [student's] exact award[.])~~).

(a) The ~~costs-of-attendance~~ for each sector are calculated by adding together a standard maintenance allowance for books, room, board, transportation and personal items, for all undergraduate students statewide as developed by the Washington Financial Aid Association, and the sector's regular tuition and fees for full-time, resident, undergraduate students.

(b) In no case may the costs-of-attendance exceed the statutory ceiling established by RCW 28B.10.808(4). The ceiling is calculated by adding together the same standard maintenance allowance used in determining the state need grant cost-of-attendance, plus the regular tuition and fees charged for a full-time resident undergraduate student at a research university, plus the current average state appropriation per student for operating expenses in all public institutions.

(c) For the 1992-93 academic year, the value of the statutory ceiling is \$13,783. This value is composed of the Washington Financial Aid Association's maintenance budget of \$6,964, plus the regular tuition and fees charged for a resident undergraduate student at a research university of \$2,274, plus the current average state appropriation per student for operating expenses in all public institutions of \$4,545.

(d) The value of each element used in the construction of the statutory ceiling will be updated annually.

The higher education coordinating board will consult with appropriate advisory committees and the representative association of student financial aid administrators, to annually review and adjust the costs-of-attendance. The costs-of-attendance for each sector will be published concurrent with annual guidelines for program administration.

(10) (~~"State need grant family contribution" for students with dependents shall mean the sum of the assumed [parents'] [parent's] contribution, contribution from student assets, and all income including student's earnings. For~~

~~students without dependents, the state need grant ["family contribution["] shall mean the sum of contributions from all the student's {(land spouse's)} assets[, and income, excluding student earnings.~~

~~(11) "Parents' contribution" shall mean the contribution toward college expenses expected from the student's parent(s) as related to the total financial strength of the parents.~~

~~(12) Funds administered by the institution[, (such as) Pell grants, BIA grants, those portions of agency funds designated for tuition and fees, as well as funds available to the student because of his or her student status are to be used in calculating the student's overall need, but are not counted as part of the state need grant family contribution.])~~
"Family income" is the student's family income for the calendar year prior to the academic year for which aid is being requested.

(a) Income means adjusted gross income and nontaxable income as reported on the federally prescribed application for federal student aid.

(b) For the dependent student family income means parental income.

(c) For the independent student family income means the income of the student and any other adult, if any, reported as part of the student's family.

(d) The institutional aid administrator may adjust the family's income up or down to more accurately reflect the family's financial situation during the academic year. When such adjustments are made they shall be consistent with guidelines for making changes to determine federal student aid eligibility.

(11) "Income cutoff" means the amount of family income below which a student is determined to be eligible for the state need grant. The cutoff shall be expressed as a percent of the state's median family income. The exact point of cutoff shall be determined each year by the board based on available funding. In no case will the minimum income cutoff be less than sixty-five percent of the state's median family income, regardless of program funding.

(12) "Median family income" is the median income for Washington state, adjusted by family size and reported annually in the federal register.

(13) "Maximum base grant" is a percentage of the state need grant costs-of-attendance for each sector. The percentage will be no less than fifteen percent and no more than twenty percent, dependent each year upon available funding. The maximum base grant may be further adjusted according to the student's family income level and rate of enrollment as described in WAC 250-20-041.

(14) "Dependent care allowance" is a flat grant amount, to be determined by the board, which is in addition to the student's eligibility for the base grant. The allowance is awarded to those students who have dependents in need of care. The dependent must be someone (other than a spouse) living with the student. Care must be that assistance provided to the dependent which is paid to and provided by someone outside of the student's household.

~~((13))~~ (15) "State need grant award" is the ((difference between the)) maximum base grant ((and the student's total state need grant family contribution)) adjusted according to level of family income, plus a dependent care allowance, if applicable.

(16) "Academic year" is that period of time between July 1 and the following June 30 during which a full-time student would normally be expected to complete the equivalent of two semesters or three quarters of instruction.

(17) "Clock hours" means a period of time which is the equivalent of either:

(a) A 50 to 60 minute class, lecture, or recitation, or

(b) A 50 to 60 minute period of faculty-supervised laboratory shop training or internship.

(18) "Gift equity packaging policy" is the institution's policy for assigning gift aid to all needy, eligible students.

(19) "Satisfactory progress" is the student's successful completion of a minimum number of credits for each term in which the grant was received. Each school's policy for measuring progress of state need grant recipients must define satisfactory as the student's completion of the minimum number of credits for which the aid was disbursed.

(a) The minimum satisfactory progress standard for full-time students is twelve credits per term or 300 clock hours per term. Satisfactory progress for three-quarter time students is nine credits per term or 225 clock hours per term. Satisfactory progress for half-time ((student{s})) students is six credits per term or 150 clock hours per term.

(b) Each school's policy must deny further disbursements of the need grant at the conclusion of any term in which he or she fails to complete at least one-half (50%) of the minimum number of credits for which the aid was disbursed or otherwise fails to fulfill the conditions of the institution's satisfactory progress policy.

(c) The school may make disbursements to a student who is in a probationary status. "Probation" is defined as completion of at least one-half (50%), but less than all (100%) of the minimum number of credits for which the aid was calculated and disbursed. The school must have a probation policy, approved by the board, which limits the number of terms in which a student may receive the need grant while in a probationary status.

(d) The school's aid administrator may at any time, using professional judgment exercised on a case-by-case basis, reinstate a student back into a satisfactory progress status, in response to an individual student's extenuating circumstances.

AMENDATORY SECTION (Amending WSR 90-04-067, filed 2/5/90, effective 7/1/90)

WAC 250-20-031 Application procedure. (1) Application for a state grant must be made each year.

(2) All applications will be ranked anew each year.

(3) Application for a state need grant is accomplished through a student's application for admission to, and financial aid from, the institution of his or her choice.

(4) Financial data must be generated in accordance with the method set forth by the higher education coordinating board to assure that information will be consistent on a state-wide basis.

The board shall each year develop criteria which shall be used to determine eligible need analysis processors in a multiple processor system. Further, the board shall each year specify the student data elements essential for determin-

ing state need grant eligibility and shall authorize the forms and processes for collecting and analyzing such data.

(5) The burden of proof of a grant recipient's eligibility is with the institution. At a minimum:

(a) The institution must be able, on request of the board, to reconstruct the calculations and rationale for the student's grant eligibility and award amounts.

(b) The financial aid form or comparable financial status documents, with the resulting financial need analysis must be on record in the financial aid office for all grant recipients.

(c) The institution must also have on record justification for reawarding a need grant to any student who failed to make satisfactory progress.

(6) The board shall establish annual criteria by which the eligible student is to be identified, ranked, and awarded. That criteria shall include the state need grant cost-of-attendance for each sector, the maximum award, and the ~~((maximum state need grant family contribution))~~ income cutoff level.

(7) The institution shall examine the student's aid application to determine overall need and specific state need grant eligibility and the appropriate award, using the board-approved criteria.

(8) The board will make available to all participating institutions, a list of all students who owe state need grant repayments or have otherwise exhausted their state need grant eligibility. It is the institution's responsibility to ensure that no ineligible student receives a state need grant.

(9) The financial aid ~~((officer))~~ administrator at each institution will be required to sign a statement attesting to the fact that all eligible financial aid applicants within state need grant parameters will be identified and served to the extent funds are available and that financial information will be determined in strict adherence to program guidelines.

(10) No group of students, such as single parents or part-time students, may be advantaged or disadvantaged in its access to the state need grant by any institutional awarding policy.

AMENDATORY SECTION (Amending WSR 90-04-067, filed 2/5/90, effective 7/1/90)

WAC 250-20-041 Award procedure. (1) The institution will offer grants to eligible students from funds reserved by the board. It is the institution's responsibility to ensure that the reserve is not over expended within each academic year.

(2) The state need grant award for an individual student should be the maximum base grant, appropriate for the sector attended, adjusted for the students level of family income, and a dependent care allowance, if applicable. Each eligible student receiving a grant must receive the maximum grant award for which he or she is eligible.

(3) The maximum state need grant award should not exceed the student's(=

~~(a)) overall need(;~~

~~(b) The maximum base grant minus state need grant family contribution, plus a dependent care allowance if eligible; or~~

~~(c)) or the institution's approved gift equity packaging policy ((as determined by the institution)).~~

(4) Eligible students shall receive a prorated portion of their state need grant for any academic period in which they are enrolled at least half-time, as long as funds are available. Students enrolled at a three-quarter time rate, at the time of disbursement, will receive seventy-five percent of their full-time base grant plus, dependent care allowance. Half-time students will receive fifty percent of their full-time base grant, at disbursement plus, dependent care allowance. ~~((Students eligible for a dependent care allowance, who are enrolled less than full time will receive fifty percent of the full time allowance.))~~ Depending on the availability of funds, students may receive a need grant for summer session attendance.

(5) The institution will be expected, insofar as possible, to match the state need grant with other funds sufficient to meet the student's need. Matching moneys may consist of student financial aid funds and/or student self-help.

(6) All financial resources available to a state need grant recipient, when combined, may not exceed the amount computed as necessary for the student to attend a postsecondary institution. The student will not be considered overawarded if he or she receives additional funds after the institution awards aid, and the total resources exceed his or her financial need by \$200 or less by the end of the academic year.

(7) The institution will notify the student of receipt of the state need grant.

(8) Any student who has received at least one disbursement and chooses to transfer to another participating institution within the same academic year, may apply to the board for funds to continue receipt of the grant at the receiving institution.

AMENDATORY SECTION (Amending WSR 90-04-067, filed 2/5/90, effective 7/1/90)

WAC 250-20-051 Grants disbursement. (1) At intervals designated by the executive director, financial aid administrators from participating independent colleges and proprietary institutions will submit the appropriate warrant order form to the higher education coordinating board for each state need grant recipient certifying enrollment and grant eligibility.

(a) Upon receipt of the warrant order forms, the higher education coordinating board will forward warrants to the appropriate institution for each recipient.

(b) At private and proprietary schools, as long as the student remains eligible for the grant, the warrant must be given directly to the student ((must acknowledge receipt for the state need grant each term agreeing to the conditions of award)) without any other condition being placed on receipt of the warrant by the institution.

(c) All signed receipts for state need grants are to be ~~((returned to the board, along with))~~ retained by the institution. They must be made available for inspection upon request of the board. All unclaimed warrants must be returned to the board on or before the date specified by the board each term.

(d) A student-by-student reconciliation must be completed by the institution at the end of each term.

(2) All other institutions may request funds as necessary to make disbursements to students.

(a) Progress reports must be filed with the board (~~at the end of each term~~) as requested.

(b) A student-by-student reconciliation must be filed with the board at the end of each academic year.

(3) No institution may disburse nor claim more funds than that amount reserved by the board for the body of students at each institution.

(4) Should a student recipient withdraw from classes during the term in which he or she received a state need grant, he or she shall be required to repay the appropriate amount according to the institution's approved repayment policy.

The institution shall advise the student(s) and the board of amounts to be repaid.

(5) The board reserves the right, if funds are available, to pay to public institutions an administrative expense allowance for the shared responsibility of administering the program on the board's behalf. The allowance shall be calculated annually as a percentage of the need grant funds disbursed by the institution.

WSR 93-03-090

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 92-58—Filed January 20, 1993, 10:25 a.m.]

Original Notice.

Title of Rule: Chapter 173-430 WAC, Agricultural burning.

Purpose: To maintain a statewide permit system to protect public health from the effects of agricultural burning.

Statutory Authority for Adoption: Chapter 70.94 RCW.
Statute Being Implemented: RCW 70.94.650.

Summary: This rule updates the Washington Administrative Code, the Clean Air Act of 1991, which requires a permit for agricultural activities. This rule establishes an interim permit fee for general agricultural burning and brings the per acre fee for grass seed production burning to the level identified in statute. The rule also changes the title to "Agricultural Burning," and adds a definition of agricultural burning.

Reasons Supporting Proposal: To prevent further degradation and protect public health from emission from [no further information supplied by agency].

Name of Agency Personnel Responsible for Drafting: Melissa McEachron, P.O. Box 47600, Olympia, WA 98504-7600, (206) 459-6998; Implementation and Enforcement: Joseph Williams, P.O. Box 47600, Olympia, Wa 98504-7600, (206) 459-6255.

Name of Proponent: Department of Ecology, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The purpose of the rule is to maintain the interim permit program while the permanent rule is being developed.

Proposal Changes the Following Existing Rules: See Summary above.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

Introduction: Chapter 19.85 RCW, the Regulatory Fairness Act, requires that rules affecting more than 20 percent of all industries or more than 10 percent of any one industry be evaluated for disproportionate impacts on small versus large businesses, and that mitigation be provided for such impacts if legally feasible. This proposed regulatory action has been reviewed in the context of that requirement. The findings of that review are that the amendatory changes to the existing rule either do not have disproportionate impacts upon small versus large businesses in the affected industries, or that any such impacts that do occur are minor and negligible. Therefore, no small business economic impact statement is required. The analysis supporting these findings is summarized below.

Background: Chapter 173-430 WAC previously applied only to field burning in connection with production of turf, field or forage grass seeds. The proposed amendments apply to those industries, and to other agricultural production sectors as well. The proposed changes in the existing rule relevant for this analysis are: The per-acre fee for field burning by turf, field or forage grass seed producers is increased from \$0.50 per acre to \$1.00 per acre, and a flat permit fee of \$20.00 is imposed for permits for open burning for other agricultural practices.

The proposed amendments are submitted using an interim approach to apply while development of a more complete and comprehensive agricultural burning rule takes place. This process is expected to be completed by July 1994. The first of the proposed amendments increases an existing fee to the level identified in RCW 70.94.656(1). The second of the above is intended to be a one-time-only fee to cover the period until this process is completed.

Review of studies and data compiled by the Washington State University cooperative extension service and consultation with Department of Ecology air program staff indicate that the sectors of Washington's economy most significantly affected by these proposed amendments include: SIC 011 Cash grains (wheat); SIC 013 Field crops, except cash grains (turf, forage and field grass seeds, alfalfa seed); and SIC 017 Fruits and tree nuts.

In that agriculture is not generally a source of significant, year-around wage and salary employment, farm size has been chosen as the basis for distinguishing between large and small businesses. Impacts of the proposed regulatory amendments are measured by costs per \$100.00 of sales.

Description of Analysis:

A: Increase in Grass Seed Field Burning Fee from \$0.50 to \$1.00 per acre. This proposed change is authorized by language in RCW 70.94.656(1). Since this fee is levied on a per-acre basis, its impact on producers will vary in direct proportion to farm size. Therefore, this proposed action will not have a disproportionate impact on small versus large businesses.

B: One-time \$20.00 Flat Fee for Open Burning Permits — Other Agriculture. Data on the number of farms by farm size and value of output was obtained from the *1987 Census of Agriculture: Washington* for the Standard Industrial Classification sectors listed above. Sales (value of output) were calculated on a per-farm basis for each farm-size

group and adjusted to 1990 levels via the best available commodity-specific Index of Prices Received by Farmers as published in the 1991 edition of *Agricultural Statistics*. As expected, sales per farm tended to increase with farm size for all commodity groups examined.

Since the proposed fee is a fixed amount regardless of the size of farm operation for which a permit may be sought, it would tend to have a disproportionately greater impact on smaller operations than on larger ones. However, in either case, the impact is minor and negligible, as shown below.

A permit secured immediately would cover all (or most) of two production seasons. Therefore, two years' worth of estimated sales (at 1990 levels) were discounted to a present value at six percent in order to provide a basis for comparison with a one-time immediate cost of \$20.00. The impacts of this permit fee per \$100.00 of sales of the smallest and largest 10 percent of the farms in the SIC's examined here are:

COSTS PER \$100.00 OF SALES — \$20.00 PERMIT FEE

<u>SIC</u>	<u>SMALLEST 10%</u>	<u>LARGEST 10%</u>
<u>011</u>	<u>\$0.21</u>	<u>\$0.008</u>
<u>013</u>	<u>\$0.11</u>	<u>\$0.001</u>
<u>017</u>	<u>\$0.12</u>	<u>\$0.003</u>

Since application materials for the above permit are widely available through Cooperative Extension Service offices, some fire departments, local air pollution control authorities and the Department of Ecology, additional costs associated with obtaining a permit are not expected to be significant. As indicated in the preceding table, the permit fee represents well under one percent of the total sales of even the smallest producers in the sectors examined. Thus, the conclusion is that proposed regulatory action will have minor and negligible impacts on even the smallest businesses.

References: United States Department of Agriculture, *Agricultural Statistics: 1991*; and United States Department of Commerce, Bureau of the Census, *1987 Census of Agriculture: Washington*.

Hearing Location: Attorney General Conference Room, 4224 6th Avenue S.E., Rowesix, Building 1, Lacey, WA, on February 24, 1993, at 7:00 p.m.; and at the Spokane County Health Department, West 1101 College Avenue, Room 140, Spokane, WA, on March 1, 1993, at 7:00 p.m.

Submit Written Comments to: Melissa McEachron, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, by March 5, 1993.

Date of Intended Adoption: May 4, 1993.

January 20, 1993
Terry Husseman
Acting Director

Chapter 173-430 WAC
~~((BURNING OF FIELD AND FORAGE AND TURF GRASSES CROWN FOR SEED))~~
AGRICULTURAL BURNING

AMENDATORY SECTION (Amending Order 90-10, filed 9/17/90, effective 10/18/90)

WAC 173-430-010 Purpose. (1) This chapter, promulgated under chapter 70.94 RCW, as amended, is to assume state jurisdiction over and to control emissions from agricultural burning including the burning of field and forage, and turf grasses grown for seed and for the proper development of the state's natural resources.

(2) Authority to enforce all provisions of this regulation, including establishing permit conditions and issuing permits, is delegated to and shall be carried out by all activated air pollution control authorities or ecology for those areas not under the jurisdiction of an authority.

(3) The purpose of this chapter is to:

(a) Minimize adverse effects on air quality from ~~((the open burning of field and forage, and turf grasses grown for seed;))~~ agricultural burning;

(b) Provide for implementation of a research program to explore and identify economical and practical alternatives ~~((agricultural practices))~~ to agricultural burning; ~~((the open burning of field and forage, and turf grasses grown for seed;))~~

(c) Provide for interim regulation of such burning until practical alternatives are found.

AMENDATORY SECTION (Amending Order 90-10), filed 9/17/90, effective 10/18/90)

WAC 173-430-020 Definitions. The definitions of terms contained in chapter 173-400 WAC are incorporated into this chapter by reference. Unless a different meaning is clearly required by context, the following words and phrases as used in this chapter, shall have the following meanings:

(1) ~~((Field and forage grasses: Canary grass, bromegrass, oatgrass, timothy, wheatgrass, and orchardgrass, planted to produce seed.~~

(2) ~~Straw: All material, other than seed, removed by swathing, combining, or cutting.~~

(3) ~~Tear-out: Any operation that destroys the existing crop and prepared the area for next year's planting.~~

(4) ~~Turf grasses: All blue grasses, fescues, bentgrass, and perennial ryegrass, planted to produce seed.)~~ Agricultural Burning: Burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, or where identified as a best management practice by the agricultural burning practices and research task force established in RCW 70.94.650 or other authoritative source on agricultural practices.

(2) Field and forage grasses: Canary grass, bromegrass, oatgrass, timothy, wheatgrass, and orchardgrass, planted to produce seed.

(3) Straw: All material, other than seed, removed by swathing, combining, or cutting.

(4) Tear-out: Any operation that destroys the existing crop and prepared the area for next year's planting.

(5) Turf grasses: All blue grasses, fescues, bentgrass, and perennial ryegrass, planted to produce seed.

(2) Field and forage grasses: Canary grass, bromegrass, oatgrass, timothy, wheatgrass, and orchardgrass, planted to produce seed.

(3) Straw: All material, other than seed, removed by swathing, combining, or cutting.

(4) Tear-out: Any operation that destroys the existing crop and prepared the area for next year's planting.

(5) Turf grasses: All blue grasses, fescues, bentgrass, and perennial ryegrass, planted to produce seed.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published

above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending Order 90-10, filed 9/17/90, effective 10/18/90)

WAC 173-430-030 Permits, conditions, and restrictions. (1) ~~No agricultural burning including open burning of field or forage grasses, or turf grasses shall be undertaken unless a permit has been obtained from ecology or an authority, as appropriate. The issuance, denial, or conditioning of permits shall be governed by consideration of air quality conditions in the area affected by the proposed burning, the time of year, meteorological conditions, the size and duration of the proposed burning activity, the amount of straw removal required, the applicant's need to carry out such burning, and the public's interest in the environment. Permits will be conditioned to minimize air pollution interest in the environment. Permits will be conditioned to minimize air pollution. Until approved alternatives become available, ecology or the authority may limit the number of acres, on a pro rata basis, among those affected for which permits to burn will be issued in order to control emissions.~~

(2) For open burning of field or forage grasses, or turf grasses, the issuance, denial, or conditioning of permits shall be governed by consideration of air quality conditions in the area affected by the proposed burning, the time of year, meteorological conditions, the size and duration of the proposed burning activity, the amount of straw removal required, the applicant's need to carry out such burning, and the public's interest in the environment. Permits will be conditioned to minimize air pollution interest in the environment. Permits will be conditioned to minimize air pollution. Until approved alternatives become available, ecology or the authority may limit the number of acres, on a pro rata basis, among those affected for which permits to burn will be issued in order to control emissions.

Burning of acreage not previously under permit may be banned or subject to more restrictive conditions. Burning of field and forage grasses may be restricted, and other measures may be required to minimize air pollution.

Permits issued before 1978 will establish a permit history for the applicant. This permit history will apply to an applicant and not to specific parcels of land and is established only for the maximum amount of acreage included in any permit issued before 1978 will establish a permit history for the applicant. This permit history will apply to an applicant and not to specific parcels of land and is established only for the maximum amount of acreage included in any permit issued before 1978. Land transferred to a spouse, son, or daughter, will retain a permit history as established by the original applicant.

Any permit denial or restriction may first be applied to applicants without a permit history and to amounts of acreage not included in an applicant's permit history.

Applicants who received permits before 1978 may be given priority for burning the amount of acreage cited in the permit history.

(3) Open burning of field and forage grasses shall be prohibited. However, a permit using restrictions or conditions, may be issued to burn field and forage grasses for disease, pest, or weed control, if such need is certified by a

county agent or other agricultural authority; or if such grasses were planted as part of a soil erosion control plan approved by a conservation district.

(4) Open burning of all grasses scheduled for tear-out shall be prohibited unless a permit specifically allows such burning.

(5) Practical alternative production methods and disease controls which would reduce or eliminate ~~((open))~~ agricultural burning shall be used when reasonably available. These methods and controls shall be used regardless of specific provisions of the compliance program described in these section.

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

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

AMENDATORY SECTION (Amending Order 90-10, filed 9/17/90, effective 10/18/90)

WAC 173-430-040 Mobile field burners. Mobile field burners, and other methods of incineration not classified as outdoor ~~((open))~~ burning, shall not be prohibited by the restrictions in WAC 173-430-030: *Provided*, That emissions do not exceed the following standards:

(1) Visible emissions shall not exceed an opacity of 20 percent for more than three minutes in any one hour;

(2) Particulate emissions shall not exceed 0.1 grains per standard dry cubic foot of exhaust gas, corrected to seven percent oxygen.

[AMENDATORY SECTION (Amending Order 90-10, filed 9/17/90, effective 10/18/90)]

WAC 173-430-050 Other approvals. A person applying for a permit under this chapter is still required to obtain permits, licenses, or approvals required by any other laws, regulations, or ordinances.

Reviser's note: The above section was filed as an amendatory section; however, there were no amendments made. Pursuant to the requirements of RCW 34.08.040 it is published in the same form as filed by the agency.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending Order 90-10, filed 9/17/90, effective 10/18/90)

WAC 173-430-060 Study of alternatives. Ecology shall conduct, cause to be conducted, or approve of a study

or studies to explore and identify economical and practical alternative practices to agricultural burning including open burning of field and forage, and turf grasses. To conduct any such study, ecology may contract with public or private entities. Any approved study shall provide for the identification of such alternatives as soon as possible. Ecology shall annually review the progress of such studies, review provisions of this regulation and available alternatives to ~~((open))~~ burning and determine if continuing agricultural burning including open burning of field and forage, and turf grasses is justified.

AMENDATORY SECTION (Amending Order 90-10, filed 9/17/90, effective 10/18/90)

WAC 173-430-070 Fees. (1) To support the study or studies described in WAC 173-430-060, ecology or an authority shall collect a fee ~~((of fifty cents))~~:

(a) For field and forage, and turf grasses grown for seed, the fee is \$1.00 per acre of crop. The fee is to be collected before any permit is issued under WAC 173-430-030. This fee shall be submitted with individual permit applications.

(b) For all other agricultural burning practices, a \$20.00 non-refundable permit/application fee shall be assessed and submitted with the general agricultural burning permit application. This \$20.00 fee is effective for the interim period ending when the agricultural burning practices and research task force establishes a permanent fee level (pursuant to RCW 70.94.650), or January 1, 1995, whichever occurs first.

(2) When a permit is granted to burn fewer acres of field and forage, and turf grasses grown for seed than requested in the permit application, ecology or the authority shall refund to the permit applicant the unused part of the permit fee.

(3) No part of the permit fee will be refunded if a grower decides to burn fewer acres than the permit allows.

(4) After granting any permit and making any refund required under WAC 173-430-070(2), the authority shall transfer the permit fee to ecology.

(5) Ecology shall deposit all permit fees ~~((in a special grass seed burning research account in the general fund))~~ in the air pollution control account.

(6) Ecology shall allocate moneys annually from this account to support approved studies provided for in WAC 173-430-060, up to the amount appropriated to ecology for such purpose.

(7) When ecology concludes that enough reasonably available alternative practices to the open burning of field and forage, and turf grasses grown for seed have been developed, and at such time as all costs of any studies have been paid, the grass seed burning research account shall be dissolved. Any money remaining in the account shall revert to the general fund.

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

AMENDATORY SECTION (Amending Order 90-10, filed 9/17/90, effective 10/18/90)

WAC 173-430-080 Certification of alternatives.

When enough information on alternative practices to open burning of field and forage, and turf grasses grown for seed becomes available, ecology shall conduct public hearings to receive testimony from interested parties. If ecology then concludes that any procedure, program, technique, or device is a practical alternative to the open burning of field and forage and turf grasses grown for seed, ecology shall, by order, approve such alternative. After approval, any alternative that is reasonably available shall be used; and open burning of field and forage, and turf grasses grown for seed shall not be allowed.

WSR 93-03-091

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 93-01—Filed January 20, 1993, 10:26 a.m.]

Original Notice.

Title of Rule: WAC 173-19-3903 City of Edmonds shoreline master program.

Purpose: Adoption of revised shoreline master program into state master program, chapter 173-19 WAC.

Statutory Authority for Adoption: RCW 90.58.200.

Statute Being Implemented: Chapter 90.58 RCW, Shoreline Management Act of 1971.

Summary: The amendment revises the shoreline master program for city of Edmonds.

Reasons Supporting Proposal: Shoreline master programs and revisions thereto are developed by local governments and submitted to the department for approval. The programs do not become effective until adopted by the department in accordance with the Shoreline Management Act and the Administrative Procedure Act.

Name of Agency Personnel Responsible for Drafting: Barry Wenger, Box 47692, Olympia, 98504-6792, (206) 649-7244; Implementation and Enforcement: D. Rodney Mack, Box 47600, Olympia, 98504-7600, 459-6777.

Name of Proponent: Department of Ecology, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed amendment modifies the definition of Conservancy Environment (Section 15.36.020) and Natural Environment (Section 15.36.030) in the city's shoreline master program in order to clarify what areas within the city limits are considered "associated wetlands" subject to regulation under the Shoreline Management Act and the master program.

Proposal Changes the Following Existing Rules: Amends chapter 173-19 WAC, Shoreline Management Act of 1971, state master program.

No small business economic impact statement is required for this proposal by chapter 19.85 RCW.

Hearing Location: Edmonds Community Services Conference Room, 250 Fifth Avenue North, Edmonds, WA, on March 3, 1993, at 7:00 p.m.

Submit Written Comments to: Master Program Coordinator, Washington State Department of Ecology, Shorelands and Coastal Zone Management Program, P.O. Box 47692, Olympia, WA 98504-7692, by March 10, 1993.

Date of Intended Adoption: June 1, 1993.

January 20, 1993
Terry Husseman
Acting Director

AMENDATORY SECTION (Amending Order 86-09, filed 6/4/86)

WAC 173-19-3903 Edmonds, city of. City of Edmonds master program approved January 23, 1976. Revision approved March 5, 1979. Revision approved May 6, 1980. Revision approved April 30, 1984. Revision approved June 3, 1986. Revision approved June 1, 1993.

WSR 93-03-092
PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Filed January 20, 1993, 10:30 a.m.]

Original Notice.

Title of Rule: Chapter 173-422 WAC, Motor vehicle emission inspection.

Purpose: To reduce the impact on air quality from gasoline and diesel motor vehicles in urban areas.

Statutory Authority for Adoption: Chapter 70.120 RCW.

Statute Being Implemented: Chapter 70.120 RCW.

Summary: Expands the King, Snohomish, and Spokane counties' inspection areas and establishes Pierce and Clark counties' inspection areas. Sets diesel inspection procedures and revises inspection procedures for gasoline vehicles.

Reasons Supporting Proposal: Needed to comply with federal and state law requirements.

Name of Agency Personnel Responsible for Drafting: John Raymond, P.O. Box 47600, Olympia, WA 98504-7600, (206) 459-6261; Implementation and Enforcement: Joe Williams, P.O. Box 47600, Olympia, WA 98504-7600, (206) 459-6255.

Name of Proponent: Department of Ecology, Air Quality Program, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The purpose of this rule is to improve air quality in areas that exceed federal air quality standards due to the operation of motor vehicles.

Proposal Changes the Following Existing Rules: Expands the King, Snohomish, and Spokane counties' inspection areas and establishes Pierce and Clark counties' inspection areas.

Small Business Economic Impact Statement

Rule Summary: Chapter 173-422 WAC specifies which vehicles need to be tested for emissions and the procedures to be followed by vehicle operators and emission testers. The revisions listed below include changing the requirements for vehicles and vehicle owners which would affect all businesses which own vehicles in the existing test area. These revisions also include broadening the test area. Since many businesses operate one or more motor vehicles the rule would affect all businesses which own vehicles in the new area.

Regulatory Fairness Act Requirements: The Regulatory Fairness Act, chapter 19.85 RCW, requires that rules which have an economic impact on more than 20 percent of the businesses of all industries or more than 10 percent of the businesses in any one industry (as defined by any three digit SIC code) be reviewed, and amended if necessary, to minimize their impact on small businesses. Revisions to chapter 173-422 WAC meet these criteria and require a small business economic impact statement (SBEIS).

Summary of Findings and Mitigation Efforts: Amendments to chapter 173-422 WAC affect all business [businesses] which own vehicles in the existing and amended test areas. Moreover, the amendments considered here have a disproportionate economic impact on small businesses.

Businesses which are likely to experience beneficial impacts are following SIC codes: 501 Motor Vehicles, Parts, and Supplies; 551 Motor Vehicle Dealers; 552 Motor Vehicles (Used); 553 Auto and Home Supply Stores; 554 Gasoline Service Stations; and 559 Automotive Dealers.

Some amendments mitigate the effects on small businesses by changing the definition of a fleet from 25 to 15 vehicles. This allows businesses the flexibility to choose between fleet testing and testing at public inspection stations. The amendment also allows 6 months rather than 90 days for the free retest for nonfleet vehicles. Fleets will still have one year to retest. Diesel vehicles will now be able to use fleet testing.

Description of Compliance Requirements:

Chapter 173-422 WAC implements the motor vehicle emission control law codified as chapter 70.120 RCW. Amendments to chapter 70.120 RCW as outlined in HB 1128, which became law on May 15, 1991, include the following: A smoke opacity test for diesel vehicles; a vehicle inspection before change of registered owner (dealer exemption retained); and emission control equipment checks as part of the inspection.

Proposed amendments chapter 173-422 WAC to meet the state law would: Establish diesel opacity resting [testing] methods and standards; reduce the number of vehicles in a fleet to 15 from 25, for purposes of establishing approved self testing; allow an owner of any number of diesel trucks to self test; require an inspection before a change of registered owner; increase the time for which inspection certificates are valid from ninety days to six months; and exempt vehicles fueled by propane, compressed natural gas, or liquid petroleum gas.

Proposed amendments to meet federal requirements would: Expand King, Snohomish, and Spokane county inspection areas and establish Pierce and Clark county

inspection areas; and include emission control equipment checks in each inspection (includes on-board diagnostic systems).

Proposed amendments to improve the program would: Revise the test procedure for gasoline vehicles to include preconditioning of failed vehicles so that false failures due to engine or catalytic converter not being at normal operating temperature is greatly reduced.

Cost of Compliance: Some businesses, such as automobile dealers, automotive repair shops and auto parts stores may see a net profit from the revisions due to the additional repairs encouraged by inspection of vehicles for removed or inoperative emission control systems. The consumer costs will depend on the cause of the emission test failure. Currently the maximum expenditure required to bring emissions into compliance for 1980 or earlier model year is \$50. The legislation has raised this to \$100. The maximum expenditure required for newer vehicles will remain at \$150. An average of 17% of vehicles fail the emission test. The failure rate varies from 42% for the 1968 model year to 1.5% for brand new vehicles. It is likely that businesses tend to own newer vehicles with lower failure rates than the population as a whole.

In 1990 vehicle emission tests resulted in over \$1,965,391 in payments to the general fund. Expansion of the test area and improvements to the test procedure will approximately double these costs. (Costs for emission tests for diesel vehicles are not included in these figures.)

In 1991 approximately 10 percent of the total payments for fleet service were from small businesses. Ecology recognizes that many small businesses operate vehicles, but do not have enough vehicles to be considered a fleet. These businesses will be required to pay the same rate for an emission test as the general public. The current rate is \$16, with a maximum level of \$18. The fee should not exceed the cost of performing and monitoring the test, but exact cost figures are not available. \$16 is used as an approximate value.

Identification of Affected Industries: Businesses which may be affected by these revisions include SIC codes 501, 551, 552, 553, 554, and 559. Many businesses in these SIC codes are small businesses. Clark and Pierce counties include approximately 14% of the businesses registered in SIC 55. With this addition approximately 50% of all businesses in the SIC Code 55 will now be in the combined area affected by the rule. This regulation does meet the requirements for a SBEIS.

The following table shows the total number of businesses in these industries, and gives the number of small businesses in each classification. (Data are from 1989.)

SIC Code	Description	All Businesses		Small Businesses	
		Units	Empl.	Units	Employees
501	Automobiles and Parts	575	6,082	552	4,239
551	New and Used Car Dealers	455	11,656	394	7,482
552	Used Car Dealers	232	683	232	683
553	Auto and Home Supply Stores	706	5,643	696	4,690

554	Gasoline Service Stations and				
559	Auto Dealers (not classified elsewhere)	1,778	9,190	1,764	8,237

Source: Employment Security Department
Small Businesses defined as businesses with fifty or fewer employees.

Cost Comparison: Larger businesses that regularly service and maintain fleets are allowed to incorporate emission tests into their service programs. Vehicle emission tests are required within twelve months of the license renewal date, with exact scheduling left to the business. This flexibility reduces the incremental cost of emission tests. In addition, the average cost for passing emission tests may be quite low for large fleets. Vehicle test forms have a set cost, but facilities for large fleets may make any maintenance adjustments necessary for passing emission test[s] relatively inexpensive.

Small businesses that do not meet the fleet requirements are required to have emission inspections at public inspection stations. The inspection fee cost must be adjusted to include the time required to take vehicles to the inspection station and the additional time the vehicle is unavailable for use by staff. Assuming a minimum wage for the employee taking the car to the test facility the minimum additional cost would be approximately \$5 to \$10 per vehicle tested. Some small businesses can not be without a vehicle for even a short period of time. An example of this would be companies that have only one vehicle and provide immediate delivery or pick-up. In addition the value of the car to the business could be equal to the cost of a replacement vehicle for the day. Costs start at \$17.32 and go up depending on the size and condition of the vehicle required. The minimum cost then is approximately \$25. Due to the lack of information on the number of vehicles operated by various small businesses, and the range in possible estimates for the value of time required to take vehicles to test facilities, or the time required for maintenance a direct comparison of cost per vehicle is not possible.

	Time and Vehicle Loss	Fee
Minimum Small Business Cost	\$25	\$16

Fleet testing utilizes the time of maintenance staff and requires equipment purchases. Since fleets pay \$16 for a test fee per vehicle, the difference in fees does not explain the decision to test vehicles as a fleet. The value of the time and vehicle use must be greater than the cost of additional mechanics time and the additional equipment. Economies of scale must be great enough to cover these costs. Therefore costs must be lower on a per vehicle basis for large companies with fleets. If they were not, those with fleets would choose to test at a public inspection station.

Small businesses that meet fleet requirements pay the same amount per vehicle test form as large businesses. In

this case the incremental cost (of testing an additional vehicle) is the same for large and small businesses. Given the limited data ratios can not be constructed. Ecology recognizes, however, that most small businesses do pay higher average costs for emission tests.

Mitigation: Current law permits fleet vehicles to be inspected within twelve months of their scheduled license renewal. This approach allows fleet emission tests to be scheduled along with other maintenance, lowering the incremental cost of testing. To help small businesses take advantage of this flexibility, the definition of a fleet is reduced from 25 vehicles to 15. In addition, one diesel vehicle may be defined as a fleet. Ecology can not legally exempt small businesses or postpone deadlines.

Hearing Location: Lacey Timberland Library, 500 College Street, Lacey, WA 98503, on February 24, 1993, at 2:30 p.m.

Submit Written Comments to: John Raymond, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, by March 5, 1993.

Date of Intended Adoption: May 3, 1993.

January 20, 1993

Terry Husseman
Acting Director

AMENDATORY SECTION (Amending Order DE 83-31, filed 11/23/83, effective 1/2/84)

WAC 173-422-010 Purpose. This chapter implements the Washington Clean Air Act, chapter 70.94 RCW, as supplemented by the motor vehicle emission inspection provisions codified as chapter 70.120 RCW.

Gasoline motor vehicles are the primary emitters of carbon monoxide and emit significant quantities of hydrocarbons and oxides of nitrogen. Diesel motor vehicles are emitters primarily of particulates, hydrocarbons, and oxides of nitrogen. Emission controls required by the federal government are designed to reduce motor vehicle related air pollution. However, the effectiveness of these controls is substantially reduced through deterioration, maladjustment and tampering. Motor vehicle emission inspection serves to identify high polluting vehicles and vehicles with tampered or missing emission controls and to reduce their emissions, when such reduction can be accomplished at reasonable cost. These rules establish the emission standards, testing procedures, and associated activities necessary to implement a program of air pollution prevention and control ((involving)) resulting from motor vehicle emission inspections.

AMENDATORY SECTION (Amending WSR 90-06-062, filed 3/6/90, effective 4/6/90)

WAC 173-422-020 Definitions. Unless a different meaning is clearly indicated by context, the following definitions will apply:

(1) "Accuracy" means the degree of correctness by which the true value of a measured sample is determined.

(2) "Calibration gases" mean a blend of hydrocarbon (propane), carbon monoxide (CO), and carbon dioxide using nitrogen as carrier gas. The concentrations are to be traceable to within two percent of NBS standards.

(3) "Certificate of acceptance" means an official form, issued by someone authorized by the department, which certifies that all of the following conditions have been met: The recipient's vehicle initially failed ((to comply with applicable)) the emission ((standards)) inspection, the recipient has provided original receipts proving that more than ((fifty)) one hundred dollars or one hundred fifty dollars on a 1981 or later model motor vehicle were spent after the first ((test)) inspection and before the final ((test)) inspection on repairs performed by a "certified emission specialist" solely to ((meet)) reduce emissions ((standards)), the vehicle on final reinspection again failed to meet such standards, and the repair information section of the test report has been completed and the vehicle has been in use for more than five years or fifty thousand miles, and any component of the vehicle installed by the manufacturer for the purpose of reducing emissions, or its appropriate replacement, is installed and operative.

(4) "Certificate of compliance" means an official form, issued by someone authorized by the department, which certifies that the recipient's vehicle on inspection complied with applicable emission inspection standards.

(5) "Certified emission specialist" means an individual who has been issued a certificate of instruction by the department as authorized in RCW 70.120.020 (2)(a) and has maintained the certification by meeting requirements of WAC 173-422-190(2).

(6) "Dealer" means a motor vehicle dealer, as defined in RCW 46.70.011, that is licensed pursuant to chapter 46.70 RCW.

(7) "Department" means the department of ecology.

(8) "Drift" means the change in the reading of the analyzer to a given sample over a period of time with no adjustment to the analyzer having been made between the initial and final measurements.

(9) "Emission contributing area" means a land area within whose boundaries are registered motor vehicles that contribute significantly to the violation of motor vehicle related air quality standards in a noncompliance area. (The inspection program implemented by this chapter applies only to vehicles registered in emission contributing areas.)

(10) "Farm vehicle" means any vehicle other than a farm tractor or farm implement which is designed and/or used primarily in agricultural pursuits on farms for the purpose of transporting machinery, equipment, implements, farm products, supplies, and/or farm labor thereon and is only incidentally operated on or moved along public highways for the purpose of going from one farm to another.

(11) "Fleet" means a group of ((twenty-five)) fifteen or more motor vehicles owned or leased concurrently by one ((person-

)) "Gaseous fuel" means liquefied petroleum gases and natural gases in liquefied or gaseous forms) owner assigned a fleet identifier code by the department of licensing.

((+13)) (12) "Gross vehicle weight ((GVW)) rating (GVWR)" means the manufacturer stated gross vehicle weight rating.

((+14)) (13) "HC and CO emissions" means the concentration of hydrocarbons (measured as n-hexane) and carbon monoxide in the engine exhaust.

~~((15))~~ (14) "Motor vehicle" means any self-propelled vehicle required to be licensed pursuant to chapter 46.16 RCW.

~~((16))~~ (15) "Motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a farm tractor.

~~((17))~~ (16) "NBS" means National Bureau of Standards.

~~((18))~~ (17) "Noncompliance area" means a land area within whose boundaries any air quality standard for any air contaminant from the emissions of motor vehicles will probably be exceeded.

~~((19))~~ (18) "PPM" means parts per million by volume.

(19) "Primary emission control components" means the components of the vehicle installed by the manufacturer for the purpose of reducing emissions or its replacement or modification which is acceptable to the United States Environmental Protection Agency. These components are the fuel inlet restrictor, the catalytic converter or thermal reactor, the air injection system components, the thermostatic air cleaner, the exhaust gas recirculation system components, the evaporative emission system components including the gas cap, the positive crankcase ventilation system components and the electronic control unit components that control the air/fuel mixture and/or ignition timing including all related sensors.

(20) "Repeatability" means the ability of an analyzer to report the same value for successive measurements of the same sample.

(21) "Response" means how quickly there is a change in reading following a change in concentration at the sample probe inlet.

(22) "Sensitivity" means the smallest change in the value of a measured sample that can be detected by the analyzer.

(23) "Zero calibration gases" means air or nitrogen in which total impurities do not exceed 0.01 percent.

AMENDATORY SECTION (Amending Order DE 83-31, filed 11/23/83, effective 1/2/84)

WAC 173-422-030 Vehicle emission inspection requirement. All motor vehicles, not specifically exempted by WAC 173-422-170, which are registered or reregistered within the boundaries of an emission contributing area, as specified in WAC 173-422-050, are subject to the vehicle emission inspection requirements of this chapter. Neither the department of licensing nor its agents may change the registered owner or may issue or renew a motor vehicle license for any vehicle registered in an emission contributing area, as that area is established under RCW 70.120.040, unless the application for issuance or renewal is: (1) Accompanied by a valid certificate of compliance issued pursuant to RCW 70.120.060, 70.120.080, or 70.120.090 or a valid certificate of acceptance issued pursuant to RCW 70.120.070; or (2) exempted from this requirement pursuant to RCW 46.16.015(2). The certificates must have a date of validation which is within ~~((ninety days))~~ six months of the date of application for the vehicle license ~~((or))~~ license renewal or registered owner change. Certificates for fleet or

owner tested vehicles may have a date of validation which is within twelve months of the assigned license renewal date.

AMENDATORY SECTION (Amending WSR 90-06-062, filed 3/6/90, effective 4/6/90)

WAC 173-422-035 Registration requirements. (1) Persons residing in emission contributing areas as defined under WAC 173-422-050 shall register their motor vehicles within that area ~~((unless business reasons require registration outside of the area)).~~

(2) Any person who violates this section is subject to a civil penalty not to exceed ~~((one))~~ two hundred fifty dollars for each violation.

(3) Any civil penalty imposed by the department hereunder shall be appealable to the pollution control hearings board as provided for in chapter 43.21B RCW.

AMENDATORY SECTION (Amending WSR 90-06-062, filed 3/6/90, effective 4/6/90)

WAC 173-422-040 Noncompliance areas. The following areas are designated noncompliance areas for the air contaminants specified: Carbon monoxide

- (1) The city of Seattle.
- (2) The city of Bellevue.
- (3) The city of Spokane.
- (4) The city of Tacoma.
- (5) The city of Vancouver.
- (6) ~~((The city of Yakima.~~
- (7)) The city of Everett.

AMENDATORY SECTION (Amending Order DE 84-7, filed 4/18/84)

WAC 173-422-050 Emission contributing areas. Emission contributing areas within which the motor vehicle emission inspection program applies are designated by the following United States Postal Service ZIP codes as of ~~((the effective dates))~~ January 1, 1992, set forth below:

- (1) Puget Sound Region ~~((effective January 1, 1982))~~

98004	98039	
98005	98040	
98006	98041	
98007	98043	
98008	98046	
98009	98052	
98011	98053	
98012	98055	
98020	98056	
98021	98057	
98027	98062	
98028	98063	
98033	98072	
98034	98073	
98036	98083	
98037	98101 thru 98199,	
	inclusive except 98110))	
<u>98001</u>	<u>98035</u>	<u>98072</u>
<u>98002</u>	<u>98036</u>	<u>98073</u>
<u>98003</u>	<u>98037</u>	<u>98083</u>

<u>98004</u>	<u>98038</u>	<u>98101 thru 98199,</u>
<u>98005</u>	<u>98039</u>	<u>inclusive except 98110</u>
<u>98006</u>	<u>98040</u>	<u>98201 thru 98208</u>
<u>98007</u>	<u>98041</u>	<u>98258</u>
<u>98008</u>	<u>98042</u>	<u>98270</u>
<u>98009</u>	<u>98043</u>	<u>98271</u>
<u>98011</u>	<u>98046</u>	<u>98275</u>
<u>98012</u>	<u>98047</u>	<u>98290</u>
<u>98020</u>	<u>98052</u>	<u>98327</u>
<u>98021</u>	<u>98053</u>	<u>98332</u>
<u>98023</u>	<u>98054</u>	<u>98335</u>
<u>98025</u>	<u>98055</u>	<u>98338</u>
<u>98026</u>	<u>98056</u>	<u>98344</u>
<u>98027</u>	<u>98057</u>	<u>98352</u>
<u>98028</u>	<u>98058</u>	<u>98354</u>
<u>98031</u>	<u>98059</u>	<u>98371 thru 98374</u>
<u>98032</u>	<u>98062</u>	<u>98387</u>
<u>98033</u>	<u>98063</u>	<u>98388</u>
<u>98034</u>	<u>98064</u>	<u>98390</u>
	<u>98071</u>	<u>98401 thru 98499</u>

later)) 75-80	3.0	600	30
81-93 (0-8500 GVWR)	1.2	220	30
81-93 (Greater than 8500 GVWR)	3.0	400	30
94-99	0.5	100	30

((Except 1981 and later model vehicles manufactured with a catalytic converter the standards are:

1.2 — 220))

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

NEW SECTION

WAC 173-422-065 Diesel vehicle exhaust emission standards. Diesel motor vehicles subject to this chapter shall meet the following opacity standards using the test procedures specified in WAC 173-422-075.

Model Year	Opacity (%)
1968 - 1973	70
1974 - 1991	60
1992 and later	40

Vehicles tested at locations over 1000 feet above sea level will be allowed an additional 10% opacity.

AMENDATORY SECTION (Amending WSR 90-06-062, filed 3/6/90, effective 4/6/90)

WAC 173-422-070 ((Test)) Gasoline vehicle inspection procedures. All persons certified by, or under contract to, the department to conduct motor vehicle emission inspections shall use the following ((test)) procedures. Variations to the procedures specified may be ((used if approved)) established by the department ((after receipt of evidence that such changes will not interfere with the validity of the test)) for all or certain vehicles.

- (1) The vehicle exhaust emissions of carbon monoxide, hydrocarbons, and carbon dioxide shall be measured using either a two-speed (idle and 2500 rpm) test with the transmission in neutral or park ((shall be used to measure vehicle exhaust emissions for carbon monoxide, hydrocarbons, and carbon dioxide)) or a loaded test with the transmission in drive or in third gear unless the engine speed does not equal or exceed 2500 rpm then second gear shall be used for the loaded mode and in park or neutral for the idle mode. A vehicle with an automatic transmission may be tested in drive for the idle ((test)) mode if the idle rpm in neutral or park exceeds ((1200)) 1100 rpm. However, the idle rpm as tested cannot exceed ((1200)) 1100 rpm unless allowed to do so by the vehicle manufacturer's specifications.
- (2) The engine shall be at normal operating temperature during the emission test with all accessories off.
- (3) Any vehicle causing an unsafe condition, such as the continuous leaking of any fluid onto the floor, may be rejected from the inspection site.
- (4) Vehicles shall be approximately level during the test.
- (5) Vehicles with more than one exhaust pipe shall be tested by sampling ((each tail)) one exhaust pipe ((and

(2) Spokane Region ((effective July 1, 1985))

<u>99001</u>	<u>99202</u>
<u>99005</u>	<u>99203</u>
<u>99014</u>	<u>99204</u>
<u>99016</u>	<u>99205</u>
<u>99019</u>	<u>99206</u>
<u>99021</u>	<u>99207</u>
<u>99025</u>	<u>99208</u>
<u>99027</u>	<u>99212</u>
<u>99037</u>	<u>99216</u>
<u>99201</u>	<u>99218</u>

(3) Vancouver Region

<u>98607</u>
<u>98660 thru 98668</u>
<u>98671</u>
<u>98682-86</u>

AMENDATORY SECTION (Amending WSR 90-06-062, filed 3/6/90, effective 4/6/90)

WAC 173-422-060 Gasoline vehicle emission standards. Gasoline motor vehicles subject to this chapter shall:

(1) Beginning June 1, 1995, with the exception of vehicles whose model year is 1980 or earlier, have the "primary emission control components" installed and operative, and have an engine that is or was available from the vehicle manufacturer for use with that vehicle or a vehicle of the same or newer model year with the same chassis; and

(2) Meet the following exhaust emission standards prior to receiving a certificate of compliance.

exhaust emission standards

<u>((Model Year))</u>	<u>CO(%)</u>	<u>HC (ppm)</u>	<u>Opacity (%)</u>
<u>68-74</u>	6.0	<u>((1000)) 900</u>	<u>30</u>
<u>((75 and</u>			

~~averaging the results, unless~~) if the exhaust pipes originate from a common point in the exhaust system(~~(--Simultaneous))~~ or simultaneously sampling (~~(from multiple))~~ each exhaust pipe(~~(s may also be used))~~).

(6) The following steps shall be taken to prevent excessive dilution. The exhaust sample probe must be inserted at least ten inches into the tail pipe. If this is not possible, an extension boot shall be used. The exhaust emission test results shall not be recorded if the sum of the carbon monoxide and the carbon dioxide concentration does not ((meet)) equal or exceed ((five)) six percent.

(7) If the engine stalls during the test, the exhaust sample probe shall be removed, the engine ((shall be)) restarted, and one additional attempt ((will be)) made to complete the test after reinserting the exhaust sample probe.

(8) ~~((If a vehicle is capable of being operated with either gasoline or gaseous fuels, the vehicle shall be tested using the fuel it is operating on when it enters the testing facility.~~

~~(9) If a multiple range analyzer is used, the exhaust analyzer range shall be selected so that the standard for the vehicles being tested is between twenty five percent and seventy five percent of full scale, if possible.))~~ Two speed test sequence.

(a) Insert the exhaust sample probe.

(b) The pass/fail analysis shall begin after an elapsed time of ten seconds. A pass determination shall be made for the vehicle and the idle mode terminated if:

(i) The vehicle shall pass the idle mode test and this mode terminated if, prior to an elapsed time of thirty seconds, exhaust gas concentrations are less than or equal to 100 ppm HC and 0.5 percent CO.

(ii) The vehicle shall pass the idle mode test and this mode terminated if, at any time between an elapsed time of thirty seconds and ninety seconds, the exhaust gas concentrations are less than or equal to the applicable emission standards.

(c) Increase the engine speed to 2500 ± 300 rpm.

(d) The pass/fail analysis shall begin after an elapsed time of ten seconds. A pass or fail determination shall be made for the vehicle and the 2500 rpm mode terminated for vehicles that passed the idle mode test as follows:

(i) The vehicle shall pass the 2500 rpm mode test and this mode terminated if, prior to an elapsed time of thirty seconds, exhaust gas concentrations are less than or equal to 100 ppm HC and 0.5 percent CO.

(ii) The vehicle shall pass the 2500 rpm mode test and this mode terminated if, at any time between an elapsed time of thirty seconds and one hundred eighty seconds, the exhaust gas concentrations are less than or equal to the applicable emission standards.

(e) A pass or fail determination shall be made for vehicles that failed the idle mode test and the 2500 rpm mode test terminated at the end of an elapsed time of one hundred eighty seconds.

(f) If the vehicle fails the initial idle mode test and passed the high-speed mode test, a second idle test will be conducted.

(9) Loaded test sequence.

(a) Insert the exhaust sample probe.

(b) The test shall start when the dynamometer speed is within the following limits:

<u>engine cylinders</u>	<u>speed (mph)</u>	<u>brake horsepower</u>
<u>4 or less</u>	<u>22-25</u>	<u>2.8-4.1</u>
<u>5-6</u>	<u>29-32</u>	<u>6.8-8.4</u>
<u>7 or more</u>	<u>32-35</u>	<u>8.4-10.8</u>

If the dynamometer speed falls outside the limits for more than five seconds in one excursion, or fifteen seconds over all excursions, the test shall be restarted.

(c) The pass/fail analysis shall begin after an elapsed time of ten seconds. A pass determination shall be made for the loaded mode and this mode terminated if at any point between an elapsed time of thirty seconds and ninety seconds, the exhaust gas concentrations are less than or equal to the applicable emission standards.

(d) The idle mode shall start when the dynamometer speed is zero and the vehicle engine speed is less than 1100 rpm. If engine speed exceeds 1100 rpm the idle mode test shall be restarted.

(e) The pass/fail analysis shall begin after an elapsed time of ten seconds. A pass determination shall be made for the vehicle and the idle mode terminated if:

(i) Prior to an elapsed time of thirty seconds, exhaust gas concentrations are less than or equal to 100 ppm HC and 0.5 percent CO.

(ii) At any time between an elapsed time of thirty seconds and ninety seconds, exhaust gas concentrations are less than or equal to the applicable emission standards.

(10) Before ~~((testing a 1981 and later))~~ failing a 1981-1986 model year Ford Motor Company vehicle with a gross vehicle weight of 8500 pounds or less, or a 1984-85 model year Honda Prelude, the engine shall be ~~((turned))~~ shut off for ten seconds and then restarted and the failing mode repeated.

~~((11) Increase the engine speed to 2500 ± 300 rpm.~~

~~(12) Insert the probe into the tailpipe. After at least thirty seconds record the exhaust emissions averaged over the last five seconds.~~

~~(13) Slowly reduce the engine speed to idle (less than 1200 rpm). After at least thirty seconds or when the readings have stabilized at a level meeting the emission standards record the exhaust emissions averaged over the last five seconds.~~

~~(14) When readings from multiple exhaust pipes are averaged, steps 10, 11, 12, and 13 shall be repeated for all exhaust pipes.))~~

NEW SECTION

WAC 173-422-075 Diesel vehicle inspection procedure. Diesel vehicles shall be tested using the following procedure:

(1) With the transmission in neutral, move the accelerator pedal from normal idle as rapidly as possible to the full power position, and hold in this position for a minimum of three seconds but not more than five seconds unless the engine exceeds the maximum speed allowed by the vehicle manufacturer, as indicated by the vehicle's tachometer or exhibits unstable operation when held against the speed

governor then the accelerator pedal shall be immediately released.

(2) Fully release the accelerator pedal so the engine decelerates to normal idle.

(3) Measure the smoke opacity with an opacity meter which meets the requirements specified in WAC 173-422-095 continuously during the test.

(4) Record the opacity reading two seconds after the opacity reading initially reaches 10 percent.

(5) Repeat the previous steps ten times or until three successive opacity measurements are equal to or less than the standard established in WAC 173-422-065.

AMENDATORY SECTION (Amending WSR 90-06-062, filed 3/6/90, effective 4/6/90)

WAC 173-422-090 Exhaust gas analyzer specifications. Only exhaust gas analyzers meeting the following specifications at the time of certification testing may be used for certification testing. Any person authorized by the department to certify vehicles is solely responsible for insuring that the testing equipment is operating within the following specifications at the time of certification testing.

(1) Accuracy: The readings or the printed test results of the exhaust analyzers compared to the true value of a measured sample shall have the following accuracy tolerances.

((HC - Measured as n - hexane	
200 to 220 ppm	±15 ppm
0 to 1000 ppm	±30 ppm
1000 to 2000 ppm	±100 ppm
CO	
1.0 to 1.2%	±0.1%
0 to 5%	±0.2%
5 to 10%	±0.5%
CO₂	
4 to 6%	±1%)

<u>HC - Measured as n - hexane</u>	
<u>0 to 400 ppm</u>	<u>±12 ppm</u>
<u>401 to 1000 ppm</u>	<u>±30 ppm</u>
<u>1001 to 2000 ppm</u>	<u>±80 ppm</u>

<u>CO</u>	
<u>0 - 2.00</u>	<u>±0.06</u>
<u>2.01 - 5.00</u>	<u>±0.15</u>
<u>5.01 - 9.99</u>	<u>±0.40</u>

<u>CO₂</u>	
<u>0 - 4.0</u>	<u>±0.6</u>
<u>4.1 - 14.0</u>	<u>±0.5</u>

(2) Calibration: The analyzer shall have the capability of being calibrated electronically and by gas.

(3) Drift: The drift of the zero reading or any calibration reading of each analyzer shall not exceed 15 ppm HC, 0.1% CO or 0.5% CO₂ in one hour.

(4) Flow restriction indicator: The analyzer shall be operated within manufacturer's specifications for sample flow. The sampling system shall be equipped with a visual and/or audible warning that sample flow is not within operating requirements.

(5) Interference effects: Sampling the following concentrations of noninterest gases shall not cause the HC

reading to change ±10 ppm: 15% CO₂ in N₂, 10% CO in N₂, 3000 ppm NO in N₂, 10% O₂ in N₂, and 3% H₂O vapor in air.

Sampling the following concentrations of noninterest gases shall not cause the CO reading to change ±0.05%: 15% CO₂ in N₂, 1600 ppm HC in N₂, 3000 ppm NO in N₂, 10% O₂ in N₂, and 3% H₂O vapor in air.

Sampling the following concentrations of noninterest gases shall not cause the CO₂ reading to change ((±0.5%)) ±0.20%: 1600 ppm HC in N₂, 10% CO in N₂, 3000 ppm NO in N₂, 10% O₂ in N₂, and 3% H₂O vapor in air.

(6) Repeatability: The repeatability of the exhaust analyzers used shall be within ((10 ppm HC, 0.05% CO and 0.2% CO₂)) the following tolerances during five successive measurements of the same sample((-):

<u>HC, ppm</u>	<u>0-400</u>	<u>8</u>
<u>as hexane</u>	<u>401-1000</u>	<u>15</u>
	<u>1001-2000</u>	<u>30</u>
<u>CO, %</u>	<u>0-2.00</u>	<u>0.03</u>
	<u>2.01-5.00</u>	<u>0.08</u>
	<u>5.01-9.99</u>	<u>0.15</u>
<u>CO₂, %</u>	<u>0-14.0</u>	<u>0.3</u>

(7) Response: The response of the exhaust analyzers shall be at least ((~~ninety-five~~)) ninety percent of the final value within ((~~fifteen~~)) eight seconds.

(8) Sensitivity: The sensitivity of each analyzer shall be equal to or less than 10 ppm HC, 0.05% CO and 0.2% CO₂.

(9) Range of measurement: The analyzer shall have a range equal to or greater than 0-2000 ppm HC (n-Hexane), 0 to 10% CO, and 0 to 6% CO₂.

NEW SECTION

WAC 173-422-095 Exhaust opacity testing equipment. The exhaust opacity measurement shall be conducted using an opacity meter approved by the department.

The opacity meter shall:

(1) Automatically calibrates itself before each test.
 (2) Provide for continuous measurement of exhaust opacity unaffected by rain or wind.

(3) Have an accuracy of plus or minus one opacity percent digit.

(4) Have a reading linearity of one opacity percent digit from 0-100 percent opacity.

(5) Have a drift of less than plus or minus one percent per use.

(6) Have a response time of less than 0.140 seconds for a change from 0-95 percent of full scale.

(7) Have a warm-up time of less than one minute.

(8) Have an operating temperature range from 32 to 120 degrees Fahrenheit.

(9) Automatically read the opacity two seconds after the opacity initially reaches 10 percent.

AMENDATORY SECTION (Amending WSR 90-06-062, filed 3/6/90, effective 4/6/90)

WAC 173-422-100 Testing equipment maintenance and calibration. (1) Unless alternative procedures have been approved or required by the department all equipment

used in the inspection shall be calibrated and maintained according to the manufacturer's specifications and recommendations. Complete logs as approved by the department shall be kept for maintenance, repair, and calibration.

(2) The following procedures shall be followed by all testing facilities unless equivalent procedures have been approved by the department. Exhaust analyzers and all electronic components that could affect the gas concentration results shall be warmed up for at least thirty minutes prior to performing any test on equipment, calibration, span, or zero checks:

(a) Each test. Before each test can start, the zero and span setting must be checked on the opacity meter and the exhaust gas analyzer readings must be less than 10 ppm HC, 0.1% CO and 0.5% CO₂. If during a test the sampling system flow restriction indicator becomes activated, the test shall be stopped and restarted after the necessary repairs to the analyzer have been completed.

(b) Hourly check. The exhaust analyzer shall not be used to test vehicles unless within an hour prior to the test it was spanned with a calibration gas. The following procedure shall be used:

(i) Adjust the exhaust analyzer to zero using ambient air or zero calibration gas.

(ii) Adjust the exhaust analyzer using the electronic span.

(iii) Check the calibration of the exhaust analyzer using a calibration gas of approximately twenty to forty percent of each range.

(iv) Adjust and repair as necessary to insure the accuracy specified in WAC 173-422-090.

(c) Weekly check. The exhaust analyzer shall not be used to test vehicles unless a multipoint calibration has been performed within the last seven days. The following procedure shall be used:

(i) Adjust the exhaust analyzer to zero using ambient air or zero calibration gas.

(ii) Adjust the exhaust analyzer using the electronic span.

(iii) Check the calibration of the exhaust analyzer using calibration gases of approximately twenty, forty, sixty, and eighty percent for each range. (CO₂ must be present at concentrations of at least 2.0%.)

(iv) Adjust and repair as necessary to insure the accuracy specified in WAC 173-422-090 at each calibration point.

(v) Check the calibration of the exhaust analyzer using a calibration gas with a CO concentration of 1.2 to 2.4%, a HC concentration of 150 to 300 ppm measured as n-hexane, and a CO₂ concentration of 4.0 to 6.0%.

(vi) Adjust and repair as necessary to insure the accuracy of the exhaust analyzer is within .05% CO and 6 ppm HC.

(d) Repair check. A multipoint calibration as specified in (c) of this subsection shall be performed before the analyzer is used for certification testing following the replacement of an optical or electronic component that can cause a variation in the analyzer reading.

The manufacturer's recommended procedures to determine any change in the correction factor from the

propane calibration gas to n-hexane readings shall be followed.

(e) Leak check. The exhaust analyzer shall not be used to test vehicles unless within one week prior to the testing, CO readings have been taken while introducing calibration gas through the calibration port and through the probe. Discrepancies of over 3% in the readings shall require repair of leaks. No analyzer adjustments shall be permitted during this check. Other leak check procedures may be used if it can be shown to the department's satisfaction that the method identifies leaks as well as the method in this subsection.

AMENDATORY SECTION (Amending Order DE 83-31, filed 11/23/83, effective 1/2/84)

WAC 173-422-120 Quality assurance. The department, or its designee, ~~((will))~~ may monitor the operation of each authorized emission ~~((testing))~~ inspection facility with unidentified or unannounced((;)) and unscheduled inspections to check the calibration and maintenance of the exhaust analyzers, test procedures, and records.

~~((Vehicle inspection reports and fiscal reports submitted by inspection station operators will be checked for completeness and accuracy. The department or its designee shall have the right to audit contractor's and subcontractor's records.~~

~~The department (or its designee) may conduct unidentified surveillance.))~~

The department (or its designee) may immediately require ~~((that the use of an exhaust analyzer be suspended due to a malfunction or incorrect calibration of the analyzer))~~ the suspension of vehicle inspections in all or part by the inspection facility if violations of this chapter are found during an inspection of the inspection facility.

AMENDATORY SECTION (Amending WSR 90-06-062, filed 3/6/90, effective 4/6/90)

WAC 173-422-130 Inspection fees. At an inspection facility operated under contract to the state, the fee for the first emission ((test)) inspection on each vehicle applicable to a vehicle license year shall be sixteen dollars. If the vehicle fails, one ((retest)) reinspection will be provided free of charge at any inspection station operated under contract to the state, provided that the ((retest)) reinspection is applicable to the same vehicle license year. Any additional ((retests)) reinspection of a failed vehicle applicable to the same vehicle license year will require the payment of sixteen dollars.

Inspection station operators shall forward to the state treasurer within ten working days, the amount of fees due to the state for inspections conducted during the previous month.

The department or its designee shall have the right to audit any inspection station operator's or contractor's records and procedures to substantiate that the operator or contractor is properly collecting and accounting for such fees.

AMENDATORY SECTION (Amending WSR 90-06-062, filed 3/6/90, effective 4/6/90)

WAC 173-422-140 Inspection forms and certificates.

All inspection ~~((stations))~~ facilities shall use inspection forms and certificates provided or approved by the department. ~~((Additional information or materials may be provided to the vehicle operator only if approved by the department.))~~

(1) Vehicle inspection report: The driver of each vehicle ~~((tested))~~ inspected shall be given a vehicle inspection report on a form to be provided or approved by the department. The inspection station operator shall record the following information.

- (a) Station number (lane number).
- (b) Date and time of test.
- (c) Who conducted the test (name or identification number).
- (d) Vehicle identification number (VIN).
- (e) Odometer reading in thousands of miles.
- (f) Vehicle license number.
- (g) Vehicle model year.
- (h) Make of the vehicle.

~~((Whether or not the vehicle was manufactured with a catalytic converter. (1981 and later model vehicles only))~~

~~((j))~~ Manufacturer's gross vehicle weight ((class)) rating (GVWR).

~~((k))~~ (j) Emission test results.

~~((l))~~ (k) Applicable standards.

~~((m))~~ (l) Whether the vehicle has passed or failed the appropriate emission standards.

~~((n))~~ (m) What component of the vehicle installed by the manufacturer for the purpose of reducing emissions, or its appropriate replacement is missing or inoperative. (Gasoline vehicles only.)

(n) The engine speed while the emission readings were taken. (Gasoline vehicles only.)

(o) Carbon dioxide reading. (Gasoline vehicles only.)

(p) First ((test)) inspection or ((retest)) reinspection.

(q) If available at ((a-retest)) reinspection the identification number of an ecology ((authorized)) "certified emission specialist" who repaired the vehicle following the first ((test)) inspection.

(2) Certificate of compliance: The driver of a vehicle meeting the appropriate ~~((emission))~~ inspection standards shall be issued a certificate of compliance.

(3) Certificate of acceptance: If a vehicle has failed to pass the emission ~~((test applicable to any vehicle license year))~~ inspection, the vehicle owner may request a certificate of acceptance, if the vehicle has been in use for more than five years or fifty thousand miles, and any component of the vehicle installed by the manufacturer for the purpose of reducing emissions, or its appropriate replacement, is installed and operative. To receive the certificate of acceptance the vehicle owner must provide original receipts totalling at least ~~((fifty))~~ one hundred dollars, for 1980 and earlier model year vehicles or at least one hundred fifty dollars for 1981 and later model year vehicles, dated on or between the date of the first test and the final retest, for costs of repairs performed by a "certified emission specialist" solely devoted to meeting the emission standards.

(4) Form storage: Copies of each certificate of compliance/ acceptance, and all vehicle inspection reports shall be kept on file by the contractor and be available for the department's review for ~~((one))~~ two years after they are issued. This requirement includes forms that are voided for any reason.

(5) Reporting: The inspection station operator shall forward to the department within ten working days after the end of each month (a) an approved storage device containing all data collected from each inspection conducted that month, and (b) a copy of all certificates of acceptance issued that month along with the related vehicle inspection reports and repair and/or parts receipts.

Before the storage device is forwarded to the department, a backup bulk storage device shall be in the possession of the contractor. The backup bulk storage device shall be retained for ~~((one))~~ two years and be available to the department upon request.

AMENDATORY SECTION (Amending WSR 90-06-062, filed 3/6/90, effective 4/6/90)

WAC 173-422-160 Fleet and ~~((government))~~ diesel owner vehicle testing requirements. ~~((Self-inspection of vehicles by a fleet or government agency operator may be authorized by the department.))~~ The department may ~~((also))~~ authorize emission inspections ~~((ef))~~ by fleet ((vehicles)) operators including government agencies and the owners of diesel motor vehicles with a gross vehicle weight rating in excess of 8500 pounds or by an automotive service or testing facility engaged by the vehicle owner for such activity. Authorizations to conduct emission tests and issue certificates of compliance under this section are limited to authorized fleet vehicles ((within the fleet or fleets requesting such authorization. Any person or facility conducting fleet tests under authorization of this section must meet all requirements of this section)) or diesel vehicles with a gross vehicle weight rating in excess of 8500 pounds.

(1) The exhaust analyzers used for certification testing of gasoline fleet vehicles shall meet the specifications in WAC 173-422-090 ~~((except for those that pertain to CO₂. (CO₂ does not need to be measured.))~~

(2) All persons engaged in testing of gasoline fleet or diesel vehicles must comply with all applicable provisions of this chapter except WAC ~~((173-422-080,))~~ 173-422-100 (2)(b)(iii) and (iv) and (c)(iii) and (iv) ~~((, 173-422-110, 173-422-130, 173-422-140, and 173-422-150))~~. The checks specified in WAC 173-422-100 (2)(c) except (c)(iii) and (iv), in addition to being required weekly, shall be performed after each relocation of the analyzer.

(3) All persons conducting tests for the purpose of issuing certificates for fleet ~~((s))~~ or diesel vehicles shall be ecology certified emission specialists.

(4) ~~((The department will provide test forms upon request.))~~ Legibly completed forms ~~((with appropriate signature(s)))~~ will constitute certificates of compliance for licensing purposes. Any person conducting testing under this section shall forward to the department within ten working days after the end of each month, a copy of each certificate of compliance issued during that month. Copies of each certificate of compliance shall be retained by the person

issuing the certificate for at least two years from date of issuance. Alternative arrangements for providing and/or storing this information using automated data storage devices may be approved or required by the department (~~(after one year's notice)~~)).

Forms must be purchased from the department in advance of issuance through payment of sixteen dollars to the department for each certificate requested. Refunds or credit may be given for unused certificates returned to the department.

Payment for fleet forms is waived for government fleets.

Test forms provided under this section are official documents. Persons receiving the forms from the department are accountable for each form provided.

Voided forms must be handled the same as certificates of compliance. One copy shall be sent to the department within ten days after the end of the month in which the form was voided and one copy shall be retained by the person accountable for the forms for at least two years after date of voiding. Refunds will not be made for voided forms.

(5) All persons authorized to conduct fleet or government vehicle inspections under this section shall be subject to performance audits and compliance inspections by the department, during normal business hours.

(6) Fleet vehicles may be inspected any time between their scheduled license renewals.

(7) Certificates of acceptance may not be issued under this section.

AMENDATORY SECTION (Amending WSR 90-06-062, filed 3/6/90, effective 4/6/90)

WAC 173-422-170 Exemptions. The following motor vehicles are exempt from the inspection requirement:

(1) Vehicles proportionally registered pursuant to chapter 46.85 RCW.

(2) Vehicles whose model year is 1967 or earlier.

(3) New motor vehicles whose equitable or legal title has never been transferred to a person who in good faith purchases the vehicle for purposes other than resale; this does not exempt motor vehicles that are or have been leased.

(4) Motor vehicles that use propulsion units powered exclusively by electricity.

(5) Motor-driven cycles as defined by RCW 46.04.332.

(6) Until June 1, 1993, motor vehicles powered by diesel engines or two-cycle engines.

(7) Farm vehicles as defined by RCW 46.04.181.

(8) Vehicles exempted from licensing pursuant to RCW 46.16.010.

(9) Mopeds as defined by RCW 46.04.304.

(10) Vehicles garaged and operated out of the emission contributing area.

(11) Vehicles registered with the state but not for highway use.

(12) Used vehicles whose licenses have expired or will expire within thirty days when sold by a Washington licensed motor vehicle dealer.

(13) Motor vehicles fueled (~~exclusively~~) by propane, compressed natural gas, or liquid petroleum gas and so recognized by the department of licensing.

(14) Motor vehicles whose manufacturer or engine manufacturer provides information that the vehicle cannot meet emission standards because of its design. In lieu of exempting these vehicles alternative standards and/or inspection procedures may be established.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-422-080 Vehicle inspection data handling procedures.

WAC 173-422-110 Data system requirements.

WAC 173-422-150 Inspection personnel requirements.

WAC 173-422-180 Air quality standards.

WSR 93-03-094
PROPOSED RULES
LOTTERY COMMISSION
 [Filed January 20, 1993, 11:13 a.m.]

Original Notice.

Title of Rule: WAC 315-11-950, 315-11-951 and 315-11-952, Definitions, criteria and ticket validation requirements for Instant Game No. 95 ("High Roller"); WAC 315-11-960, 315-11-061 and 315-11-962, Definitions, criteria and ticket validation requirements for Instant Game No. 96 ("Tic-Tac-Dough"); WAC 315-11-970, 315-11-971 and 315-11-972, Definitions, criteria and ticket validation requirements for Instant Game No. 97 ("Lucky Charm"); and WAC 315-11-890 Definitions for Instant Game No. 89 ("Lucky 8's").

Purpose: To establish the game play rules and criteria for determining winners of Instant Game Nos. 95 ("High Roller"), 96 ("Tic-Tac-Dough"), and 97 ("Lucky Charm"); and to amend WAC 315-11-890.

Statutory Authority for Adoption: RCW 67.70.040.

Statute Being Implemented: RCW 67.70.040.

Summary: See Purpose above.

Reasons Supporting Proposal: See Explanation of Rules below.

Name of Agency Personnel Responsible for Drafting: Jeff Burkhardt, Rules Coordinator, Olympia, 586-6583; Implementation and Enforcement: Evelyn P. Yenson, Director, Olympia, 753-3330.

Name of Proponent: Washington State Lottery Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 315-11-950, 315-11-951, 315-11-952, 315-11-960, 315-11-961, 315-11-962, 315-11-970, 315-11-971, and 315-11-972, for each game, certain terms must be defined in order to provide consistency in the game play rules. The play criteria will explain how the game functions to licensed retailers and players. Rigid validation requirements are set forth which will prevent the lottery or its retailers from paying out prize money on invalid tickets.

Proposal Changes the Following Existing Rules: WAC 315-11-890 is amended to change the game name from "Eights Are Crazy" to "Lucky 8's."

No small business economic impact statement required by chapter 19.85 RCW.

The lottery has considered whether these rules are subject to the Regulatory Fairness Act, chapter 19.85 RCW, and has determined that they are not for the following reasons: The rules have no economic impact on business' cost of equipment, supplies, labor or administrative costs. The rules are designed to establish rules and procedures for the playing of instant lottery games; and the rules will have a negligible impact, if any, on business because they are interpretive. They have been promulgated for the purpose of stating policy, procedure and practice and do not include requirements for forms, fees, appearances or other actions by business.

Hearing Location: Washington State Lottery, 814 4th Avenue, Olympia, WA 98506, on March 5, 1993, at 10:00 a.m.

Submit Written Comments to: Jeff Burkhardt, Lottery, P.O. Box 43025, Olympia, WA 98504-3025, by March 4, 1993.

Date of Intended Adoption: March 5, 1993.

January 20, 1993
Evelyn P. Yenson
Director

NEW SECTION

WAC 315-11-950 Definitions for Instant Game Number 95 ("High Roller"). (1) Play symbols: The following are the "play symbols": "1," "2," "3," "4," "5," and "6." One of these play symbols appears in each of the five play spots under the latex covering on the front of the ticket. The latex covered area shall be known as the playfield. One of the five play spots shall be labeled "winning number."

(2) Play symbol captions: The small printed characters appearing below each play symbol which correspond with and verify that play symbol. The caption is a spelling out, in full or abbreviated form of the play symbol. One and only one of these captions appears under each play symbol. The three-digit ticket number shall appear before each play symbol caption. For Instant Game Number 95, the captions which correspond with and verify the play symbols are:

<u>PLAY SYMBOL</u>	<u>CAPTION</u>
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX

(3) Prize symbols: The following are the "prize symbols": "\$1.00," "\$2.00," "\$4.00," "\$8.00," "\$50.00," and "\$20,000." One of these prize symbols appears below each of the play symbol captions, except for the caption of the play symbol labeled "winning number."

(4) Prize symbol captions: The small printed characters which appear below the prize symbol and verify and

correspond with that prize symbol. The prize symbol caption is a spelling out, in full or abbreviated form, of the prize symbol. For Instant Game Number 95, the prize symbol captions which correspond with and verify the prize symbols are:

<u>PRIZE SYMBOL</u>	<u>CAPTION</u>
\$1.00	ONE DOL
\$2.00	TWO DOL
\$4.00	FOR DOL
\$8.00	EGT DOL
\$50.00	\$FIFTYS
\$20,000	TWYTHOU

(5) Validation number: The unique nine-digit number on the front of the ticket. The number is covered by latex.

(6) Pack-ticket number: The eleven-digit number of the form 09500001-000 printed on the front of the ticket. The first three digits are the game identifier. The first eight digits of the pack-ticket number for Instant Game Number 95 constitute the "pack number" which starts at 09500001; the last three digits constitute the "ticket number" which starts at 000 and continues through 399 within each pack of tickets.

(7) Retailer verification codes: Codes consisting of small letters found under the removable covering on the front of the ticket which the lottery retailer uses to verify instant winners of \$25.00 or less. For Instant Game Number 95, the retailer verification code is a three-letter code, with each letter appearing in a varying three of six locations beneath the removable covering and among the play symbols on the front of the ticket. The retailer verification codes are:

<u>VERIFICATION CODE</u>	<u>PRIZE</u>
ONE	\$1.00 (\$1)
TWO	\$2.00 (\$1 and \$1)
THR	\$3.00 (\$1, \$1 and \$1)
EGT	\$8.00 (\$2, \$2, \$2 and \$2; \$8)
SXT	\$16.00 (\$4, \$4, \$4 and \$4; \$8, \$4 and \$4)

(8) Pack: A set of four hundred fanfolded instant game tickets separated by perforations and packaged in plastic shrinkwrapping.

NEW SECTION

WAC 315-11-951 Criteria for Instant Game Number 95. (1) The price of each instant game ticket shall be \$1.00.

(2) Determination of prize winning tickets: An instant prize winner is determined in the following manner:

(a) When any of the four play symbols matches exactly the play symbol labeled "winning number," the matching play symbol shall be a winning play symbol, and the bearer of the ticket shall win the prize below the winning play symbol.

(b) The bearer of a ticket which has more than one winning play symbol shall win the total of the prizes below each winning play symbol.

(3) No portion of the display printing nor any extraneous matter whatever shall be usable or playable as a part of the instant game.

(4) The determination of prize winners shall be subject to the general ticket validation requirements of the lottery as set forth in WAC 315-10-070, to the particular ticket validation requirements for Instant Game Number 95 set forth in WAC 315-11-952, to the confidential validation requirements established by the director, and to the requirements stated on the back of each ticket.

(5) Notwithstanding any other provisions of these rules, the director may:

(a) Vary the length of Instant Game Number 95; and/or

(b) Vary the number of tickets sold in Instant Game Number 95 in a manner that will maintain the estimated average odds of purchasing a winning ticket.

NEW SECTION

WAC 315-11-952 Ticket validation requirements for Instant Game Number 95. (1) In addition to meeting all other requirements in these rules and regulations, to be a valid instant game ticket for Instant Game Number 95 all of the following validation requirements apply:

(a) Exactly one play symbol must appear in each of the five play spots in the playfield on the front of the ticket.

(b) Each play symbol must have a play symbol caption below it and each must agree with its caption.

(c) Each of the play symbol captions, except for the "winning number" play symbol caption, shall have a prize symbol below it. Each of the prize symbols shall also have a prize symbol caption below it.

(d) The display printing and the printed numbers, letters, and symbols on the ticket must be regular in every respect and correspond precisely with the artwork on file with the director. The numbers, letters, and symbols shall be printed as follows:

Play Symbols	Play Symbol Font
Prize Symbols	Prize Symbol Font
Captions	Caption Font
Pack-Ticket Number	Validation Font
Validation Number	Validation Font
Retailer Verification Code	Validation Font

(e) Each of the play symbols and its caption, the validation number, pack-ticket number, and retailer verification code must be printed in black ink.

(f) Each of the play symbols must be exactly one of those described in WAC 315-11-950(1) and each of the play symbol captions must be exactly one of those described in WAC 315-11-950(2).

(g) Each of the prize symbols must be exactly one of those described in WAC 315-11-950(3) and each of the prize symbol captions must be exactly one of those described in WAC 315-11-950(4).

(2) Any ticket not passing all the validation requirements in WAC 315-10-070 and subsection (1) of this section is invalid and ineligible for any prize.

NEW SECTION

WAC 315-11-960 Definitions for Instant Game Number 96 ("Tic-Tac-Dough"). (1) Play symbols: The following are the "play symbols": "X" and "O." One of

these symbols appears in each of the nine play spots under the latex covering on the front of the ticket.

(2) Play symbol captions: The small printed characters appearing below each play symbol which verify and correspond with that play symbol. The caption contains five characters. The first character indicates the location of the play symbol in either column one, column two, or column three. The second character repeats the play symbol. The last three characters repeat the ticket number. Only one caption appears under each play symbol. An example of play symbol captions follow:

<u>PLAY SYMBOL</u>	<u>CAPTION</u> (Example for ticket number 122)
X	1X122 (Play symbol in column 1)
O	2O122 (Play symbol in column 2)
X	3X122 (Play symbol in column 3)

(3) Prize symbols: The following are the "prize symbols": "\$1.00"; "\$2.00"; "\$4.00"; "\$9.00"; "\$19.00"; "\$50.00"; "\$500"; and "\$5,000." One of these prize symbols appears in the prize box under the latex covering on the front of the ticket.

(4) Prize symbol captions: The small printed characters appearing below the prize symbol which verify and correspond with that prize symbol. The caption is a spelling out, in full or abbreviated form, of the prize symbol. Only one caption appears under the prize symbol. For Instant Game Number 96, the prize symbol captions which correspond with and verify the prize symbols are:

<u>PRIZE SYMBOL</u>	<u>CAPTION</u>
\$1.00	ONE DOL
\$2.00	TWO DOL
\$4.00	FOR DOL
\$9.00	NIN DOL
\$19.00	NIT DOL
\$50.00	\$FIFTYS
\$500	FIVHUND
\$5,000	FIVTHOU

(5) Validation number: The unique nine-digit number on the front of the ticket. The number is covered by latex covering.

(6) Pack-ticket number: The eleven-digit number of the form 09600001-000 printed on the front of the ticket. The first eight digits of the pack-ticket number for Instant Game Number 96 constitute the "pack number" which starts at 09600001; the last three digits constitute the "ticket number" which starts at 000 and continues through 399 within each pack of tickets.

(7) Retailer verification codes: Codes consisting of small letters found under the removable covering on the front of the ticket which the lottery retailer uses to verify instant winners of \$25.00 or less. For Instant Game Number 96, the retailer verification code is a three-letter code, with each letter appearing in a varying three of six locations beneath the latex covering and among the play symbols on the front of the ticket. The retailer verification codes are:

VERIFICATION CODE

ONE	\$1.00
TWO	\$2.00
FOR	\$4.00
NIN	\$9.00
NIT	\$19.00

(8) Pack: A set of four hundred fanfolded instant game tickets separated by perforations and packaged in plastic shrinkwrapping.

NEW SECTION

WAC 315-11-961 Criteria for Instant Game Number 96. (1) The price of each instant game ticket shall be \$1.00.

(2) Determination of prize winning tickets: An instant prize winner is determined in the following manner:

The bearer of a ticket having three "X" play symbols or three "O" play symbols in any row, column, or diagonal beneath the latex covering on the front of the ticket shall win the prize shown in the prize box.

(3) No portion of the display printing nor any extraneous matter whatever shall be usable or playable as a part of the instant game.

(4) The determination of prize winners shall be subject to the general ticket validation requirements of the lottery as set forth in WAC 315-10-070, to the particular ticket validation requirements for Instant Game Number 96 set forth in WAC 315-11-962, to the confidential validation requirements established by the director, and to the requirements stated on the back of each ticket.

(5) Notwithstanding any other provisions of these rules, the director may:

(a) Vary the length of Instant Game Number 96; and/or

(b) Vary the number of tickets sold in Instant Game Number 96 in a manner that will maintain the estimated average odds of purchasing a winning ticket.

NEW SECTION

WAC 315-11-962 Ticket validation requirements for Instant Game Number 96. (1) A valid instant game ticket for Instant Game Number 96 shall meet all of the following validation requirements as well as all other requirements in these rules and regulations:

(a) Exactly one play symbol must appear in each of the nine play spots on the front of the ticket.

(b) Each of the nine play symbols must have a caption below it and each must agree with its caption.

(c) Exactly one prize symbol must appear in the prize box under the latex covering on the front of the ticket.

(d) The prize symbol must have a caption below it and it must agree with its caption.

(e) The display printing and the printed numbers, letters, and symbols on the ticket must be regular in every respect and correspond precisely with the artwork on file with the director. The numbers, letters, and symbols shall be printed as follows:

Play Symbols	Play Symbol Font
Captions	Caption Font
Pack-Ticket Number	Validation Font
Validation Number	Validation Font
Retail Verification Code	Validation Font

(f) Each of the play symbols and its caption, the validation number, pack-ticket number, and retailer verification code must be printed in black ink.

(g) Each of the play symbols must be exactly one of those described in WAC 315-11-960(1); and each of the play symbol captions must be exactly one of those described in WAC 315-11-960(2).

(h) Each of the prize symbols must be exactly one of those described in WAC 315-11-960(3); and each of the prize symbol captions must be exactly one of those described in WAC 315-11-960(4).

(2) Any ticket not passing all the validation requirements in WAC 315-10-070 and subsection (1) of this section is invalid and ineligible for any prize.

NEW SECTION

WAC 315-11-970 Definitions for Instant Game Number 97 ("Lucky Charm"). (1) Play symbols: The following are the "play symbols": " U "; "\$1.00"; "\$2.00"; "\$7.00"; "\$21.00"; "\$40.00"; and "\$5,000." One of these symbols appears in each of the six play spots under the latex covering on the front of the ticket.

(2) Play symbol captions: The small printed characters appearing below each play symbol which verify and correspond with that play symbol. The caption is a spelling out, in full or abbreviated form of the play symbol. One and only one of these captions appears under each play symbol. For Instant Game Number 97, the captions which correspond with and verify the play symbols are:

<u>PLAY SYMBOL</u>	<u>CAPTION</u>
U	HORSHOE
\$1.00	ONE DOL
\$2.00	TWO DOL
\$7.00	SVN DOL
\$21.00	TTN DOL
\$40.00	SFORTYS
\$5,000	FIVTHOU

(3) Validation number: The unique nine-digit number on the front of the ticket. The number is covered by latex covering.

(4) Pack-ticket number: The eleven-digit number of the form 09700001-000 printed on the front of the ticket. The first eight digits of the pack-ticket number for Instant Game Number 97 constitute the "pack number" which starts at 09700001; the last three digits constitute the "ticket number" which starts at 000 and continues through 399 within each pack of tickets.

(5) Retailer verification codes: Codes consisting of small letters found under the removable covering on the front of the ticket which the lottery retailer uses to verify instant winners of \$25.00 or less. For Instant Game Number 97, the retailer verification code is a three-letter code, with each letter appearing in a varying three of six locations

beneath the latex removable covering and among the play symbols on the front of the ticket. The retailer verification codes are:

<u>VERIFICATION CODE</u>	<u>PRIZE</u>
ONE	\$1.00
TWO	\$2.00
FOR	\$4.00
SVN	\$7.00
FRN	\$14.00
TTN	\$21.00

(6) Pack: A set of four hundred fanfolded instant game tickets separated by perforations and packaged in plastic shrinkwrapping.

NEW SECTION

WAC 315-11-971 Criteria for Instant Game Number 97.

(1) The price of each instant game ticket shall be \$1.00.
 (2) Determination of prize winning tickets: An instant prize winner is determined in the following manner:

The bearer of a ticket having the following play symbols in any three of the six spots beneath the removable covering on the front of the ticket shall win the following prize:

Three \$1.00 play symbols	- Win \$1.00
Two \$1.00 play symbols and one U	- Win \$2.00
Three \$2.00 play symbols	- Win \$2.00
Two \$2.00 play symbols and one U	- Win \$4.00
Three \$7.00 play symbols	- Win \$7.00
Two \$7.00 play symbols	- Win \$14.00
Three \$21.00 play symbols	- Win \$21.00
Three \$40.00 play symbols	- Win \$40.00
Two \$40.00 play symbols and one U	- Win \$80.00
Three \$5,000 play symbols	- Win \$5,000

(3) No portion of the display printing nor any extraneous matter whatever shall be usable or playable as a part of the instant game.

(4) The determination of prize winners shall be subject to the general ticket validation requirements of the lottery as set forth in WAC 315-10-070, to the particular ticket validation requirements for Instant Game Number 97 set forth in WAC 315-11-972, to the confidential validation requirements established by the director, and to the requirements stated on the back of each ticket.

(5) Notwithstanding any other provisions of these rules, the director may:

(a) Vary the length of Instant Game Number 97; and/or

(b) Vary the number of tickets sold in Instant Game Number 97 in a manner that will maintain the estimated average odds of purchasing a winning ticket.

NEW SECTION

WAC 315-11-972 Ticket validation requirements for Instant Game Number 97. (1) A valid instant game ticket for Instant Game Number 97 shall meet all of the following validation requirements as well as all other requirements in these rules and regulations:

(a) Exactly one play symbol must appear under each of the six play spots on the front of the ticket.

(b) Each of the six play symbols must have a caption below it and each must agree with its caption.

(c) The display printing and the printed numbers, letters, and symbols on the ticket must be regular in every respect and correspond precisely with the artwork on file with the director. The numbers, letters, and symbols shall be printed as follows:

Play Symbols	Play Symbol Font
Captions	Caption Font
Pack-Ticket Number	Validation Font
Validation Number	Validation Font
Retail Verification Code	Validation Font

(d) Each of the play symbols and its caption, the validation number, pack-ticket number, and retailer verification code must be printed in black ink.

(e) Each of the play symbols must be exactly one of those described in WAC 315-11-970(1) and each of the captions must be exactly one of those described in WAC 315-11-970(2).

(2) Any ticket not passing all the validation requirements in WAC 315-10-070 and subsection (1) of this section is invalid and ineligible for any prize.

AMENDATORY SECTION (Amending WSR 92-23-032, filed 11/13/92, effective 12/14/92)

WAC 315-11-890 Definitions for Instant Game Number 89 (~~("Eights Are Crazy"))~~ ("**Lucky 8's**"). (1) Play symbols: The following are the "play symbols": "1;" "2;" "4;" "5;" "6;" "8;" and "9." One of these play symbols appears in each of the nine play spots under the latex covering on the front of the ticket. The nine play spots are arranged in a three-by-three configuration. The area under the latex covering shall be known as the playfield.

(2) Play symbol captions: The small printed characters appearing below each play symbol which correspond with and verify that play symbol. The caption contains four characters. The first character repeats the play symbol. The last three characters repeat the ticket number. One and only one play symbol caption appears under each play symbol. An example of play symbol captions for Instant Game Number 89 follows:

<u>PLAY SYMBOL</u>	<u>CAPTION</u>
	(Example for ticket number 122)
1	1122
2	2122
4	4122
5	5122
6	6122
8	8122
9	9122

(3) Prize symbols: The following are the "prize symbols": "\$1.00;" "\$2.00;" "\$4.00;" "\$8.00;" "\$18.00;" "\$80.00;" "800;" and "\$8,888." One of these prize symbols appears under the prize box on the front of the ticket which has the word "PRIZE" printed on the latex covering. The prize box shall be contiguous to the playfield.

(4) Prize symbol captions: The small printed characters appearing below the prize symbol which verify and correspond with that prize symbol. The caption is a spelling out, in full or abbreviated form, of the prize symbol. Only one caption appears under the prize symbol. For Instant Game Number 89, the prize symbol captions which correspond with and verify the prize symbols are:

<u>PRIZE SYMBOL</u>	<u>CAPTION</u>
\$1.00	ONE DOL
\$2.00	TWO DOL
\$4.00	FOR DOL
\$8.00	EGT DOL
\$18.00	EGTTEEN
\$80.00	EIGHTYS
\$800	EGTHUND
\$8,888	FOREGTS

(5) Validation number: The unique nine-digit number on the front of the ticket. The number is covered by latex.

(6) Pack-ticket number: The eleven-digit number of the form 08900001-000 printed on the front of the ticket. The first three digits are the game identifier. The first eight digits of the pack-ticket number for Instant Game Number 89 constitute the "pack number" which starts at 08900001; the last three digits constitute the "ticket number" which starts at 000 and continues through 399 within each pack of tickets.

(7) Retailer verification codes: Codes consisting of small letters found under the removable covering on the front of the ticket which the lottery retailer uses to verify instant winners of \$25.00 or less. For Instant Game Number 89, the retailer verification code is a three-letter code, with each letter appearing in a varying three of six locations beneath the removable covering and among the play symbols on the front of the ticket. The retailer verification codes are:

<u>VERIFICATION CODE</u>	<u>PRIZE</u>
ONE	\$1.00
TWO	\$2.00
FOR	\$4.00
EGT	\$8.00
EGN	\$18.00

(8) Pack: A set of four hundred fanfolded instant game tickets separated by perforations and packaged in a plastic bag or plastic shrinkwrapping.

WSR 93-03-004
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed January 8, 1993, 1:04 p.m.]

Date of Adoption: January 8, 1993.

Purpose: To amend the rule to explain the department's policy for assessments involving unregistered taxpayers, evasion, and use of waivers.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-230.

Statutory Authority for Adoption: RCW 82.32.300.

Pursuant to notice filed as WSR 92-23-020 on November 10, 1992.

Effective Date of Rule: Thirty-one days after filing.

January 8, 1993

Russell W. Brubaker
 Legislation and Policy Manager

AMENDATORY SECTION (Amending Order ET 70-3, filed 5/29/70, effective 7/1/70)

WAC 458-20-230 Statutory limitations on assessments. ~~((No assessment or correction of an assessment for additional taxes due may be made by the department of revenue more than four years after the close of the tax year, except:))~~

(1) Introduction. This section explains the time period during which the department of revenue may issue a tax assessment. It also explains the circumstances under which the department may request that a taxpayer complete a statute of limitations waiver.

(2) Assessment period. Tax assessments must be made within four years after the close of the tax (calendar) year in which the tax was incurred with the following exceptions:

(a) Against a taxpayer who ~~((has))~~ was not registered as required by chapter 82.32 RCW.

~~((2))~~ (b) Upon a showing of fraud or of misrepresentation of a material fact by the taxpayer.

~~((3))~~ (c) Where the taxpayer has executed a written waiver of such limitation.

~~((4))~~ (d) Sales tax collected by a seller upon retail sales ~~((Such tax shall be deemed to be held in trust until paid to the department. (RCW 82.08.050.)~~

Revised June 1, 1965.)) and not remitted to the department.

(3) Unregistered taxpayer. Except for evasion or misrepresentation, if the department of revenue discovers any unregistered taxpayer doing business in this state, the department will assess taxes, interest, and penalties for a period of seven years plus the current year. If a taxpayer voluntarily registers before being contacted by the department, assessments will not exceed four years plus the current year, provided the taxpayer has made a good faith attempt to report correctly and there is no evidence of intent to evade tax under RCW 82.32.050. It will be presumed that a taxpayer has registered with the department if the taxpayer voluntarily files for an identification number under the Unified Business Identifier (UBI) system prior to any contact from the department of revenue.

(4) Evasion or misrepresentation. There is no limitation for the period in which an assessment or correction of an assessment can be made upon a showing of

evasion or of misrepresentation of a material fact. Evasion involves a situation where the taxpayer knows a tax liability is due and the taxpayer attempts to escape detection through deceit, fraud, or other intentional wrongdoing. The evasion must be shown by clear, cogent, and convincing evidence which is objective and creditable. However, in the case of evasion or misrepresentation, any assessment for taxes which extends beyond four years and the current year will be limited to taxes which were underpaid as a result of the evasion or misrepresentation. (See RCW 82.32.050 and 82.32.090).

(5) Statute of limitations waiver. The department may request that a taxpayer complete a waiver of the statute of limitations in those cases where the delay in timely completing an audit or issuance of an assessment is the result of actions of the taxpayer. If the department requests that a statute of limitations waiver be completed, the waiver will also hold open the period during which the department may refund taxes discovered to have been overpaid. The department may also request that a taxpayer complete a waiver of the statute of limitations in connection with a request from a taxpayer for a refund or credit for overpaid taxes. If the refund or credit request relates to a year for which the statute of limitations will expire within a short period, the department may be able to more promptly issue a refund by delaying the verification process until it is more convenient to the taxpayer and/or the department if the taxpayer will execute a statute of limitations waiver. (Refer to WAC 458-20-229).

(6) Trust funds. Retail sales tax which is collected by a seller must be remitted to the department of revenue. These amounts are deemed to be held in trust by the seller until paid to the department. The statute of limitations does not apply to retail sales tax which was collected and not remitted to the department.

(7) Revised assessments. The department may issue an assessment to correct errors found in examining tax returns or it may issue an assessment to correct errors based on a review of the taxpayer's records. Assessments which are based on a review of the tax returns are subject to further review and revision by future audit. Once issued, the department may revise an audit assessment subject to the following restrictions.

(a) The assessment generally may not be increased from the amount originally assessed for those years for which the statute of limitations would have expired if this were an original assessment. For these years an assessment can be reduced, but not increased.

(b) An assessment may be increased upon discovery of fraud/evasion or misrepresentation of a material fact.

(8) Assessments following conditional refunds or credits. Taxpayers may petition for a credit or refund of overpaid taxes by following the procedures in WAC 458-20-229. The department at its option may grant such credits or refunds without further immediate verification. If it is later determined that a refund was granted in error and that there was no fraud/evasion or misrepresentation of a material fact, the department may issue an assessment to recover the taxes and interest which were refunded in error, provided the assessment is issued within four years from the close of the tax year in which the tax was incurred or within a period covered by a statute of limitations waiver.

(9) Examples. The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(a) ABC Manufacturing has manufacturing plants in Oregon and Washington. This taxpayer properly registered with the department of revenue when first engaging in business in Washington a number of years ago and has remained registered. In 1987 the taxpayer transferred equipment from its Oregon plant and used the equipment in its Washington plant. (See RCW 82.12.010 for a definition of use). This transfer was recorded in the accounting records in 1987, but the taxpayer inadvertently failed to report the use tax. The taxpayer's records were audited in 1992 at which time this transfer and the failure to report the use tax came to the department's attention. Since the department discovered the use tax had not been paid more than four years after the close of 1987 and none of the exceptions as stated in subsection (2) of this section apply, the department is barred by the statute of limitations from now assessing the use tax. The department can expand the statute of limitations to seven years plus the current year if the taxpayer was required to be registered and failed to do so.

(b) The department issued its assessment on December 20, 1992, for use taxes owed by ABC Manufacturing covering the period January 1, 1988, through September 30, 1992. The taxpayer contacted the department in April 1994 and provided documentation to support that retail sales tax had been paid on some items assessed for use tax in the tax years 1989 and 1990. In the process of reviewing the documentation, the department discovered that the auditor inadvertently had failed to assess use tax on some assets purchased in the year 1988 which would have resulted in a larger tax assessment for that year than originally assessed. The department issued a revised assessment on June 15, 1994, covering the period January 1, 1988, through September 30, 1992 which reflected the deletion of the use tax assessed in error for 1989 and 1990. The revised assessment did not increase the tax assessment for taxes owed in 1988 because this would have resulted in the assessment being increased more than four years after the close of the 1988 tax year. Any petition for refund must be made within four years of the close of the tax year in which the tax was paid.

(c) The department contacted XYZ Distributing on September 1, 1992, to schedule a routine audit of its records. The taxpayer requested that the department delay the start of the audit until December 1, 1992, because its records are maintained on a fiscal year ending September 30 and the audit would be extremely disruptive to its year end closing if begun immediately. This delay would not allow the department sufficient time to complete the review of the records for 1988 and timely make an assessment for any taxes found to be due. The department may request the taxpayer to complete a statute of limitations waiver for the year 1988 in exchange for delaying the start of the audit. The completion of the waiver by the taxpayer will also hold open the year 1988 for refund or credit of any taxes found to have been overpaid in this period until such time as an assessment is issued or the waiver expires.

(d) ABC Manufacturing was being audited by the department for the period January 1, 1988, through September 30, 1992. During the process of examining the records, the department discovered that ABC had collected retail sales tax on sales in 1986 which had never been remitted to the department. There was no fraud or misrepresentation involved in the taxpayer's failure to remit the tax. The department appropriately expanded the period covered by the assessment to include the unremitted retail sales tax in the year 1986. Retail sales tax collected by a seller is deemed to be held in trust until paid to the department and the statute of limitations does not apply. (See RCW 82.08.050.)

(e) The department, through staff at its Seattle office, was unable to find a registration for ARC Company. The department contacted ARC by letter inquiring about its business activities in Washington and asking ARC for its registration number. ARC had not registered with the department of revenue, nor had it registered with any other state agencies through the UBI system. Shortly after being contacted by the department's Seattle staff, ARC contacted the Olympia office of the department and completed an application for registration without disclosing the earlier contact by the Seattle office. ARC subsequently argued that the assessment should be restricted to four years plus the current year. The department appropriately made its assessment for seven years plus the current year because the taxpayer was unregistered at the time of being first contacted by the department.

(f) John Smith lives in Washington part of the year, votes in Washington, has a Washington driver's license, and uses his Washington address in filing federal tax returns. He spends the winters in Arizona. In 1986, while in Arizona, he purchased a new motor home which he licensed in Arizona. He assumed that it was appropriate to license the vehicle in Arizona since he spends a considerable part of the year there and was not aware that he should pay use tax on the first use in Washington which occurred later that year. In 1992 he traded this motor home for a new motor home which he purchased from an Arizona dealer. Shortly thereafter, he returned to Washington and the department became aware of Mr. Smith's use of both of these motor homes in Washington. The department concluded that use tax was due. However, because the department could not show any evidence of evasion or misrepresentation and the taxpayer was not required to be registered with the department, the statute of limitations had expired on the 1986 purchase. Use tax was properly due and assessed on the 1992 purchase with the value based on the total purchase price after allowing a deduction for the trade-in value.

(g) In 1992 the department audited the records of XYZ Hauling for the years 1988 through 1991. The audit disclosed that some income from hauling performed in 1988 had not been reported and issued an assessment in 1992 for additional taxes owed under the motor transportation public utility tax. The taxpayer paid the assessment in 1992. In 1994 the taxpayer contacted the department with additional records which disclosed that part of the hauling for which motor transportation tax was assessed for the year 1988 should have been assessed under the urban transportation classification, a lower tax rate. The taxpayer requested that all of the motor transportation tax be refunded and argued that the urban transportation tax could not be assessed since

the statute of limitations had expired for the year 1988. The department issued a revised assessment in which it subtracted the tax that should have been paid under urban transportation from the motor transportation tax which was assessed. The department refunded the difference. The revised assessment did not result in additional taxes being assessed, but was a reduction of the original assessment.

WSR 93-03-005
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed January 8, 1993, 1:20 p.m.]

Date of Adoption: January 8, 1993.

Purpose: To repeal this rule. The subject matter of this rule is discussed more extensively in WAC 458-20-173. There is no reason to retain WAC 458-20-149.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 458-20-149.

Statutory Authority for Adoption: RCW 82.32.300.

Pursuant to notice filed as WSR 92-23-022 on November 10, 1992.

Effective Date of Rule: Thirty-one days after filing.
 January 8, 1993

Russell W. Brubaker
 Legislation and Policy Manager

REPEALER

The following section of the Washington Administrative Code is hereby repealed:

WAC 458-20-149 Jewelry repair shops

WSR 93-03-007
PERMANENT RULES
DEPARTMENT OF
NATURAL RESOURCES

[Order 608—Filed January 8, 1993, 4:20 p.m.]

Date of Adoption: January 8, 1993.

Purpose: Removes forest land from DNR protection, assigns responsibility for protection to fire districts. Removes forest protection assessment from forest lands transferred to fire district protection.

Statutory Authority for Adoption: RCW 76.04.165.

Pursuant to notice filed as WSR 92-22-031 on October 27, 1992.

Changes Other than Editing from Proposed to Adopted Version: No changes other than editing of legal descriptions.

Effective Date of Rule: Thirty-one days after filing.
 January 8, 1993

James A. Stearns
 Department Supervisor

NEW SECTION

WAC 332-24-710 Forest protection zone—Kitsap County. (1) It is determined that some forest lands within Kitsap County are best protected by fire protection districts. Therefore, the forest lands, situated within the following fire

districts, are removed from the Department's forest protection zone and become the protection responsibility of the district:

(a) Fire Protection District 1. All forest lands, except State and federal owned forest lands within the legal description as follows: Township 25 North, Range 1 East W.M., Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 28, 29, 30; Township 25 North, Range 1 West W.M., Sections 1, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and N 1/2 28, N 1/2 29, N 1/2 30; Township 25 North, Range 2 West W.M., Sections 25, 26, 27, 34, 35, 36; Township 26 North, Range 1 West W.M., Sections 24, 25, 31, 36; Township 26 North, Range 1 East, Section 31.

(b) Fire Protection District 2. All forest lands except State and federal owned forest lands within the legal description as follows: Township 24 North, Range 2 East W.M., Section 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15; Township 25 North, Range 2 East W.M., Section 2, 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36; Township 26 North, Range 2 East W.M., Sections 26, 27, 28, 33, 34, 35.

(c) Fire Protection District 4. All forest lands except State, tribal, and federal owned forest lands within the legal description as follows: Township 26 North, Range 2 East W.M., Sections 4, 5, 8, 9, 16, 17, 20, 21, 28, 29, 32.

(d) Fire Protection District 7. All forest lands except State and federal owned forest lands within the legal description as follows: Township 22 North, Range 1 East W.M., Sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12; Township 22 North, Range 2 East W.M., Sections 3, 4, 5, 6, 7, 8, 9, 10; Township 23 North, Range 1 East W.M., Sections 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36; Township 23 North, Range 1 West W.M., Sections 2, 3, 10, 11, 12, 13, 14, 22; Township 23 North, Range 2 East W.M., Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 14, 15, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33, 34; Township 24 North, Range 1 East W.M., Sections 3, 10, 15, 21, 22, 27, 28, 29, 31, 32, 33, 34, 35, 36; Township 24 North, Range 1 West W.M., Sections 29, 31, 32, 33, 34, 35; Township 24 North, Range 2 East W.M., Sections 8, 9, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36.

(e) Fire Protection District 10. All forest lands except State and federal owned forest lands within the legal description as follows: Township 26 North, Range 2 East W.M., Sections 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 16; Township 26 North, Range 3 East W.M., Sections 6, 7, 18; Township 27, North Range 2 East W.M., Sections 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36.

(f) Fire Protection District 12. All forest lands except State and federal owned forest lands within the legal description as follows: Township 24 North, Range 1 East W.M., Sections 4, 5, 6, 7, 8, 16, 17, 20, 21; Township 24, North, Range 1 West W.M., Sections 1, 2, 3; Township 25 North, Range 1 East W.M., Sections 29, 30, 31, 32, 33; Township 25, North, Range 1 West W.M., Sections 25, 26, 27, 34, 35.

(g) Fire Protection District 14. All forest lands except State and federal owned forest lands within the legal description as follows:

PERMANENT

Township 27 North, Range 2 East W.M., Sections 2, 3, 10, 11; Township 28 North, Range 1 East W.M., Sections 12, 13; Township 28 North, Range 2 East W.M., Sections 7, 15, 16, 17, 18, 19, 20, 21, 22, 26, 27, 34, 35, E 1/2 E 1/2 Sec. 28, E 1/2 E 1/2 Sec. 33.

(h) Fire Protection District 15. All forest lands except State and federal owned forest lands within the legal description as follows: Township 24 North, Range 1 East W.M., Sections 1, 2, 3, 10, 11, 12; Township 24 North, Range 2 East W.M., Sections 6, 7, 18; Township 25 North, Range 1 East W.M., Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36; Township 25 North, Range 2 East W.M., Sections 19, 30, 31.

(i) Fire Protection District 18. All forest lands except State and federal owned forest lands within the legal description as follows: Township 25 North, Range 2 East W.M., Section 6; Township 26 North, Range 1 East W.M., Sections 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 16, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36; Township 26 North, Range 2 East W.M., Sections 6, 7, 18, 19, 30, 31; Township 27 North, Range 1 East W.M., Sections 1, 12, 14, 22, 23, 26, 27, 28, 33, 34, 35, 36, and W 1/2 Section 13; Township 27 North, Range 2 East W.M., Sections 5, 6, W 1/2 and NE 1/4 Sec. 31, SE 1/4 SW 1/4 SE 1/4 Sec. 36.

(2) Forest lands removed from the forest protection zone will not be assessed under RCW 76.04.610 or 76.04.630

(3) The transfer of fire protection responsibility is effective January 1, 1994.

WSR 93-03-008
PERMANENT RULES
LOTTERY COMMISSION

[Filed January 8, 1993, 4:26 p.m.]

Date of Adoption: January 7, 1993.

Purpose: To establish the game play rules and criteria for determining winners of Instant Game Nos. 92 ("Triple Play"), 93 ("Hog Mania"), and 94 ("Applebucks II"); and to amend WAC 315-34-040.

Citation of Existing Rules Affected by this Order: Amending WAC 315-34-040.

Statutory Authority for Adoption: RCW 67.70.040.

Pursuant to notice filed as WSR 92-24-068 on December 1, 1992.

Effective Date of Rule: Thirty-one days after filing.

January 8, 1993
Evelyn P. Yenson
Director

NEW SECTION

WAC 315-11-920 Definitions for Instant Game Number 92 ("Triple Play"). (1) Play symbols: The following are the "play symbols": "0"; "1"; "2"; "3"; "4"; "5"; "6"; "9"; "10"; "11"; and "12." One of these symbols appears under each of the three play spots under the latex covering in the "your score" column and under each of the three play spots under the latex covering in the "their score" column in the play field on the front of the ticket.

(2) Play symbol captions: The small printed characters appearing below each play symbol which correspond with

and verify that play symbol. One and only one caption appears under each play symbol. The play symbol captions for Instant Game Number 92 shall consist of the number 1, 2, or 3, in parentheses, to indicate the location of the play symbol in game (row) 1, game (row) 2, or game (row) 3, followed by the play symbol.

(3) Prize symbols: The following are the "prize symbols": "\$1.00"; "\$2.00"; "\$4.00"; "\$8.00"; "\$16.00"; "\$40.00"; "\$5,000." One of these prize symbols appears in the prize column of each game (row) in the playfield on the front of the ticket.

(4) Prize symbol captions: The small printed characters appearing below the prize symbol which verify and correspond with that prize symbol. The caption is a spelling out, in full or abbreviated form, of the prize symbol. One and only one caption appears under each prize symbol. The number 1, 2, or 3 precedes each prize symbol caption to indicate its location in game (row) 1, game (row) 2, or game (row) 3. For Instant Game Number 92, the prize symbols and their corresponding captions are:

<u>PRIZE SYMBOL</u>	<u>CAPTION</u>
\$ 1.00	ONEDOL
\$ 2.00	TWODOL
\$ 4.00	FORDOL
\$ 8.00	EGTDOL
\$ 16.00	SXTDOL
\$ 40.00	FORTYS
\$ 5,000	FIVTHO

(5) Validation number: The unique nine-digit random number on the front of the ticket. The number is covered by latex.

(6) Pack-ticket number: The eleven-digit number of the form 09200001-000 printed on the front of the ticket. The first three digits are the game identifier. The first eight digits of the pack-ticket number for Instant Game Number 92 constitute the "pack number" which starts at 09200001. The last three digits constitute the "ticket number" which starts at 000 and continues through 399 within each pack of tickets.

(7) Retailer verification codes: Codes consisting of small letters found under the removable latex covering on the front of the ticket which the lottery retailer uses to verify instant winners of \$25.00 and less. For Instant Game Number 92, the retailer verification codes are three-letter codes, with each letter appearing in a varying three of six locations among the play symbols and prize symbols on the front of the ticket. The retailer verification codes are:

<u>VERIFICATION CODE</u>	<u>PRIZE</u>
ONE	\$1.00
TWO	\$2.00 (\$1 and \$1; \$2)
FOR	\$4.00 (\$2, \$1 and \$1)
EGT	\$8.00 (\$4, \$2 and \$2; \$8)
SXT	\$16.00 (\$16)

(8) Pack: A set of four hundred fanfolded instant game tickets separated by perforations and packaged in a plastic bag or plastic shrinkwrapping.

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NEW SECTION

WAC 315-11-921 Criteria for Instant Game Number

- 92. (1) The price of each instant game ticket shall be \$1.00.
- (2) Determination of prize winning tickets: An instant prize winner is determined in the following manner: The bearer of a ticket having a play symbol in the "your score" column that is a larger number than the play symbol in the "their score" column in the same game (row) shall win the prize shown in the prize column for that game (row). The bearer of a ticket having winning play symbols in more than one game (row) shall win the sum of the prizes in each winning game (row). Play symbols in different games (rows) may not be combined to win a prize.
- (3) No portion of the display printing nor any extraneous matter whatever shall be usable or playable as a part of the instant game.
- (4) The determination of prize winners shall be subject to the general ticket validation requirements of the lottery as set forth in WAC 315-10-070, to the particular ticket validation requirements for Instant Game Number 92 set forth in WAC 315-11-922, to the confidential validation requirements established by the director, and to the requirements stated on the back of each ticket.
- (5) Notwithstanding any other provisions of these rules, the director may:
 - (a) Vary the length of Instant Game Number 92; and/or
 - (b) Vary the number of tickets sold in Instant Game Number 92 in a manner that will maintain the estimated average odds of purchasing a winning ticket.

NEW SECTION

WAC 315-11-922 Ticket validation requirements for Instant Game Number 92.

- (1) In addition to meeting all other requirements in these rules and regulations, a valid instant game ticket for Instant Game Number 92 shall comply with all of the following validation requirements:
 - (a) Exactly one play symbol must appear under each of the three rub-off spots in the "your score" column and under each of the three rub-off spots in the "their score" column on the front of the ticket.
 - (b) Each of the six play symbols must have a caption below and each must agree with its caption.
 - (c) Exactly one prize symbol for each of the three games (rows) must appear under the rub-off material covering the prize column on the front of the ticket.
 - (d) Each of the three prize symbols must have a caption below and each must agree with its caption.
 - (e) The display printing and the printed numbers, letters, and symbols on the ticket must be regular in every respect and correspond precisely with the specifications on file with the director. The numbers, letters, and symbols shall be printed as follows:

Play Symbols	Play Symbol Font
Prize Symbols	Prize Symbol Font
Captions	Caption Font
Pack-Ticket Number	Validation Font
Validation Number	Validation Font
Retailer Verification Code	Validation Font

- (f) Each of the play symbols and its caption, prize symbol and its caption, the validation number, pack-ticket

number, and the retailer verification code must be printed in black ink.

(g) Each of the play symbols must be exactly one of those described in WAC 315-11-920(1); each of the play symbol captions must be exactly one of those described in WAC 315-11-920(2); each of the prize symbols must be exactly one of those described in WAC 315-11-920(3); and each of the prize symbol captions must be exactly one of those described in WAC 315-11-920(4).

(2) Any ticket not passing all the validation requirements in WAC 315-10-070 and subsection (1) of this section is invalid and ineligible for any prize.

NEW SECTION

WAC 315-11-930 Definitions for Instant Game Number 93 ("Hog Mania").

- (1) Play symbols: The following are the "play symbols": "\$1.00"; "\$2.00"; "\$4.00"; "\$7.00"; "\$11.00"; "\$21.00"; "\$50.00"; "\$500.00"; and "\$10,000." One of these play symbols appears in each of the nine play spots under the latex covering on the front of the ticket.
- (2) Play symbol captions: The small printed characters appearing below each play symbol which verify and correspond with that play symbol. The caption is a spelling out, in full or abbreviated form of the play symbol. One and only one of these captions appears under each play symbol. For Instant Game Number 93, the captions which correspond with and verify the play symbols are:

<u>PLAY SYMBOL</u>	<u>CAPTION</u>
\$1.00	ONE DOL
\$2.00	TWO DOL
\$4.00	FOR DOL
\$7.00	SVN DOL
\$11.00	ELV DOL
\$21.00	TWYONES
\$50.00	\$FIFTYS
\$500.00	FIVHUND
\$10,000	TENTHOU

(3) Validation number: The unique nine-digit number on the front of the ticket. The number is covered by latex covering.

(4) Pack-ticket number: The eleven-digit number of the form 09300001-000 printed on the front of the ticket. The first three digits are the game identifier. The first eight digits of the pack-ticket number for Instant Game Number 93 constitute the "pack number" which starts at 09300001. The last three digits constitute the "ticket number" which starts at 000 and continues through 399 within each pack of tickets.

(5) Retailer verification codes: Codes consisting of small letters found under the removable latex covering on the front of the ticket which the lottery retailer uses to verify instant winners of \$25.00 or less. For Instant Game Number 93, the retailer verification codes are three-letter codes, with each letter appearing in a varying three of six locations among the play symbols on the front of the ticket. The retailer verification codes are:

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<u>VERIFICATION CODE</u>	<u>PRIZE</u>
ONE	\$1.00
TWO	\$2.00
FOR	\$4.00
SVN	\$7.00
ELV	\$11.00
TTN	\$21.00

(6) Pack: A set of four hundred fanfolded instant game tickets separated by perforations and packaged in plastic shrinkwrapping.

NEW SECTION

WAC 315-11-931 Criteria for Instant Game Number 93. (1) The price of each instant game ticket shall be \$1.00.

(2) Determination of prize winning tickets: An instant prize winner is determined in the following manner:

The bearer of a ticket having the following play symbols in any three of the nine spots beneath the removable covering on the front of the ticket shall win the following prize:

Three	\$1.00	play symbols	- Win	\$1.00
Three	\$2.00	play symbols	- Win	\$2.00
Three	\$4.00	play symbols	- Win	\$4.00
Three	\$7.00	play symbols	- Win	\$7.00
Three	\$11.00	play symbols	- Win	\$11.00
Three	\$21.00	play symbols	- Win	\$21.00
Three	\$50.00	play symbols	- Win	\$50.00
Three	\$500.00	play symbols	- Win	\$500.00
Three	\$10,000	play symbols	- Win	\$10,000

(3) No portion of the display printing nor any extraneous matter whatever shall be usable or playable as a part of the instant game.

(4) The determination of prize winners shall be subject to the general ticket validation requirements of the lottery as set forth in WAC 315-10-070, to the particular ticket validation requirements for Instant Game Number 93 set forth in WAC 315-11-932, to the confidential validation requirements established by the director, and to the requirements stated on the back of each ticket.

(5) Notwithstanding any other provisions of these rules, the director may:

(a) Vary the length of Instant Game Number 93; and/or

(b) Vary the number of tickets sold in Instant Game Number 93 in a manner that will maintain the estimated average odds of purchasing a winning ticket.

NEW SECTION

WAC 315-11-932 Ticket validation requirements for Instant Game Number 93. (1) A valid instant game ticket for Instant Game Number 93 shall meet all of the following validation requirements as well as all other requirements in these rules and regulations.

(a) Exactly one play symbol must appear in each of the nine play spots under the removable latex covering on the front of the ticket.

(b) Each of the nine play symbols must have a caption below it, and each must agree with its caption.

(c) The display printing and the printed numbers, letters, and symbols on the ticket must be regular in every respect

and correspond precisely with the artwork on file with the director. The numbers, letters, and symbols shall be printed as follows:

Play Symbols	Play Symbol Font
Captions	Caption Font
Pack-Ticket Number	Validation Font
Validation Number	Validation Font
Retail Verification Code	Validation Font

(d) Each of the play symbols and its caption, the validation number, pack-ticket number, and retailer verification code must be printed in black ink.

(e) Each of the play symbols must be exactly one of those described in WAC 315-11-930(1) and each of the play symbol captions must be exactly one of those described in WAC 315-11-930(2).

(2) Any ticket not passing all the validation requirements in WAC 315-10-070 and subsection (1) of this section is invalid and ineligible for any prize.

NEW SECTION

WAC 315-11-940 Definitions for Instant Game Number 94 ("Applebucks II"). (1) Play symbols: The following are the "play symbols": "♠"; "♣"; "♥"; "♦"; "▲"; "●"; "⊙"; "⊕"; and "⊖." One of these play symbols appears in each of the six play spots under the latex covering on the front of the ticket.

(2) Play symbol captions: The small printed characters appearing below each play symbol which verify and correspond with that play symbol. The caption is a spelling out, in full or abbreviated form of the play symbol. One and only one of these captions appears under each play symbol. For Instant Game Number 94, the captions which correspond with and verify the play symbols are:

<u>PLAY SYMBOL</u>	<u>CAPTION</u>
♠	SKIER
♣	MOOSE
♥	CHRY
♦	SHIP
▲	TREE
●	FISH
⊙	PLANE
⊕	APPLE

(3) Validation number: The unique nine-digit number on the front of the ticket. The number is covered by latex covering.

(4) Pack-ticket number: The eleven-digit number of the form 09400001-000 printed on the front of the ticket. The first three digits are the game identifier. The first eight digits of the pack-ticket number for Instant Game Number 94 constitute the "pack number" which starts at 09400001. The last three digits constitute the "ticket number" which starts at 000 and continues through 399 within each pack of tickets.

(5) Retailer verification codes: Codes consisting of small letters found under the removable latex covering on the front of the ticket which the lottery retailer uses to verify instant winners of \$25.00 or less. For Instant Game Number 94, the retailer verification codes are three-letter codes, with each letter appearing in a varying three of six locations

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among the play symbols on the front of the ticket. The retailer verification codes are:

<u>VERIFICATION CODE</u>	<u>PRIZE</u>
ONE	\$1.00
TWO	\$2.00
FOR	\$4.00
SVN	\$7.00
SVT	\$17.00

(6) Pack: A set of four hundred fanfolded instant game tickets separated by perforations and packaged in plastic shrinkwrapping.

NEW SECTION

WAC 315-11-941 Criteria for Instant Game Number

94. (1) The price of each instant game ticket shall be \$1.00.
 (2) Determination of prize winning tickets: An instant prize winner is determined in the following manner:

The bearer of a ticket having the following play symbols in any three of the six spots beneath the removable covering on the front of the ticket shall win the following prize:

Three		play symbols	- Win	\$1.00
Three		play symbols	- Win	\$2.00
Three		play symbols	- Win	\$4.00
Three		play symbols	- Win	\$7.00
Three		play symbols	- Win	\$17.00
Three		play symbols	- Win	\$40.00
Three		play symbols	- Win	\$80.00
Three		play symbols	- Win	\$10,000

(3) No portion of the display printing nor any extraneous matter whatever shall be usable or playable as a part of the instant game.

(4) The determination of prize winners shall be subject to the general ticket validation requirements of the lottery as set forth in WAC 315-10-070, to the particular ticket validation requirements for Instant Game Number 94 set forth in WAC 315-11-942, to the confidential validation requirements established by the director, and to the requirements stated on the back of each ticket.

(5) Notwithstanding any other provisions of these rules, the director may:

- (a) Vary the length of Instant Game Number 94; and/or
- (b) Vary the number of tickets sold in Instant Game Number 94 in a manner that will maintain the estimated average odds of purchasing a winning ticket.

NEW SECTION

WAC 315-11-942 Ticket validation requirements for Instant Game Number 94. (1) A valid instant game ticket for Instant Game Number 94 shall meet all of the following validation requirements as well as all other requirements in these rules and regulations.

(a) Exactly one play symbol must appear in each of the six play spots under the removable latex covering on the front of the ticket.

(b) Each of the six play symbols must have a caption below it, and each must agree with its caption.

(c) The display printing and the printed numbers, letters, and symbols on the ticket must be regular in every respect and correspond precisely with the artwork on file with the director. The numbers, letters, and symbols shall be printed as follows:

Play Symbols	Play Symbol Font
Captions	Caption Font
Pack-Ticket Number	Validation Font
Validation Number	Validation Font
Retail Verification Code	Validation Font

(d) Each of the play symbols and its caption, the validation number, pack-ticket number and retailer verification code must be printed in black ink.

(e) Each of the play symbols must be exactly one of those described in WAC 315-11-940(1) and each of the play symbol captions must be exactly one of those described in WAC 315-11-940(2).

(2) Any ticket not passing all the validation requirements in WAC 315-10-070 and subsection (1) of this section is invalid and ineligible for any prize.

AMENDATORY SECTION (Amending WSR 92-11-033, filed 5/15/92, effective 6/15/92)

WAC 315-34-040 Prizes for Lotto. (1) The prize amounts to be paid to each Lotto player who selects a winning combination of numbers in the first, second, third and fourth prize categories vary due to parimutuel calculation of prizes.

<u>WINNING COMBINATIONS</u>	<u>PRIZE CATEGORIES</u>	<u>ODDS OF WINNING (ONE PLAY)</u>
All six winning numbers in one play	First Prize (Jackpot)	1:13,983.816
Any five but not six winning numbers in one play	Second Prize	1:54.201
Any four but not five or six winning numbers in one play	Third Prize	1:1,033
Any three but not four, five or six winning numbers in one play	Fourth Prize	1:57

(2) Prize allocation. The prize allocation consists of forty-eight percent of Lotto revenue. The prize allocation will be divided between the prize pool and the prize reserve as follows: prize pool—forty-six percent of Lotto revenue; prize reserve—two percent of Lotto revenue.

(3) Prize amounts.

(a) First prize (jackpot). The first prize will be the amount announced by the director as the Lotto jackpot. The jackpot will be divided equally among all players who selected all six winning numbers in one play (in any sequence). The director may utilize the prize reserve to augment the cash available to fund the jackpot prize. Any revenue remaining in the prize pool after providing sufficient moneys for payment of all first, second, third, and fourth prizes of that drawing shall be placed in the Lotto prize reserve for use pursuant to the terms of WAC 315-34-040 (3)(e).

(b) Second prize. Five percent of the prize pool is to be divided equally among all players who selected five of the six winning numbers in one play (in any sequence).

(c) Third prize. Ten percent of the prize pool is to be divided equally among all players who selected four of the six winning numbers in one play (in any sequence).

(d) Fourth prize. Twenty-one percent of the prize pool is to be divided equally among all players who selected three of the six winning numbers in one play (in any sequence).

(e) Prize reserve. The prize reserve will be held for payment of prizes at the discretion of the director.

(f) ((All)) Second and third prizes will be rounded down to the nearest dollar. Fourth prize will be rounded to the nearest dollar. The remainder or shortages, if any, from the rounding process shall be placed in or taken from the prize reserve.

(g) The holder of a winning ticket may win only one prize per play in connection with the winning numbers drawn and shall be entitled only to the highest prize category won by those numbers.

(h) The holder of two or more jackpot winning tickets with a cumulative total cash value of \$250,000 or more may elect to receive a single prize based on the total cash value with prize payments in accordance with subsection (5)(a) or (b) of this section.

(i) In the event any player who has selected three, four, five, or six of the six winning numbers does not claim the prize won within one hundred eighty days after the drawing in which the prize was won, that player's prize shall be retained in the state lottery account for further use as prizes, pursuant to RCW 67.70.190.

(4) Roll-over feature.

(a) If no player selects all six winning numbers for any given drawing, the jackpot accumulated for that drawing will be added to the jackpot accumulation for the next drawing. This process is repeated until the jackpot is won.

(b) If no player selects five of the six winning numbers for any given drawing, the second prize allocation will be added to the jackpot accumulation for the next drawing or placed in the prize reserve for future consideration at the discretion of the director.

(c) If no player selects four of the six winning numbers for any given drawing, the third prize allocation will be added to the jackpot accumulation for the next drawing or placed in the prize reserve for future consideration at the discretion of the director.

(d) If no player selects three of the six winning numbers for any given drawing, the fourth prize allocation will be added to the jackpot accumulation for the next drawing or placed in the prize reserve for future consideration at the discretion of the director.

(5) Prize payments will be made in accordance with WAC 315-30-030(6).

(a) Each prize that has a cash value of \$500,000 or more shall be paid in twenty annual payments.

(b) Each prize that has a cash value of more than \$250,000 but less than \$500,000 shall, at the discretion of the director, be paid either in ten annual payments or twenty annual payments.

(c) Each prize that has a cash value of \$250,000 or less shall be paid in a single payment.

(d) For prizes paid over a period of years, the lottery will make the first annual payment. The remaining payments will be paid in the form designated by the director.

WSR 93-03-020

PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Order 134—Filed January 12, 1993, 9:58 a.m.]

Date of Adoption: January 7, 1993.

Purpose: To make minor changes to chapter 468-16 WAC to improve its effectiveness since its implementation.

Citation of Existing Rules Affected by this Order: Amending chapter 468-16 WAC, Prequalification of contractors.

Statutory Authority for Adoption: RCW 47.01.101, 47.28.030, and 47.28.070.

Pursuant to notice filed as WSR 92-24-060 on November 30, 1992.

Effective Date of Rule: Thirty-one days after filing.

January 7, 1993

S. A. Moon

Deputy Secretary

AMENDATORY SECTION (Amending Order 128, filed 1/28/91, effective 2/28/91)

WAC 468-16-030 Definitions. The definitions set forth in this section apply throughout this chapter and have the following meanings, unless the context clearly indicates otherwise.

(1) **Above standard** - Performance ranging from standard to that meeting the lower range of superior.

(2) **Active contractor** - A contractor who has participated in department activities through maintaining required prequalification(~~(- bidding, or construction activities))~~ and having a history of performing department work.

(3) **Affiliate** - An associate, subordinate associate, or subsidiary firm which may involve the intermingling of funds, officers, or (~~(directors))~~ officials of one or more firms.

(4) **Assistant secretary for operations** - The primary representative of the secretary of transportation responsible for the highway construction program and for the qualification of contractors employed thereon.

(5) **Below standard** - Performance bordering on standard extending to the limits of inadequate.

(6) **Bidding proposal** - A form issued by the department for the submission of a contractor's bid(~~(s))~~ containing spaces for entering bid amounts, authentication, and other data.

(7) **Capacity multiplier** - The number 5.0 multiplied by a firm's net worth to calculate its initial maximum bidding capacity.

(8) **Conditional qualification** - A temporary qualification status given a contractor who has received a "below standard" or "inadequate" overall rating(~~(s))~~ or for other reasons which result in restrictions to a contractor's ability to bid on department work.

(9) **Contractor** - Any person, partnership, firm, corporation or joint venture who or which, in the pursuit of an

independent business, undertakes, offers to undertake, or submits a bid to perform construction work for the department.

(10) **Department** - The department of transportation.

(11) **Endorser** - The district operations engineer or immediate supervisor of the construction project engineer, or project architect or, under specified conditions, the district administrator responsible for reviewing contractor's performance reports.

(12) **Inadequate** - Performance failing completely to meet the prescribed standard((s)) or requirement((s)).

(13) **Integrity** - The quality of being of sound moral principle, uprightness, honesty, and sincerity.

(14) **Joint venture** - Two or more persons, sole proprietorships, companies, corporations, or combinations thereof, entering into an agreement for a business venture such as a construction project.

(15) **Limited work class** - A work classification given when a contractor lacks the total experience, organization, equipment, or skills required to perform the entire range of work within a work class.

(16) **Maximum capacity rating** - The total value of uncompleted prime contract work a contractor is permitted to have under contract at any time.

(17) **Performance inquiry** - A request made to a contractor's previous employers for an evaluation of the quality and manner of that contractor's performance.

(18) **Performance rating** - A numerical rating which is equal to the grand total of the evaluation elements of the prime contractor's performance report used ~~((as a guide))~~ to measure and quantify the quality of contractor performance.

(19) **Performance score** - The product of the performance rating when multiplied by a numerical factor which may be used to calculate prequalification ratings.

(20) **Prequalification** - The process of ~~((reviewing))~~ evaluating a contractor's financial status, organizational structure, experience, equipment, integrity, and other required qualifications to determine a contractor's responsibility and suitability for performing department work. This term is used interchangeably with qualification.

(21) **Prime contractor performance report** - A report prepared to evaluate the performance of a prime contractor upon completion of, or at an interim period during a department project which is used as a guide to adjust a prime contractor's qualification status.

(22) **Project estimate** - A document prepared by the department establishing the estimated value of all items of work, the total estimated value of work within each class of work, and the estimated total value of a project.

(23) **Rater** - The designated individual, normally the project engineer, responsible for evaluation of the quality and manner of performance of a contractor in the completion of a project.

(24) **Revocation of qualification** - The act by which a contractor's qualification is terminated.

(25) **Secretary** - The secretary of transportation who may delegate his or her functions under this chapter to the assistant secretary for operations or such other individual as deemed appropriate.

(26) **Standard** - The expected, acceptable quality of performance, considered to meet the demand, need or requirement((s)).

(27) **Standard questionnaire** - The application form completed by a contractor to present information relating to the applicant's financial status, experience, organization, and equipment for the purpose of becoming qualified to perform department work.

(28) **Superior** - Preeminent performance ~~((, generally at a higher level than that of others))~~ consistently at an extremely high level.

(29) **Suspension of qualification** - The termination of a contractor's qualification for a specified period of time.

(30) **Unsatisfactory** - Below standard or inadequate performance, failing to meet requirements.

(31) **Work class** - A specific type of work within the various classifications of work, e.g., grading, draining, fencing, etc.

(32) **Work class rating** - The maximum value within a class of work which a contractor may bid upon in a single project.

AMENDATORY SECTION (Amending Order 128, filed 1/28/91, effective 2/28/91)

WAC 468-16-040 Criteria for a determination of an unsatisfactory record of performance. The following list of ~~((elements))~~ deficiencies may be considered cause for a determination that an unsatisfactory record of performance exists:

- (1) Failure to complete project on time; or
- (2) Continued workmanship below the level of standard ~~((or inadequate));~~ or
- (3) ~~((Nonadherence))~~ Failure to adhere to the ~~((requirements of))~~ plans and specifications; or
- (4) Disregard for the welfare or safety of traveling public; or
- (5) Inadequate supervision and control of subcontractors; or
- (6) Insufficient supervision available on project site; or
- (7) Inadequate coordination and planning with owner; or
- (8) Inadequate procurement and delivery of supplies and materials; or
- (9) Inadequate control and utilization of equipment; or
- (10) An overall performance rating in the prime contractor performance report of less than standard as defined in WAC 468-16-030 and 468-16-150.

AMENDATORY SECTION (Amending Order 128, filed 1/28/91, effective 2/28/91)

WAC 468-16-050 Criteria for a determination of an unsatisfactory record of integrity and judgment. (1) The following deficiencies may be cause for a determination ~~((of))~~ that an unsatisfactory record of integrity and judgment exists:

- (a) Conviction ~~((by))~~ of the firm or its principals of violating a federal or state antitrust law by bid-rigging, collusion, or restraint of competition between bidders; or conviction of violating any other federal or state law related to bidding or contract performance; or
- (b) Knowingly concealing any deficiency in the performance of a prior contract; or
- (c) Falsification of information or submission of deceptive or fraudulent statements in connection with

prequalification, bidding, performance of a contract, or in legal proceedings; or

(d) Debarment of the contractor by a federal or state agency; or

(e) Willful disregard for applicable laws, rules or regulations.

(2) Only such data relating to subsection (1)(a) through (e) of this section having taken place within three years next preceding the date of the most recently submitted standard questionnaire may be used for the purpose of this section.

AMENDATORY SECTION (Amending Order 128, filed 1/28/91, effective 2/28/91)

WAC 468-16-060 Criteria for a determination of inability to comply with performance schedules. The following discrepancies may be cause for a determination of inability to comply with performance schedules:

(1) A majority of responses to inquiries made to ~~((previous))~~ owners of previously completed projects reveal that projects have not been completed on time; or

(2) A major portion of projects completed within the last three years for the department have not been completed on time; or

(3) When two or more consecutive performance reports are rated below standard in the area((s)) of "progress of work"; or

(4) Neglectful or willful failure to meet interim completion dates as defined in the contract.

AMENDATORY SECTION (Amending Order 128, filed 1/28/91, effective 2/28/91)

WAC 468-16-070 Criteria for a determination of the lack of necessary experience, organization, or technical qualifications. A determination of lack of necessary experience, organization, or technical qualification may be made when data has been presented which reveals:

(1) A lack of prior experience in the classes of work for which qualification is sought; or

(2) That supervisory experience of key personnel responsible for prior projects has been reported predominantly below standard or less than satisfactory on performance reports and responses to inquiries made to other project owners or agencies; or

(3) That permanent employment status of key supervisory personnel has not been of a duration of at least one year or for the duration of the project in which they have been engaged; or

(4) That previous work experience in a work class presented for qualification did not conform to plans and specifications for the project; or

(5) That work claimed by the contractor was completed by others(~~;~~ or

~~(6) A performance rating in appropriate categories of the prime contractor performance report of less than standard as defined in WAC 468-16-030)).~~

AMENDATORY SECTION (Amending Order 128, filed 1/28/91, effective 2/28/91)

WAC 468-16-090 Standard questionnaire. The standard questionnaire and financial statement shall be prepared and transmitted to the secretary, Attn: Precontract administration office. The questionnaire shall include the following information:

(1) The contractor's name, address, phone number, facsimile number, and type of organization (corporation, partnership, sole proprietorship, etc.).

(2) A list of the classes of work for which the contractor seeks qualification.

(3) A statement of the ownership of the firm and, if a corporation, the name of the parent corporation, if any, and the names of any affiliated or subsidiary ((~~or~~)) companies.

(4) A certificate of authority from the office of the secretary of state to do business in Washington state if the applicant is ~~((a-foreign))~~ an out-of-state corporation.

(5) A list of officials within the applicant firm who are also affiliated with other firms involved in construction work as a contractor, subcontractor, supplier, or consultant; including the name of the firm and their relationship with the affiliate firm.

(6) A complete list of the highest valued contracts or subcontracts performed in whole or in part within the immediate three years preceding application. The contract amount, contract number, date of completion, class of work; and the name, mailing address, and phone number of the project owner or agency representative must be provided for those projects listed. Only that work completed by the contractor's own organization under its own supervision will be considered for prequalification purposes. A minimum of five projects must be listed.

(7) Personnel requirements.

(a) A listing of the principal officers and key employees indicating their years of experience ~~((engaged))~~ in the classes of work for which prequalification is sought. For qualification in a class of work based on newly acquired personnel rather than the firm's past contract experience, the newly acquired personnel must be available for future employment for the full year for which qualification is sought unless replacement personnel have been approved. The loss of such personnel during the year of qualification, will result in revocation of qualification for the class of work granted pursuant to their acquisition. The department may require resumes of such personnel as deemed proper for making its determination. The firm's performance on department contracts must be currently rated standard or better to be used for qualification purposes.

(b) A firm must have, within its own organization, qualified permanent, full time personnel having the skills and experience including, if applicable, technical or specialty licenses, for each work class for which prequalification is sought. Those firms seeking qualification for electrical work (classes 9 and 16) must provide photocopies of current Washington state electrical licenses. The skills and experience must be substantiated by education and practical experience on completed construction projects.

(c) "Its own organization" shall be construed to include only the contractor's permanent, full time employed office and site supervisory personnel as shown on the most recently

submitted or amended prequalification questionnaire. Workers of the organization shall be employed and paid directly by the prime contractor. The term "its own organization," shall also include the equipment owned or rented by the contractor with or without equipment operators. Such term does not include employees or equipment of another contractor, subcontractor, assignee, or agent of the applicant contractor although they are placed on the applicant contractor's payroll.

(8) A list of all major items of equipment used to perform those classes of work for which prequalification is sought. The description, quantity, condition, present location, and age of such equipment must be shown. The schedule must show whether the equipment is owned, leased, or rented.

(9) ~~(An initial)~~ A financial statement.

(a) For a firm showing a net worth in excess of one hundred thousand dollars, the applicant must provide, with the questionnaire, a copy of its financial statement as audited or reviewed for its last fiscal year, prepared in accordance with the standards of the American Institute of Certified Public Accountants. The statement must be prepared by an independent certified public accountant registered and licensed under the laws of any state. Balance sheets, income statements, a statement of retained earnings, supporting schedules and notes, and the opinion of the independent auditor must accompany the financial statement.

(b) Financial statements must be for the current twelve month period and must reflect a ratio of total current assets to total current liabilities of 1.0 or greater.

(10) A wholly owned subsidiary firm may file the latest consolidated financial statement of its parent corporation in lieu of a financial statement prepared solely for the subsidiary. When a consolidated financial statement is submitted, the requirements of subsection (9) of this section and WAC 468-16-140 (2)(b) must be fulfilled.

(11) The applicant shall list the following occurrences within the previous three years:

(a) Instances of having been denied qualification, or a license, or instances of having been deemed other than responsible by any public agency.

(b) Convictions for felonies listed in WAC 468-16-050.

(c) Failure to complete a contract.

(12) The standard questionnaire shall be processed as follows:

(a) The application for qualification shall be prepared on a standard questionnaire provided by the department and sworn to before a notary public or other person authorized to take oaths.

(b) A standard questionnaire will be reviewed and a written notice provided to the applicant, within thirty days of its receipt, stating whether the applicant has been prequalified or qualification has been denied. The applicant will be advised of lack of receipt of data corroborating project completion and errors or omissions in the questionnaire and a request made for additional information necessary to complete evaluation of the applicant. If the information is not provided within twenty calendar days of the request, the application will be processed, if possible, with the information available or it will be returned to the applicant without further action.

(c) When qualification is denied, the applicant shall be advised in writing by certified mail (return receipt requested) of the reasons for the denial and of the right to a hearing upon written request.

(d) Applicants not satisfied with the qualification granted may request in writing, a review of their questionnaire and qualification ratings. The request must be filed within thirty calendar days of the date of receipt of the notice of qualification and must specifically state the basis for the request.

(e) The secretary or designee shall advise the applicant of his or her decision on the reconsideration within thirty calendar days of receipt of the request.

(13) Criteria for initial qualification, renewal, and submission of supplemental data:

(a) Qualification may be established in any calendar quarter and must be renewed annually. Information submitted in the questionnaire will be used as a basis for the contractor's initial prequalification, work class ratings, and maximum capacity ratings. Qualification will be valid for the remainder of the applicant's fiscal year plus one calendar quarter as established by the date of the year-end financial statement. Prequalification will be renewed annually thereafter or at other times as designated by the department.

(b) A standard questionnaire from a contractor, not previously qualified under this chapter, must have been received by the department no less than fifteen calendar days prior to the scheduled bid opening to receive consideration for issuance of a bidding proposal for that bid opening.

(c) The department may, during the period for which the contractor has been prequalified, require the submission of a new standard questionnaire. If the questionnaire is not provided within thirty calendar days of the date of request, the notice of qualification held by the contractor will be declared invalid and the contractor will not be permitted to bid with the department until the contractor is again prequalified.

(d) A supplemental questionnaire shall be submitted when a significant change in the structure of the firm occurs, e.g., incorporation, officers, ownership, etc., or when required by the department.

(e) If prequalification has lapsed for more than six months, the applicant will again be required to submit a fully executed standard questionnaire and financial statement.

(f) The applicant shall authorize the department to request and receive such additional information from any sources deemed necessary for the completion of the qualification process.

(g) Inquiries will be made and investigations, if necessary, will be conducted to verify the applicant's statements and to determine eligibility for qualification.

(h) The department may require a personal interview with a principal or principals of the contracting firm when considering its qualification.

(i) Qualified contractors in good standing shall be notified of impending expiration of their qualification and will be provided the necessary questionnaire forms for renewal at least forty-five days before the expiration date.

(14) Financial information supplied by, or on behalf of, a contractor for the purpose of qualification shall not be made available for public inspection and copying pursuant to RCW 42.17.310 (1)(m). The foregoing restriction shall not

prohibit the department's providing such information in evidence or in pretrial discovery in any court action or administrative hearing involving the department and a contractor. Insofar as permitted by public disclosure statutes, qualification ratings shall be treated as confidential information.

(15) Qualified contractors will be provided with notices which list projects currently being advertised.

AMENDATORY SECTION (Amending Order 128, filed 1/28/91, effective 2/28/91)

WAC 468-16-100 Conditional qualification. (1) A firm may be conditionally qualified when it has been given a below standard (less than 1.0 (~~or below~~)) performance score on a final performance report. A firm may also be qualified conditionally by the secretary when performance has become below standard in either "quality of work" or "progress of work" on an interim report for a current project. The district administrator may, under the foregoing condition, request in writing that a contractor be placed in conditional status. A conditionally qualified contractor will be denied bidding proposals while in that status but may receive, at the discretion of the secretary, a bidding proposal for one project (~~at a time if special circumstances warrant such action~~).

(2) The assistant secretary for operations shall advise the contractor and the district administrator when a contractor has been placed in conditional status.

(3) Should the contractor be the low successful bidder and be awarded a contract subsequent to being placed in conditional status, the issuance of further bidding proposals will be considered only when an interim report is submitted in accordance with WAC 468-16-160 or when a final performance report is submitted in accordance with WAC 468-16-150(12) and the rating thereon is standard or better.

(4) Normally a contractor may have only one active prime contract for the department while qualified conditionally.

(5) Return to fully qualified status of a conditionally qualified contractor will be effected by:

(a) A performance rating of standard or above on contracts completed during the current prequalification year; or

(b) An interim rating of standard or above (~~average~~) on all concurrent contracts; or

(c) A standard or above rating on the first interim report for a project awarded subsequent to conditional qualification.

(6) Should the rating continue to be less than standard, the contractor's prequalification will be suspended in accordance with WAC 468-16-180.

AMENDATORY SECTION (Amending Order 128, filed 1/28/91, effective 2/28/91)

WAC 468-16-120 Work class ratings. (1) Qualification shall be granted a contractor in one or more classes of work in which the firm has shown the capability to satisfactorily perform with its own forces under its own immediate supervision.

(2) The department's project estimate shall be the only estimate used to determine the value of the various classes of work within a project for determining a contractor's

eligibility to bid that specific project. The contractor will be required to perform a specified percentage of the total work as provided for in the current issue of the *Standard Specifications*.

(3) Contractors will be given work class ratings on the basis of their financial status, performance record, previous experience, organization, and condition and suitability of equipment. Higher performance ratings result in higher work class ratings.

(4) Data provided by project owners, other than the department, to inquiries made concerning new applicants seeking qualification, shall be used to determine initial work class ratings and maximum capacity ratings. (~~The applicant's experience multiplier shall be used to calculate the applicant's initial work class rating.~~) Initial work class ratings for new applicants and those of firms which have not renewed their qualification within two years, will be based on performance data provided by agencies or organizations having previously employed the applicant. Such other data as the department may have on file may also be used. Work submitted by the new contractor and verified by the department will be given an initial work class rating equal to 2.5 times the highest value of the work the contractor has completed within that work class during the past three years. If a specific portion of a work class is performed by the contractor, the prequalification for that class will be limited to that portion of the work.

(5) Work reported as less than satisfactory will not be accepted for qualification purposes, but may be included with (~~other satisfactory~~) performance reports in determining the status of the contractor's prequalification.

(6) Work class ratings previously granted will not be reduced providing the contractor has maintained a (~~satisfactory~~) standard (~~or~~) performance record on department work and the contractor continues to submit the required questionnaire annually. Should a significant reduction of resources occur, the contractor's work class ratings may be modified or reduced to an amount within the contractor's current capacity.

(7) A contractor's work class ratings will be reviewed annually effective on the date the renewal questionnaire has been received. Work class ratings for those contractors renewing prequalification will be reviewed for increases, decreases, and additional work classes not previously granted. In determining the annual status of the contractor's work class ratings, prime work completed for the department and the performance rating given for that work shall be weighted more heavily than work completed for other agencies.

(8) Work class ratings shall be computed by multiplying the highest value of the work class completed satisfactorily during the preceding prequalification year by a factor of 2.5(~~or~~) provided that the currently established work class rating is not higher. In that event, the currently established work class shall become the work class rating for the ensuing qualification year. Work class ratings will not change if the contractor has not performed in that work class during the prequalification year.

(9) Work class ratings for inactive contractors renewing prequalification will be computed annually in the same manner as for new applicants for a period not to exceed three years. Work class ratings granted within three succes-

sive renewal periods shall remain the same as for an inactive contractor if the contractor continues to submit the required questionnaire annually and the questionnaire does not reveal a significant reduction in organizational resources. When a significant reduction of resources occurs, the inactive contractor's work class ratings may be modified to an amount within the contractor's current capacity.

AMENDATORY SECTION (Amending Order 128, filed 1/28/91, effective 2/28/91)

WAC 468-16-130 Prequalification work classes. A contractor seeking prequalification under this chapter will be classified for one or more of the following listed work classes in accordance with the adequacy of the firm's equipment and plant facilities and its proven ability to perform the work class sought.

- Class 1 **Clearing, grubbing, grading & draining**
Removal of tree stumps, shrubs, modification of the ground surface by cuts and fills, excavating of earth materials, and the placement of drainage structures.
- Class 2 **Production and placing of crushed materials**
Production and placing crushed surfacing materials and gravel.
- Class 3 **Bituminous surface treatment**
Placing of crushed materials with asphaltic application.
- Class 4 **Asphalt concrete paving**
Production and placing Asphalt Concrete Plant Mix Pavement.
- Class 5 **Cement concrete paving**
Production and placing cement concrete pavement.
- Class 6 **Bridges and structures**
Construction of bridges, walls and other major structures of timber, steel, and concrete.
- Class 7 **Buildings**
Construction of buildings and related structures within the right of way and major reconstruction and remodeling of such buildings.
- Class 8 **Painting**
Painting bridges, buildings, and related structures.
- Class 9 **Traffic signals**
Installation of traffic signal and control systems.
- Class 10 **Structural tile cleaning**
Cleaning tunnels, large buildings and structures and storage tanks.
- Class 11 **Guardrail**
Construction of a rail secured to uprights and erected ~~((along the exposed sides and ends of platforms or))~~ as a barrier between, or beside lanes of a highway.
- Class 12 **Pavement marking (excluding painting)**
Thermoplastic markings, stripes, bars, symbols, etc. Traffic buttons, lane markers, guide posts.

- Class 13 **Demolition**
Removal of timber, steel, and concrete structures and obstructions.
- Class 14 **Drilling and blasting**
Controlled blasting of rock and obstructions by means of explosives.
- Class 15 **Sewers and water mains**
Draining, pipe jacking, water systems, pumping stations, storm drainage systems, sewer rehabilitation, sewage pumping stations, pressurized lines.
- Class 16 **Illumination & general electrical**
Highway illumination, navigational lighting, wiring, junction boxes, conduit installation.
- Class 17 **Cement concrete curb and gutter**
Sidewalks, spillways, driveways, monument cases and covers, right of way markers, traffic curbs, and gutters.
- Class 18 **Asphalt concrete curb and gutter**
Sidewalks, spillways, driveways, monument cases and covers, right of way markers, traffic curbs, and gutters.
- Class 19 **Riprap and rock walls**
Mortar, rubble, and masonry walls((:)); rock retaining walls, and ~~((the))~~ placing of large broken stone on earth surfaces for protection against the action of water.
- Class 20 **Concrete structures except bridges**
Cast-in-place median barrier, prestressing, post-tensioned structures, footings, prefabricated panels and walls, retaining walls, and ramps, foundations, rock bolts, and concrete slope protection.
- Class 21 **Tunnels and shaft excavation**
Tunnel excavation, rock tunneling, and soft bore tunneling.
- Class 22 **Piledriving**
Driving concrete, steel, and timber piles.
- Class 23 **Concrete surface treatment**
Exposed aggregate, fractured-fin and rope textured ~~((finished))~~ finishes; waterproofing concrete surfaces (clear or pigmented sealer).
- Class 24 **Fencing**
Wire and metal fencing, glare screens.
- Class 25 **Bridge deck repair**
Bridge expansion joint repair and modification, bridge deck resurfacing and repair.
- Class 26 **Deck seal**
Waterproof membrane.
- Class 27 **Signing**
Sign structures and signs.
- Class 28 **Electronics**
Surveillance and control systems design and installation, electronics training and maintenance.
- Class 29 **Slurry diaphragm and cut-off walls**
Slurry excavation and the construction of structural concrete walls and slurry cut-off walls.

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| <p>Class 30 Surveying
Highway construction surveying.</p> <p>Class 31 Water distribution and irrigation
Irrigation systems and heavy duty water distribution.</p> <p>Class 32 Landscaping
Landscape irrigation, planting, sodding, seeding, fertilizing, mulching, herbicide application, insecticide application, weed control, mowing, liming, soil binder, topsoil.</p> <p>Class 33 Engineering
Work other than surveying, including engineering calculations, drawing and other related work for highway construction.</p> <p>Class 34 Erosion control
Seeding, fertilizing, mulching, slope protection, topsoil application, hydro-seeding, soil stabilization, soil sampling.</p> <p>Class 35 Precast median barrier
A concrete barrier that is cast and cured in other than its final position used to divide the median of two adjacent highways or temporarily placed to divert traffic in construction zones.</p> <p>Class 36 Permanent tie back anchor
Installation of permanent rock and soil anchors, soldier piles and timber lagging. Soldier pile tie back anchor wall construction.</p> <p>Class 37 Impact attenuators
Installation of approved protective systems filled with sand, water, ((or)) foam, <u>or other substances</u> which prevent errant vehicles from impacting roadside hazards.</p> <p>Class 38 Paint striping
Painted bars, letters, symbols, and striping.</p> <p>Class 39 Wire mesh slope protection
The installation of a zinc coated steel wire mesh anchored by wire rope and reinforced concrete posts or anchor rods. Used for dampening the effects of rolling rocks onto the highway.</p> <p>Class 40 Gabion and gabion construction
Construction of walls made with containers of galvanized steel hexagonal wire mesh and filled with stone.</p> <p>Class 41 Not used</p> <p>Class 42 Electronics—fiber optic based communications systems
Design and installation of fiber optic based communication systems.</p> <p>Class 43 Mechanical
Plumbing work and the installation of heating or air conditioning units.</p> <p>Class 44 Not used</p> <p>Class 45 Not used</p> | <p>Class 46 Concrete restoration
Pavement subseal, cement concrete repair, epoxy coatings, epoxy repair, masonry repair, masonry cleaning, special coatings, epoxy injection, gunite, shotcrete grouting, pavement jacking, gunite repair, and pressure grouting.</p> <p>Class 47 Concrete sawing, coring, and grooving
Concrete sawing, concrete planing and grooving, bump grinding, joint repair, concrete coring.</p> <p>Class 48 Dredging
Excavating underwater materials.</p> <p>Class 49 Marine work
Underwater surveillance, testing, repair, subaquatic construction.</p> <p>Class 50 Not used</p> <p>Class 51 Well drilling
Drilling wells, installing pipe casing and pumping stations.</p> <p>Class 52 Sewage disposal
Hauling and disposing liquid and solid wastes.</p> <p>Class 53 Traffic control
Providing piloted traffic control, traffic control labor, and maintenance and protection of traffic.</p> <p>Class 54 Railroad construction
Construction of railroad subgrade, placing of ballast, ties, and track and other items related to railroad work.</p> <p>Class 55 Steel fabrication
Welding of steel members, heat straightening steel.</p> <p>Class 56 Street cleaning
Street sweeping with self-propelled sweeping equipment.</p> <p>Class 57 Materials transporting
Truck hauling.</p> <p>Class 58 Sand blasting and steam cleaning
<u>Steam cleaning, sand blasting, shot blasting, and water blasting.</u></p> |
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AMENDATORY SECTION (Amending Order 128, filed 1/28/91, effective 2/28/91)

WAC 468-16-140 Maximum capacity rating. (1) The maximum capacity rating shall be determined by multiplying the contractor's reported net worth by a factor of 5.0. The factor may be increased at a rate of 0.5 annually, provided the contractor has maintained a satisfactory performance record with the department and has completed a contract of fifty thousand dollars or more within the preceding prequalification year. The maximum factor shall be 7.5. The department may at any time decrease the rating factor if the contractor's performance becomes less than ~~((satisfactory-))~~standard((~~3~~)), however no decrease in the bidding capacity will become effective until ~~((agreed to by both parties or until))~~ action to appeal, as specified in these rules, has been completed.

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(2) For the purpose of prequalification and establishing the maximum capacity rating, the following additional resources may be added to net worth if supported with documentation as specified:

Superior	((1.550 — 2.000))
	<u>1.31 = 1.50</u>
Above Standard	((1.101 — 1.549))
	<u>1.01 = 1.30</u>
Standard	((1.000 — 1.100))
	<u>1.00</u>
Below Standard	((0.550 — 0.999))
	<u>.70 = .99</u>
Inadequate	((0.000 — 0.549))
	<u>.50 = .69</u>

(a) An operating line of credit - Documentation from an acceptable financial institution stating the amount of credit authorized, its expiration date, and the amount currently available. The document must be authenticated by an official authorized to execute lines of credit on behalf of the institution. Should the operating line of credit be revoked, it shall be deducted before computing a new annual maximum capacity rating.

(b) A parent firm pledge of net worth - A sworn statement from the parent firm that guarantees the performance of the subsidiary for any contracts awarded it. The document shall include a parent firm pledge in an amount such that when calculated in subsection (1) of this section will not be less than the value of uncompleted contracts of the subsidiary. An audited financial statement, as prescribed in WAC 468-16-090 (9)(a), may be requested ~~((, when deemed appropriate,))~~ from the parent firm when deemed appropriate.

(c) A personal pledge of net worth - A sworn statement pledging a specific amount of personal assets. The statement must be accompanied by acceptable documents that will verify the ownership and value of the assets.

(3) Resources listed above will not be accepted in lieu of a minimum net worth of fifty thousand dollars.

(4) When the value of a firm's uncompleted work for the department exceeds its maximum capacity rating, a bidding proposal shall be denied that firm.

(5) The performance score (PS) is computed by multiplying the performance rating (PR) obtained from the prime contractor's performance report by a factor (F) of ~~((.001))~~ .01 e.g. ~~((1.685)), 1.29~~ (PR) x ~~((.001))~~ .01 (F) = ~~((1.685))~~ 1.29 (PS).

(6) The annual performance score is the average of the scores, by work class, obtained from all performance reports submitted for department projects completed during the one-year period next preceding the date of expiration of the contractor's qualification.

(7) The performance report shall be used ~~((as an additional tool))~~ in fixing a contractor's prequalification status.

(8) The report shall contain a narrative section which verbally provides the details substantiating the numerical rating. The narrative section shall be based upon documentation prepared during the life of the project, such as the project engineer's diary, the inspector's daily report and other pertinent documents. This documentation shall constitute the major portion of the administrative record to be used for any hearings or litigation that may arise from the rating process.

(9) The performance report will be prepared and discussion held with the contractor by the project engineer ~~((who))~~. The report will include a numerical rating ~~((s))~~ substantiated by a narrative report which describes the contractor's typical performance. The narrative will reference such documents as will substantiate the given numerical rating.

(10) The report will be endorsed by the district operations engineer or ~~((designee))~~ designated assistant who will provide a copy to the contractor ~~((and discuss all ratings with the contractor))~~.

(11) The contractor may appeal the rating to the district administrator in writing within twenty calendar days of the date ~~((of the report))~~ the report is received by the contractor. If the report is not delivered to the contractor in person, it shall be forwarded by certified mail with a return receipt requested. The appeal must set forth the specific basis upon which it has been made.

(12) The district administrator will review all contractor performance reports after they have been endorsed and may modify the numerical or narrative rating if such is deemed appropriate ~~((, advising))~~. The contractor ~~((when appropriate))~~ will be advised of any changes made. The district administrator will ~~((enter narrative))~~ be required to make comments thereon only when the contractor's overall performance rating has been rated ~~((below standard,))~~ inadequate, below standard, or superior.

(13) Performance reports, when completed at district level, will be submitted to the secretary, Attn: Manager, precontract administration office, not later than ~~((thirty))~~

AMENDATORY SECTION (Amending Order 128, filed 1/28/91, effective 2/28/91)

WAC 468-16-150 Prime contractor performance reports. (1) Performance reports described in this section, substantially in the format as that appearing at WAC 468-16-210, will be completed for prime contractors only for projects valued at one hundred thousand dollars or more. Each prime contractor's performance report will be classified as to the primary work class being rated. This shall be stated in Section I of the report by listing the major classes of work performed by the contractor e.g., clearing, grading, surfacing, etc.

(2) Performance will be rated under the following headings: Administration, management, and supervision; quality of work; progress of work; and equipment.

(3) The following adjectival ratings are established for performance reports:

- (a) Superior.
- (b) Above standard.
- (c) Standard.
- (d) Below standard.
- (e) Inadequate.

(4) The report shall contain a numerical section which quantifies the adjectival ratings into a total performance rating which is multiplied by ~~((.001))~~ .01 to obtain a performance score falling within one of the following ranges:

forty-five calendar days following final completion of the project.

(14) The district administrator shall review the appeal(s) and provide a written response to the contractor by certified mail (return receipt requested) within (ten) twenty calendar days of its receipt (of an appeal). A copy of the appeal and the response thereto will be forwarded to the secretary, Attn: Precontract administration office.

(15) ~~((Upon receipt of a copy of the district administrator's response and further appeal by the contractor, the secretary shall appoint a committee of three individuals who have not been directly involved with the project to review the response and the performance report. The committee shall be composed of one member chosen randomly from the list of prequalified contractors, a member chosen from the department, and a third member chosen by both members. The department's member shall chair the committee. The review shall consider the objectivity, accuracy, and completeness of the report, the appeal, and the response. The board shall use the project engineer's diary, the inspector's journal, and other written documentation including such data as may be provided by the contractor, as a basis for its determination and written recommendation which shall be submitted to the secretary within fifteen calendar days of their appointment.~~

(16) The committee's report shall be advisory.

(17) The contractor may further appeal to the secretary in writing setting forth the specific basis for the appeal. The contractor's appeal shall be made within ten calendar days of the date of receipt of the district administrator's response. When making an appeal, the contractor may also present information in person. The secretary will consider the appeal and respond to it by certified mail within thirty calendar days of its receipt. This determination shall be the final administrative act of the department.

(16) All prime contractor performance reports shall be reviewed by the office of the secretary for completeness, objectivity, and substantiation of numerical ratings. The secretary may modify the report as deemed appropriate as a result of the review.

(17) A prime contractor performance report shall be considered a preliminary paper until all reviews and appeals have been accomplished and it shall have been stamped and initialed as having been "filed in the office of the secretary."

AMENDATORY SECTION (Amending Order 128, filed 1/28/91, effective 2/28/91)

WAC 468-16-160 Interim reports. (1) Interim performance reports will be completed for contracts of long duration, particularly those in excess of one year and submitted to the manager, precontract administration office. They will be completed annually on the anniversary of the start date of the contract ~~((as prescribed in WAC 468-16-109)).~~ An interim report will also be completed when a contractor's work has become less than standard and the firm has been advised in writing of such performance. The report will be used by the secretary as a basis for determining whether a contractor will be placed in conditional status.

(2) In the case of a conditionally qualified firm, an interim report shall be submitted at sixty ~~((working))~~ calendar day intervals for ~~((all))~~ the project(s) being

undertaken by that firm subsequent to its being placed in conditional status. ~~((Projects of short duration will be rated as prescribed in subsection (2) of this section.))~~ When a contractor's performance has not improved sufficiently to be removed from conditional status after two consecutive interim reports have been prepared, no further interim reports shall be made except at the written request of the contractor. The initial date of the requested report will be the date of the contractor's request.

(3) The project engineer shall submit an interim report when it becomes evident that he or she will no longer be involved in the project, providing that project has been in progress for twenty-five percent of the working days assigned the project or ninety working days whichever is less.

(4) Interim performance reports will supplement and will be made a part of the final performance report.

(5) DOT Form 421-010 ~~((revised 7/90))~~ is authorized ~~((for use effective July 1, 1991, until such time DOT Form 421-010 revised 9/86 will be used)).~~

AMENDATORY SECTION (Amending Order 128, filed 1/28/91, effective 2/28/91)

WAC 468-16-170 Refusal to issue proposal. The secretary may refuse to issue a proposal for reasons as enumerated in WAC 468-16-040 through 468-16-070, inclusive. Refusal to issue a proposal may continue in effect until the cause for the refusal has been eliminated. One or more of the following additional conditions may be considered sufficient for refusal to issue a proposal:

(1) The value of outstanding work plus the contract total of the work proposed to be bid exceeds the contractor's maximum capacity rating.

(2) Being placed in conditional status.

(3) Making false, fraudulent, or deceptive statements on the standard questionnaire, related documents, or documents prepared in the course of prosecuting the work.

(4) Debarment or suspension from participation in federal projects.

(5) Expiration of qualification.

(6) Failure to update the latest questionnaire to fairly represent the contractor's current organization and financial status.

(7) Noncompliance with equal employment opportunity (EEO), or minority and women's business enterprise (MWBE), or disadvantaged business enterprise (DBE) regulations.

(8) Bankruptcy.

(9) The existence of any conditions described in WAC 468-16-040 through 468-16-070 inclusive.

AMENDATORY SECTION (Amending Order 128, filed 1/28/91, effective 2/28/91)

WAC 468-16-180 Suspension of qualification. (1) A suspension may be ordered for cause or for a period pending the completion of investigation and any ensuing legal action for revocation of qualification.

(2) The secretary may, upon determination from reports, other documents, or through investigation that cause exists to suspend the qualification of a contractor, impose suspension upon a contractor.

- (3) The secretary may suspend qualification for:
- Incompetency found detrimental to timely project completion or to the safety of the public or employees.
 - Inadequate performance on one or more projects.
 - Infractions of rules, regulations, specifications, and instructions which may adversely affect public health, welfare, and safety.
 - Uncompleted work which might prevent the prompt completion of other work.
 - Continual failure to comply with equal employment opportunity or women's, minority and disadvantaged business enterprise requirements.
 - Debarment or suspension from participation in federal projects.
 - Pending completion of debarment proceedings in federal projects.
- (4) The maximum period of suspension for acts or deficiencies enumerated above are as follows:
- For subsection (3)(a) of this section - ~~((Two))~~ Three months.
 - For subsection (3)(b), (c), (d), and (e) of this section - ~~((Three))~~ Six months.
 - For subsection (3)(f) of this section - For duration of debarment or suspension by the federal or other state agency.
 - For subsection (3)(g) of this section - Until a determination is made by the federal or other state agency.
- (5) The secretary may reduce the period of suspension upon the contractor's supported request for reasons including, but not limited to:
- Newly discovered evidence;
 - Elimination of causes for which the suspension was imposed.

AMENDATORY SECTION (Amending Order 128, filed 1/28/91, effective 2/28/91)

- WAC 468-16-190 Revocation of qualification.** (1) The secretary, upon determination from reports, other documents, or investigation that cause exists to revoke the qualification of a contractor, may revoke the contractor's qualifications for a maximum period of two years.
- (2) The secretary may revoke the qualification of a contractor upon a plea by the firm of nolo contendere, conviction, judgment, or admission for any of the following causes:
- Existence of any condition cited in WAC 468-16-050.
 - Intentional falsification with intent to defraud or unauthorized destruction of project related records.
- (3) Revocation of qualification may also be imposed for the following reasons:
- Default on a contract within three years prior to the date of application for qualification.
 - Bankruptcy or insolvency.
 - Breach of contract.
 - Having been suspended two or more times within a two-year period.
- (4) When qualification has been revoked, a contractor shall be required to reapply for qualification upon again reaching eligibility status (~~when qualification has been revoked~~).

- (5) Revocation of qualification shall be final after twenty calendar days following receipt of notification thereof by certified mail unless a hearing has been requested.
- (6) The secretary may reverse the decision to revoke qualifications upon the contractor's supported request for reasons including, but not limited to:
- Newly discovered evidence;
 - Reversal of the conviction or judgment upon which the revocation was based; and
 - Elimination of causes for which the revocation was imposed.

AMENDATORY SECTION (Amending Order 128, filed 1/28/91, effective 2/28/91)

- WAC 468-16-200 Hearings procedure.** (1) A contracting firm((s)) which has been notified by the secretary that the department is contemplating suspending or revoking its qualification, may request in writing within twenty calendar days of the date of notification by certified mail, that a hearing be conducted. Unless the department is otherwise prohibited from contracting with the contractor, the suspension or revocation shall not become effective until the final decision of the secretary has been rendered. The hearing shall be conducted in accordance with the procedure set forth in this section.
- (2) The secretary shall designate a hearing official to conduct any hearing held under this chapter. The hearing official shall furnish written notice by certified mail of a hearing to the contractor and any named affiliates at least twenty calendar days before the effective date of suspension or revocation of qualifications. The notice shall state:
- That suspension or revocation of qualification is being considered.
 - The effective date of the proposed action.
 - The facts giving cause for the proposed action.
 - The cause or causes relied upon for proposing the action, i.e., fraud, statutory violations, etc.
 - If suspension is proposed, the duration of the suspension.
 - That the contractor may, within twenty calendar days of receipt of the notice, submit to the hearing official by certified mail, return receipt requested, information and argument in opposition to or in clarification of the proposed action.
 - When the action is based on a conviction, judgment, or admission, fact-finding shall be conducted if the hearing official determines that the contractor's submission raises a genuine dispute over material facts upon which the suspension or revocation is based or whether the causes relied upon for proposing suspension or revocation exist.
 - The time, place, and date of the hearing.
 - The name and mailing address of the hearing official.
 - That proposals shall not be issued nor contracts awarded to the contractor subsequent to the dispatch of the notice of hearing pending the final decision of the secretary.
- (3) The hearing official may extend the date of any hearing upon request of the contractor, but the hearing shall not be extended beyond forty-five calendar days from the date of the notice. The hearing official shall schedule and conduct the hearing within thirty calendar days of the date

of the notice, except when an extension is granted as provided in this subsection.

(4) In the course of the hearing, the hearing official shall:

- (a) Regulate the course and scheduling of the hearings;
- (b) Rule on offers of proof, receipt of relevant evidence, and acceptance of proof and evidence as part of the record;
- (c) Take action necessary to insure an orderly hearing; and

(d) At the conclusion of the hearing, issue written findings of fact and recommended administrative action to the secretary. The hearing officer shall deliver the entire record to the secretary.

(5) The contractor shall have the opportunity to be present and appear with counsel, submit evidence, present witnesses, and cross-examine all witnesses. A transcribed or taped record shall be made of the hearing unless the secretary and the contractor waive the transcript or taping requirement. The transcript or tape shall be made available, at cost, to the contractor and all named affiliates upon request (~~at cost~~).

In actions where it has been established by conviction, judgment or admission, or where it has been established by findings made in accordance with this chapter, that the named contractor has engaged in conduct described in WAC 468-16-050 and the sole issue before the hearing official is the appropriateness of revocation of qualification or the length of suspension of qualification to be recommended to the secretary, prior judicial or administrative decision or findings shall not be subject to collateral attack.

The secretary, after receiving the record, findings of fact, and recommendations of the hearing official shall determine the administrative action to be taken. The secretary shall notify the contractor of his determination in writing.

Upon denial, suspension or revocation of prequalification, the respondent may appeal therefrom to the superior court of Thurston County pursuant to RCW 47.28.070. If the appeal is not made within the time prescribed in that statute, the department's action (~~is~~) shall be conclusive.

WSR 93-03-031

PERMANENT RULES

DEPARTMENT OF HEALTH

[Order 324—Filed January 12, 1993, 2:57 p.m.]

Date of Adoption: January 4, 1993.

Purpose: To establish application procedures for licensing temporary-worker housing; explain the department's responsibilities and authority; and establish the process for paying fees.

Citation of Existing Rules Affected by this Order: Amending WAC 246-358-025 and 246-358-990; and new section WAC 246-358-030.

Statutory Authority for Adoption: RCW 43.70.340.

Other Authority: RCW 43.70.040.

Pursuant to notice filed as WSR 92-21-088 on October 21, 1992.

Changes Other than Editing from Proposed to Adopted Version: Changed to allow the department to establish

maximum occupancies for fully self-contained worker-supplied housing. This implements a change in Washington State Board of Health rules pertaining to an operator's responsibilities when workers provide their own housing.

Effective Date of Rule: Thirty-one days after filing.

January 4, 1993

Kristine Gebbie

Secretary

AMENDATORY SECTION (Amending Order 242B, filed 2/5/92, effective 3/7/92)

WAC 246-358-025 (~~(Permit Administration—Enforcement Exemptions)~~) Operating license. (1) ~~(The)~~ An operator shall ~~(:)~~ have an operating license before allowing the use of housing except as specified in subsection (3) of this section.

~~((a) Submit a completed initial application to the department)~~ (2) An operator shall apply for an operating license at least forty-five days prior to either the use of ~~((the temporary worker))~~ housing ~~(;~~

~~(b) Submit a completed renewal notice to the department or health officer as required;~~

~~(c) Have a permit from the department or health officer prior to initial occupancy;~~

~~(d) Post the department's health and sanitation the permit in a place readily accessible to workers; and~~

~~(e) Notify the department or health officer of a transfer of ownership.—There will be no fee charged for transferring ownership.~~

~~(2) The)~~ or the expiration of an existing operating license by submitting to the department or contracted health officer:

(a) A completed application on a form provided by the department;

(b) Proof of satisfactory results of a bacteriological water quality test as required by WAC 246-358-055(2); and

(c) A fee as specified in WAC 246-358-990.

(3) An operator may ~~(;~~

~~(a))~~ allow the use of ~~((temporary worker))~~ housing without a permit when all of the following conditions exist:

~~((i) More than))~~ (a) The operator applied for an operating license in accordance with subsection (2) of this section at least forty-five days ~~((have passed since a completed initial application was submitted and received by the department or health officer))~~ before occupancy, as evidenced by the post mark; ~~(and~~

~~((ii))~~ (b) The department or contracted health officer has not inspected the housing or issued ~~((a permit))~~ an operating license;

~~((iii))~~ (c) Other local, state, or federal laws, rules, or codes do not prohibit use of the ~~((temporary worker))~~ housing; and

~~((iv) Request refund of fees if housing is not occupied during the year.~~

~~(b) Request in writing an exemption for one or more of the sections or a portion of a section of this chapter from the Washington state board of health except the requirement for a permit; and~~

~~(e))~~ (d) The operator provides and maintains housing in compliance with this chapter.

(4) An operator shall:

(a) Post the operating license in a place readily accessible to workers;

(b) Notify the department or contracted health officer in the event of a transfer of ownership; and

(c) Cooperate with the department during on-site inspections.

(5) An operator may appeal decisions of the department ((to an adjudicative proceeding governed by the Administrative Procedure Act (A)) in accordance with chapter 34.05 RCW((3)) and chapter ((388-08)) 246-08 WAC.

((3) The department:

(a) May establish an agreement with a health officer whereby the health officer assumes responsibility for inspections, issuing permits, and enforcing chapter 246-358 WAC excluding exemptions.

(b) Shall consult with local health, fire, safety, and building agencies to define each party's responsibilities in temporary worker housing with respect to complaints, on site sewage, drinking water, solid waste, food service, and other related environmental health issues.

(4) The department or health officer shall:

(a) Survey each premises of temporary worker housing to ensure standards of this chapter are met, including inspection:

(i) Prior to issuance of initial permit;

(ii) Upon request of operator or occupant; and

(iii) At least once every year or more frequently as determined by the department or health officer.

(b) Respond to complaints;

(c) Issue a permit to the operator when an on site inspection reveals conditions meet or exceed the requirements in chapter 246-358 WAC;

(d) Include on each permit the duration for which the permit is valid not to exceed two years;

(e) Take appropriate enforcement action including any one or combination of the following:

(i) Develop corrective action including a compliance schedule;

(ii) Notify the operator concerning violations; and

(iii) Suspend or revoke the permit.

(f) Allow the operator to use temporary worker housing without a permit as specified in subsection (2) of this section.

(g) Allow permit to continue under the new ownership or transfer owner.

(5) The department or health officer may:

(a) Issue a provisional permit when temporary worker housing fails to meet the standards in this chapter if:

(i) A written corrective action plan including a compliance schedule is approved by the department or health officer; or

(ii) Pending the Washington state board of health's decision regarding an exemption request.

(b) Establish and collect fee as authorized in RCW 43.70.340;

(c) Refund all or part of a permit fee for housing not occupied during the year if requested by the operator.))

NEW SECTION

WAC 246-358-030 Department authority. (1) The department may establish an agreement with a health officer whereby the health officer assumes responsibility for inspections, issuing operating licenses, and enforcing this chapter.

(2) The department or contracted health officer shall issue an operating license when the department or contracted health officer determines the operator has met the minimum requirements in this chapter.

(3) The department or contracted health officer shall specify on the operating license the:

(a) Operator's name;

(b) Number of approved units;

(c) Maximum occupancies approved for operator-supplied, basic worker-supplied, and fully self-contained worker-supplied housing; and

(d) Expiration date, which shall be one calendar year from the date of issuance.

(4) The department or contracted health officer shall determine the maximum occupancy for:

(a) Operator-supplied housing based on the square footage and the number of bathing, foodhandling, handwashing, laundry, and toilet facilities;

(b) Basic worker-supplied housing based on:

(i) The number of spaces designated by the operator for basic worker-supplied housing; and

(ii) The number of bathing, foodhandling, handwashing, laundry, and toilet facilities, in excess of those facilities required for operator-supplied housing; and

(c) Fully self-contained worker-supplied housing based on the number of spaces:

(i) Designated by the operator for fully self-contained worker-supplied housing; and

(ii) Meeting the requirements in WAC 246-358-085(2).

(5) The department or contracted health officer may issue a provisional operating license when housing fails to meet the standards in this chapter when:

(a) The operator agrees to comply with a written corrective action plan and compliance schedule; or

(b) An exemption request by the operator is pending action by the board.

(6) The department or contracted health officer shall survey each housing site to ensure standards of this chapter are met, including inspection:

(a) Before issuing an annual operating license;

(b) Upon request of an operator or occupant; and

(c) At least once each year or as determined by the department or contracted health officer.

(7) The department or contracted health officer shall respond to complaints.

(8) The department or contracted health officer shall take appropriate enforcement action which may include any one or combination of the following:

(a) Develop, with the operator, a corrective action plan including a compliance schedule;

(b) Notify the operator concerning violations;

(c) Suspend or revoke the operating license; or

(d) Other action deemed necessary to bring housing into compliance with this chapter.

(9) The department shall confer with local health, fire, safety, and building agencies to understand each party's responsibilities for housing complaints, on-site sewage, drinking water, solid waste, food service, and other related environmental health issues.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-358-990 (~~Labor camp health and sanitation permit and survey~~) **Operating license fees.** (~~Starting December 1, 1987, owners or operators of labor camps, as defined in chapter 248-63 WAC, shall pay fees to the department as follows:~~

(1) A state health and sanitation permit of fifty dollars plus one dollar and fifty cents for each dwelling unit intended for occupancy by temporary workers.

(2) A labor camp survey charge of:

(a) Five dollars per dwelling unit up to and including twenty nine units intended for occupancy by temporary workers, or

(b) One hundred fifty dollars for each camp with thirty or more dwelling units intended for occupancy by temporary workers.

(3) Owners or operators of labor camps shall submit the health and sanitation fee with initial application for permit or upon receipt of a renewal notice.

(4) Owners or operators of labor camps shall submit the labor camp survey fee:

(a) With initial application for new labor camps, or

(b) Within thirty days after the department completes each survey for existing labor camps.

(5) The department shall:

(a) Issue the health and sanitation permit for two calendar years, and

(b) Collect no more than one survey fee from each labor camp annually.

(6) Labor camps regulated by local health officers in accordance with WAC 248-63-020 are excluded from the requirements in this section.) (1) An operator shall pay the following annual fee as established by RCW 43.70.340(2):

(a) Fifty dollars for housing with six or less units; or

(b) Seventy-five dollars for housing with more than six units.

(2) An operator shall submit the fee to the department with the annual application for an operating license.

(3) An operator may request a refund if housing has not been occupied and inspected.

(4) An operator regulated by a contracted health officer is exempt from subsections (2) and (3) of this section.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-358-035; and amending WAC 246-358-001, 246-358-010, 246-358-020, 246-358-045, 246-358-055, 246-358-065, 246-358-075, 246-358-085, 246-358-095, 246-358-105, 246-358-115, 246-358-125, 246-358-135, 246-358-140, 246-358-145, 246-358-155, 246-358-165, and 246-358-175.

Statutory Authority for Adoption: RCW 70.54.110.

Pursuant to notice filed as WSR 92-21-087 on October 21, 1992.

Changes Other than Editing from Proposed to Adopted Version:

REASON	WAC 246-358-	CHANGES
Clarifications & housekeeping changes.	010 075(14)(b)&(c)	Deleted "worker-supplied housing does not mean a tent" (Tents are prohibited in WAC 246-358-085). Changed "outlets as needed" to "one or more outlets"
To allow vault privies & chemical toilets closer to housing than pit privies. JUSTIFICATION: Request from the public. No public health risk.	095(1)(e) 095(1)(f)	Added "pit" before "privies" Added "When vault privies or chemical toilets are approved: (i) Locate at least fifty feet from any dwelling unit, dormitory, space, or foodhandling facility; (ii) Maintain a service contract for sewage pumping with a licensed waste disposal company; and (iii) Comply with local ordinances;" (Changed numbering as necessary)
To allow 6'4" ceilings for operator-supplied recreational vehicles. JUSTIFICATION: Request from the public. No public health risk.	075(5) (pg 8)	Amended to read: "Provide ceiling heights of seven feet over at least one-half the floor area with no point less than five feet, and ensure the minimum ceiling height in: (a) Manufactured homes is six feet eight inches; and (b) Operator-supplied recreational vehicles is six feet four inches;"
To change so that toilets may be considered urinals. JUSTIFICATION: This is not a change to current rules.	095(2)(a) Table I	Added "and" before "toilets" and delete "and urinals" after "toilets" Deleted the ratios for required urinals in the table.
To qualify that an operator shall assist an occupant to get medical treatment when the operator is aware the occupant is ill. JUSTIFICATION: Requested by the public.	175 (3)	Changed to read: "When aware of an occupant's illness, assist the occupant to obtain medical diagnosis and treatment;"

REASON	WAC 246-358-	CHANGES
To allow fully self-contained worker-supplied housing without requiring operators to provide centralized facilities. JUSTIFICATION: Clarification of the Board's position. Requested by the public.	010(22) 055(4) 055(5) 075(18) 085(2) 085(3) Table I	Amended to read "'Worker-supplied housing' means an enclosed vehicle designed for sleeping and/or living, supplied and used by a temporary worker, and may be: (a) 'Fully self-contained worker-supplied housing' which means a unit with bathing, foodhandling, handwashing and toilet facilities that meet the requirements of this chapter; or (b) 'Basic worker-supplied housing' which means a unit without bathing, foodhandling, handwashing and toilet facilities that meet the requirements of this chapter." Added "for basic worker-supplied housing" after "space" Added "Provide cold, potable, running water under pressure to each space used for fully self-contained worker-supplied housing;" Added "operator-supplied" after "ensure that" Added "Provide water, electricity, and sewage disposal at each space used for fully self-contained worker-supplied housing." Added "for basic worker-supplied housing" after "license" Added "basic" after "operator-supplied and"

WSR 93-03-032

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Health)

[Order 326B—Filed January 12, 1993, 3:02 p.m.]

Date of Adoption: December 9, 1992.

Purpose: To clarify regulations, include minimum WISHA standards, and make changes necessary to improve the regulation of temporary worker housing.

Effective Date of Rule: Thirty-one days after filing.

January 7, 1993

Sylvia Beck

Executive Director

PERMANENT

AMENDATORY SECTION (Amending Order 242B, filed 2/5/92, effective 3/7/92)

WAC 246-358-001 Purpose and scope. ~~((Chapter 246-358 WAC establishes the Washington state board of health minimum health and sanitation requirements for temporary worker housing or labor camps as specified in RCW 70.54.110. These rules implement chapter 253, Laws of 1990, to establish a set of standards for farmworker housing and the intent of RCW 70.54.110.))~~ (1) This chapter contains:

(a) Minimum health and sanitation requirements for temporary worker housing adopted by the Washington state board of health in accordance with RCW 70.54.110;

(b) Procedures for applying for an operating license to provide temporary worker housing, adopted by the Washington state department of health in accordance with RCW 43.70.340(3); and

(c) Operating license fees as set by RCW 43.70.340(2) to cover the costs of an inspection program to ensure compliance with this chapter, adopted by the Washington state department of health.

(2) This chapter applies to temporary worker housing started on or after May 3, 1969, that consists of:

(a) Five or more dwelling units; or

(b) Any combination of dwelling units, dormitories, or spaces that house ten or more occupants.

(3) This chapter does not apply to housing regulated by chapter 59.18 RCW, Residential Landlord-Tenant Act, or chapter 59.20 RCW, Mobile Home Landlord-Tenant Act.

AMENDATORY SECTION (Amending Order 242B, filed 2/5/92, effective 3/7/92)

WAC 246-358-010 Definitions. (1) "Board" means the Washington state board of health.

(2) "Construction" means building ~~((of new temporary worker housing and additions, or alterations to existing temporary worker housing when the housing started on or after May 3, 1969)),~~ altering, or adding to a structure, or changing the use of ~~((a building to temporary worker housing (reference chapter 70.54 RCW)))~~ an existing structure, to house temporary workers.

~~((2))~~ (3) "Contracted health officer" means a health officer who has a signed agreement with the department to inspect housing, issue operating licenses, and enforce this chapter.

(4) "Department" means the Washington state department of health.

~~((3))~~ (5) "Dormitory" means a shelter, building, or portion of a building, without cooking and eating facilities, which is:

(a) ~~((Is))~~ Provided and designated by the operator as a sleeping area for five or more occupants; and

(b) Physically separated from ~~((dwelling units))~~ other sleeping and common use areas(;

(b) Is designated by the operator as a sleeping area for groups of temporary workers and/or those who accompany temporary workers;

(c) Houses at least five occupants; and

(d) Lacks cooking and eating facilities).

~~((4))~~ (6) "Dwelling unit" means a shelter, building, or portion of a building, that may include cooking and eating facilities, which is:

(a) ~~((Is))~~ Provided and designated by the operator as a sleeping and/or living area for occupants; and

(b) Physically separated from other ~~((units, dormitories,))~~ sleeping and common-use areas(;

(b) Is designated by the operator for use by temporary workers and/or those who accompany temporary workers as sleeping and/or living space; and

(c) May contain cooking and eating facilities).

~~((5))~~ (7) "Drinking fountain" means a ~~((product))~~ fixture equal to a nationally recognized standard or a ~~((designed and drained))~~ designed-to-drain faucet which provides potable drinking water under pressure. "Drinking fountain" does not mean a bubble-type water dispenser.

~~((6))~~ (8) "Emergency" means a natural disaster or other sudden and unexpected occurrence demanding immediate action. ~~((An))~~ "Emergency" ~~((condition would not include))~~ does not mean an unexpected demand for housing because additional workers are needed to harvest a crop larger than anticipated.

~~((7))~~ (9) "Exemption" means a written authorization from the ~~((Washington state))~~ board ~~((of health))~~ which excludes an operator from meeting a specific ~~((standard))~~ requirement or requirements in this chapter.

~~((a))~~ An exemption may be from:

(i) One or more subsections of this chapter;

(ii) A specific condition; and/or

(iii) A specific time limit.

(b) An exemption may not be granted for the permit requirements as defined in WAC 246-358-025(1).

(8)) (10) "Foodhandling facility" means a designated, enclosed area for preparation of food~~((, either:))~~.

(a) "Central foodhandling facility(;)" means a cafeteria-type eating place with ~~((operator furnished))~~ food furnished by and prepared under the direction of the operator for consumption, with or without charge, by ~~((temporary workers; or))~~ occupants.

(b) "Common foodhandling facility(;)" means an area designated by the operator for ~~((temporary workers))~~ occupants to store, prepare, cook, and eat their own food supplies.

~~((9))~~ "Health and sanitation permit" or "operating license" means a document issued by the department or the health officer authorizing the use of temporary worker housing under conditions specified in this chapter. An exemption shall not be granted for the permit requirement. A permit will specify:

(a) The length of time the permit is valid;

(b) Operator's name; and

(c) Number of persons authorized to occupy temporary worker housing according to square footage requirements.

~~((10))~~ (11) "Health officer" means the individual appointed as such for a local health department under chapter 70.05 RCW ~~((as the health officer for a local health department))~~ or appointed ~~((under chapter 70.08 RCW))~~ as the director of public health of a combined city-county health department under chapter 70.08 RCW.

~~((11))~~ (12) "Laundry" means an area or room with one or more laundry sinks and/or mechanical washing machines used to wash clothing.

~~((12))~~ (13) "Occupant" means a temporary worker or a person who resides with a temporary worker at the housing site.

(14) "Operator" means owner, or the individual designated ((as the person)) by the owner, responsible for the owner's temporary-worker housing ((and whose name appears on the health and sanitation permit)).

~~((13))~~ "Person" means any individual, firm, partnership, corporation, association or the legal successor thereof, or any agency of the city, county, or state, or any municipal subdivision.

~~((14))~~ (15) "Operating license" means a document issued annually by the department or contracted health officer authorizing the use of temporary-worker housing.

(16) "Refuse" means solid wastes, rubbish, or garbage.

~~((15))~~ (17) "Single operation" means the common use of labor, equipment, and supervision.

(18) "Sink" means a properly trapped plumbing fixture which prevents back passage or return of air and ((includes)) may be a:

(a) "Handwashing sink" ((or lavatory with hot and cold)) with water under pressure ((and which is used)) intended for handwashing ((purposes)); or

(b) "Laundry sink" ((of a size)) with hot and cold water under pressure, large enough to accommodate hand laundering of clothing ((with hot and cold water under pressure)).

~~((16))~~ "Single operation" means the common use of labor, equipment, and supervision.

~~((17))~~ (19) "Space" means a site designated by an operator for an individual worker-supplied housing unit.

(20) "Temporary worker" means a person employed intermittently and not residing year-round ((in the same place)) at the same site.

~~((18))~~ (21) "Temporary-worker housing" or "housing" (((formerly a)) labor camp) means all facilities provided by the operator, managed as a single operation, including(=

(a) Five dwelling units;

(b) A combination of facilities, shelters, spaces, dwelling units, or dormitories for housing ten or more temporary workers and/or those who accompany temporary workers with a minimum square footage of five hundred twenty square feet;

(c) Food handling facilities, toilet, bathing, handwashing facilities, and laundry facilities; and

(d) Does not include housing which is covered by the Landlord Tenant Act.

~~((19))~~ site; spaces; bathing, foodhandling, handwashing, laundry, and toilet facilities; dwelling units and dormitories, to house occupants.

(22) "Worker-supplied housing" means ((a shelter provided by the temporary worker and may include recreational vehicles or trailers. Tents shall be prohibited)) an enclosed vehicle designed for sleeping and/or living, supplied and used by a temporary worker, and may be:

(a) "Fully self-contained worker-supplied housing" which means a unit with bathing, foodhandling, handwashing, and toilet facilities that meet the requirements of this chapter; or

(b) "Basic worker-supplied housing" which means a unit without bathing, foodhandling, handwashing, and toilet facilities that meet the requirements of this chapter.

NEW SECTION

WAC 246-358-020 Exemptions. The board may exempt an operator from meeting a specific requirement or requirements in this chapter. The board shall not grant an exemption for the operating license requirement.

(1) An operator wishing to request an exemption shall follow procedures established by the board, which include:

(a) Submitting a written request to the board; and

(b) Appearing before the board at a public hearing to justify the exemption.

(2) The board's decision shall be based on potential risk to public health and safety, justification presented by the operator, and recommendations by the department.

AMENDATORY SECTION (Amending Order 242B, filed 2/5/92, effective 3/7/92)

WAC 246-358-045 Location and maintenance.

~~((The))~~ (1) An operator shall locate housing:

~~((1) Provide))~~ (a) To prevent a health or safety hazard;

(b) On well-drained sites ((for temporary-worker housing which prevents the existence of)) to prevent standing water from becoming a nuisance;

~~((2) Locate and maintain temporary-worker housing to prevent the creation of a health or safety hazard; and~~

~~(3) Not locate temporary-worker housing:~~

~~(a) Within))~~ (c) More than five hundred feet ((of)) from a livestock operation unless the department or contracted health officer determines that no health risk exists; ((of

~~(b) Within))~~ (d) More than two hundred feet ((of)) from swamps, pools, sink holes, or other surface collections of water unless provisions are taken to prevent the breeding of mosquitoes((-

~~(4) Maintain all open areas surrounding the housing units and dormitories in a sanitary condition and free from garbage and other refuse.~~

~~(5) All sites shall be); and~~

(e) On sites sufficient in size to prevent overcrowding of necessary structures.

(2) An operator shall ensure that the housing site is maintained at all times in a sanitary condition free from garbage and other refuse.

AMENDATORY SECTION (Amending Order 242B, filed 2/5/92, effective 3/7/92)

WAC 246-358-055 Water supply. ~~((The))~~ An operator shall:

(1) Provide an adequate, convenient water supply from an approved source as described in chapter 246-290 WAC, and:

(a) For housing existing prior to August 1, 1984, maintain and operate the water system in accordance with chapter 246-290 WAC; and

(b) For housing constructed after August 1, 1984, design, construct, maintain, and operate the water system in accordance with chapter 246-290 WAC;

(2) Submit a water sample to a department-certified laboratory for ~~((testing of))~~ bacteriological quality testing each year prior to opening ~~((temporary worker))~~ housing ~~((as described))~~ in accordance with WAC 246-290-300;

(3) Delay ~~((opening))~~ the use of housing until bacteriological quality meets the requirements ~~((as described))~~ in WAC 246-290-310;

(4) Provide ~~((hot and))~~ cold, potable, running water under pressure ~~((twenty four hours a day for bathing, laundry, and handwashing facilities adequate to meet needs of occupants served as defined by the department or health officer))~~ in, or within one hundred feet of, each dwelling unit, dormitory, and space for basic worker-supplied housing;

(5) Provide cold, potable, running water under pressure to each space used for fully self-contained worker-supplied housing;

~~(6) Provide ((in existing facilities where drinking water is not available in individual housing units,)) one or more drinking fountains for ((every)) each one hundred occupants or fraction thereof;~~

~~((6))~~ (7) Prohibit the use of containers from which water is dipped or poured, and common drinking cups;

~~((7) Operate and maintain water service in accordance with chapter 246-290 WAC for temporary worker housing existing prior to August 1984))~~ (8) Ensure that outlets for nonpotable water are rendered inaccessible to occupants within the housing site; and

~~((8) Design, construct, and maintain a water supply system in accordance with chapter 246-290 WAC and this section for temporary worker housing constructed after August 1984.))~~

(9) When water is unsafe for drinking purposes and accessible to occupants ~~((at the temporary worker housing site, a sign shall be posted)),~~ post a sign within three feet of the source ~~((as))~~ reading "DO NOT DRINK. DO NOT USE FOR WASHING. DO NOT USE FOR PREPARING FOOD." in English or marked with easily-understood pictures or symbols. ~~((Outlets for nonpotable water shall be rendered inaccessible to occupants of the temporary worker housing site.))~~

AMENDATORY SECTION (Amending Order 124B, filed 12/27/90, effective 1/31/91)

WAC 246-358-065 Sewage disposal. ~~((The))~~ An operator shall:

(1) Provide on-site sewage disposal systems designed, constructed, and maintained as required in chapter ~~((248-96))~~ 246-272 WAC, chapter 173-240 WAC, and local ~~((regulations))~~ ordinances; and

(2) Ensure connection and drainage of sewage and waste water from all ~~((temporary worker))~~ housing to a sewage disposal system approved by the jurisdictional agency.

AMENDATORY SECTION (Amending Order 242B, filed 2/5/92, effective 3/7/92)

WAC 246-358-075 Construction ~~((of new facilities))~~ and maintenance ~~((of existing dwelling units, dormitories, and other facilities used for temporary worker housing))~~. An operator shall:

(1) Ensure that all construction ~~((, as defined in WAC 246-358-010(1), of facilities shall be in accordance))~~

complies with applicable state and local ordinances, codes, (and) regulations, and this chapter;

~~((Maintenance of existing facilities.~~

~~((a) The operator shall))~~ Provide structurally-sound buildings and shelters which:

~~((i))~~ (a) Are maintained in good repair;

~~((ii))~~ (b) Are maintained in a sanitary condition; and

~~((iii))~~ (c) Protect ~~((temporary workers and those who accompany them))~~ occupants against the elements~~((:));~~

~~((b) The operator shall follow the compliance schedule established with the department or health officer when existing temporary worker housing fails to meet requirements in this section.~~

~~((c) All heating, cooking, water heating, and other electrical equipment shall be installed in accordance with state, local ordinances, codes, and regulations governing such installation.~~

~~((d) The operator shall provide temporary worker housing with:~~

~~((i) Subfloors shall be constructed of))~~ (3) Provide two means of escape from sleeping rooms, foodhandling facilities, and rooms where fifty or more people congregate;

(4) Provide, at a minimum, the following area, with ceiling heights in accordance with subsection (5) of this section:

(a) Seventy square feet of floor space for one occupant and fifty square feet for each additional occupant in each dwelling unit;

(b) Fifty square feet of floor space for each occupant in a dormitory; and

(c) Fifty square feet of floor space for each occupant in rooms used for sleeping purposes;

(5) Provide ceiling heights of seven feet over at least one-half the floor area with no point less than five feet, and ensure the minimum ceiling height in:

(a) Manufactured homes is six feet eight inches; and

(b) Operator-supplied recreational vehicles is six feet four inches;

(6) Provide smooth and tightly constructed wood, asphalt, or concrete ~~((and shall be of smooth and tight construction and kept))~~ floors in good repair;

~~((ii) Wood floors. If used;))~~ (7) When wood floors ~~((shall be))~~ are used, ensure floors are at least twelve inches above the ground at all points;

~~((iii) Clean;))~~ (8) Provide easily-cleanable surfaces on interior walls and floors free of excessive peeling paint;

~~((iv) Cold, potable, running water under pressure within one hundred feet of each dwelling unit;~~

(v) A minimum of seventy square feet gross floor space for first occupant and fifty square feet for each additional occupant in each dwelling unit;

(vi) A minimum of fifty square feet for each occupant in each dormitory;

(vii) At least fifty square feet of floor space for each occupant in rooms used for sleeping purposes;

(viii) A minimum ceiling height of seven feet over at least one-half the floor area except for manufactured homes which may have six feet eight inches ceiling height;

(ix) Windows;)) (9) Use nonlead-based paint on all painted surfaces;

~~(10) Provide a window area ((ef)) equal to one-tenth of the total floor area in each ((dwelling unit, dormitory, and other)) habitable room((s));~~

~~((*) (11) Provide an adequate natural or mechanical ventilation system ((or natural ventilation)) for all rooms including ((in)) the bathroom((-));~~

~~((Openable)) (12) Ensure windows or skylights used for ventilation ((shall)) open:~~

~~(a) To fifty percent of total window area; and~~

~~(b) Directly to the outside((-));~~

~~((*) (13) Provide:~~

~~(a) Sixteen-mesh screens on all exterior openings; and~~

~~(b) Tight-fitting screen doors in good repair and equipped with self-closing devices;~~

~~(14) Provide electrical service including:~~

~~((A) Installation of wiring of fixtures consistent with the department of labor and industries, RCW 19.28.070 and local ordinances;~~

~~(B) Maintenance of wiring and fixtures in safe condition;~~

~~((C)) (a) One electrical ceiling-type light fixture and one wall outlet in each ((room of each)) dwelling unit room;~~

~~((D)) (b) One electrical ceiling-type light fixture or wall fixture, and one or more outlets ((as-needed)), for each two hundred fifty square feet of space in each dormitory; and~~

~~((E)) (c) One electrical ceiling-type or wall-type light fixture, and one or more outlets ((as-needed)), in each central ((toilet, handwashing,)) bathing, ((and)) foodhandling, handwashing, laundry, and toilet room((-);~~

~~((xii) Sixteen mesh screens on all exterior openings; and~~

~~(xiii) Screen doors shall be tight fitting, in good repair, and equipped with self-closing devices.~~

~~(e) The operator shall exclude floor space where ceiling height is under five feet when calculating minimum space requirements.~~

~~(f) Temporary worker housing consisting of) (15) Provide lighting intensities that meet the requirements in WAC 246-358-115;~~

~~(16) Ensure wiring and fixtures are installed in accordance with department of labor and industries regulations, RCW 19.28.070 and local ordinances, and maintained in a safe condition;~~

~~(17) Ensure heating, cooking, water heating, and other electrical equipment is installed in accordance with state and local ordinances, codes, and regulations governing such installation;~~

~~(18) Ensure that operator-supplied trailers and recreational vehicles manufactured after July 1968 ((shall have)) display a Washington state department of labor and industries insignia as required in chapters 296-150A and 296-150B WAC((-~~

~~(g) For painted surfaces, nonlead based paint shall be applied in all temporary worker housing facilities.~~

~~(h) Tents supplied by employer or emergency services agencies may be used for a limited time in emergency situations provided state board of health guidelines on the use of tents for temporary worker housing are followed and with the department's written approval prior to set up and occupancy. The signatory agencies of the interagency agreement pertaining to farmworker housing shall be~~

~~provided the opportunity to participate in the development of the guidelines); and~~

~~(19) Follow the compliance schedule established with the department or contracted health officer when existing housing fails to meet the requirements in this chapter.~~

AMENDATORY SECTION (Amending Order 124B, filed 12/27/90, effective 1/31/91)

WAC 246-358-085 Worker-supplied housing~~((— Spaces and sites)). ((The)) An operator ((providing spaces or sites to accommodate)) licensed for worker-supplied housing shall:~~

~~(1) ((Designate the area to be used)) Provide a space located and maintained in accordance with WAC 246-358-045 for each worker-supplied housing unit; ((and))~~

~~(2) Provide water, electricity, and sewage disposal at each space used for fully self-contained worker-supplied housing;~~

~~(3) Provide facilities for the maximum occupancy specified on the operating license for basic worker-supplied housing, including:~~

~~(a) Centralized ((toilets, handwashing sinks,)) bathing, ((and)) handwashing, laundry, and toilet facilities ((for worker-supplied housing spaces or sites as)) in accordance with the ratios specified in WAC ((248-63-095)) 246-358-095; and~~

~~(b) Common or central foodhandling facilities;~~

~~(4) Prohibit the use of tents as worker-supplied housing; and~~

~~(5) Comply with the requirements in this chapter, except, operators licensed only for worker-supplied housing are exempt from regulations pertaining to dwelling units and dormitories.~~

AMENDATORY SECTION (Amending Order 242B, filed 2/5/92, effective 3/7/92)

WAC 246-358-095 ((Toilets, handwashing,)) Bathing, ((and)) handwashing, laundry, and toilet facilities. (1) ((The)) An operator shall:

~~(a) Provide ((toilets, handwashing, bathing, and laundry facilities as required in this section)) hot and cold running water under pressure twenty-four hours a day for bathing, handwashing, and laundry adequate to meet the needs of occupants as determined by the department or contracted health officer; ((and~~

~~(b) Construct urinals, when provided so that the floor from the wall and for a distance not less than fifteen inches measured from the outward edge of the urinal is constructed of materials impervious to moisture; and~~

~~(e) Provide toilets) (b) Separate toilets from habitable areas by walls((-);~~

~~(c) Locate toilet rooms to provide access without passing through sleeping rooms;~~

~~(d) Provide water flush toilets and urinals unless privies or other methods are specifically approved by the department or contracted health officer according to requirements in chapter 246-272 WAC;~~

~~(e) Locate pit privies, when approved, at least one hundred feet from any dwelling unit, dormitory, space, or foodhandling facility;~~

~~(f) When vault privies or chemical toilets are approved:~~

PERMANENT

- (i) Locate at least fifty feet from any dwelling unit, dormitory, space, or foodhandling facility;
- (ii) Maintain a service contract for sewage pumping with a licensed waste disposal company; and
- (iii) Comply with local ordinances;
- (g) If urinals are provided, cover the floor with a material impervious to moisture for a radius of not less than fifteen inches from the outer edge of the urinal, and from the urinal to the wall; and
- (h) Connect sinks, bathing, and laundry facilities through properly trapped floor drains to an approved disposal system.
- (2) ((The)) An operator providing centralized ((toilets, handwashing, and)) bathing, handwashing, or toilet facilities shall meet the requirements of subsection (1) of this section, and:
 - (a) Provide the number of handwashing sinks, shower heads, and toilets specified in Table I;
 - (b) Locate toilets and handwashing sinks within two hundred feet ((from temporary worker)) of the door of housing lacking toilets;
 - ((b)) (c) Locate bathing facilities within three hundred feet ((from temporary worker)) of housing lacking bathing facilities;
 - ((c)) (d) Provide means for individual privacy for toileting and bathing;
 - ((d) Where the toilet rooms are shared such as in multifamily shelters and dormitories;
 - ((e)) (e) Provide an adequate number of toilet rooms for each sex, and clearly mark each room for men and for women with signs printed in English and easily-understood pictures or symbols;
 - (f) Separate toilet rooms for ((each sex;
 - (ii) Distinctly mark each room for "men" and for "women" by signs printed in English or marked with easily understood pictures or symbols; and
 - (iii) If the facilities for each sex are in the same building, separate rooms by)) men and for women with solid walls or partitions extending from the floor to the roof or ceiling;
 - ((e) Maintain facilities)) (g) Provide adequate, accessible supplies of toilet tissue and holders;
 - (h) Provide lighting in toilet rooms twenty-four hours per day;
 - (i) Ensure bathing and handwashing facilities are maintained in a clean and sanitary condition;
 - ((f) Determine required number of centralized toilets, handwashing sinks, and bathing facilities by:
 - (i) Using the maximum occupancy permitted and recorded on the permit as a base; and
 - (ii) Excluding from the determination the numbers of occupants sheltered in operator-supplied dwelling units containing toilets, handwashing sinks, and bathing facilities.
 - (g) Toilets, handwashing sinks, and bathing units in centralized toilet facilities:
 - (i) The number of toilets or privy seats shall be in the ratio of one such unit for each fifteen persons with a minimum of two units for any facility shared by men and women;
 - (ii) The number of handwashing basins shall be one per six persons;

- (iii) The number of shower heads shall be one for every ten persons.
- (h) Provide water flush toilets unless privies or other methods are specifically approved by the department or health officer according to requirements in chapter 246-272 WAC when approved, privies must be located at least one hundred feet from any sleeping room, dining room, lunch area, or kitchen; and
- (i) Provide adequate, accessible supplies of toilet tissue and holders;))
- (j) Ensure that the toilet facilities are cleaned at least daily;
- (k) Provide shower and laundry rooms with:
 - (i) Sloped ((floors;
 - (1) Provide)), coved floors of nonslip impervious materials;
 - ((m) Provide cleanable, nonabsorbent waste containers;)) and
 - ((n)) (ii) Floor drains;
 - (l) Provide ((walls and partitions of)) shower rooms ((which are)) with smooth ((and)), water impervious walls and partitions, and
 - (m) Provide cleanable, nonabsorbent waste containers.

TABLE 1:

Required number of centralized handwashing sinks, shower heads, toilets, and urinals.

HANDWASHING SINKS	One per each 6 persons* ² or fraction thereof.
SHOWER HEADS	One per each 10 persons* or fraction thereof.
TOILETS	One per each 15 persons*, or fraction thereof, with a minimum of two for any facility shared by men and women.

*The number of persons shall be calculated by subtracting the number of occupants sheltered in dwelling units and dormitories that contain individual facilities from the maximum occupancies approved for both operator-supplied and basic worker-supplied housing.

- (3) ((The)) An operator ((having)) providing bathing, handwashing, or toilet facilities in dwelling units shall meet the requirements in subsection (1) of this section, and:
 - (a) Provide a handwashing sink in each dwelling unit that contains a toilet; ((and))
 - (b) ((Inform)) Request occupants ((of requirements)) to maintain bathing, handwashing, and toilet((s)) facilities in a clean and sanitary condition; and
 - (c) When dwelling units house more than one family, provide a means of privacy for toileting and bathing.
 - (4) ((The operator shall connect handwashing sinks, bathing, and laundry facilities through properly trapped floor drains to an approved disposal system.
 - (5) The)) An operator shall provide the following centralized laundry facilities ((convenient to temporary worker housing as follows)) unless commercial or public laundry facilities are within three miles of housing and accessible to occupants:
 - (a) One laundry ((tub or)) sink and one mechanical washing machine for ((up to and including)) each thirty occupants ((as approved and listed on the permit; or
 - (b) Additional mechanical washing machines may be provided but each laundry facility shall have at least one laundry sink or tub; or

~~(e))~~, or fraction thereof, specified on the operating license. Two laundry ~~((tubs or))~~ sinks ~~((to))~~ may replace ~~((every required))~~ one mechanical washing machine. One mechanical washing machine may replace two laundry sinks, provided each laundry facility has at least one laundry sink; and

~~((d))~~ (b) Facilities for drying clothes.

AMENDATORY SECTION (Amending Order 242B, filed 2/5/92, effective 3/7/92)

WAC 246-358-105 Heating. ~~((The))~~ An operator shall:

(1) Provide means of maintaining temperature of at least seventy degrees Fahrenheit in ~~((dwelling units, dormitories))~~ habitable rooms, and bathing, foodhandling, handwashing, laundry, and toilet facilities if used during periods requiring artificial heating;

(2) Install, vent, and maintain heating facilities to prevent fire hazard and fume concentrations;

(3) Avoid placing heating facilities in locations obstructing exits ~~((from the dwelling unit));~~

(4) Prohibit use of portable kerosene heaters; and

(5) If providing wood burning devices in manufactured homes ~~((;))~~ or recreational vehicles ~~((used as temporary worker housing))~~, ensure the Washington state department of labor and industries insignia is displayed in accordance with chapter 43.22 RCW ~~((shall be displayed)).~~

AMENDATORY SECTION (Amending Order 242B, filed 2/5/92, effective 3/7/92)

WAC 246-358-115 Lighting. ~~((The))~~ An operator shall provide:

(1) Dwelling units and dormitories with a minimum of thirty foot-candles of light measured thirty inches from the floor ~~((in dwelling units and dormitories and));~~

(2) Toilet facilities with a minimum of twenty foot-candles of light measured thirty inches from the floor ~~((in the toilets facility));~~ and

~~((2))~~ (3) Adequate outdoor lighting for safe passage within the ~~((temporary worker))~~ housing area.

AMENDATORY SECTION (Amending Order 242B, filed 2/5/92, effective 3/7/92)

WAC 246-358-125 Cooking and foodhandling facilities. ~~((1-The))~~ An operator shall provide enclosed cooking ~~((or))~~ and foodhandling facilities for all ~~((temporary workers housed by the operator))~~ occupants.

~~((2-The))~~ (1) An operator ~~((providing))~~ furnishing cooking facilities in each dwelling unit shall ~~((include))~~ provide:

(a) An operable cook stove or hot plate with a minimum of ~~((two))~~ one cooking surface ~~((s))~~ for every two adult occupants or four cooking surfaces for every two ~~((to ten occupants or two))~~ families;

(b) A sink with running water under pressure;

(c) Food storage areas and easily-cleanable food preparation counters ~~((which are))~~ situated off the floor;

(d) Individual or centralized mechanical refrigeration, capable of maintaining temperature of forty-five degrees Fahrenheit or below, ~~((which has))~~ with space for storing

perishable food items ~~((of))~~ for all ~~((affected temporary workers))~~ occupants;

(e) Tables and chairs or equivalent seating;

(f) Fire resistant, nonabsorbent, nonasbestos, and easily-cleanable wall coverings adjacent to cooking areas; and

(g) ~~((Floors which are))~~ Nonabsorbent and easily-cleanable floors.

~~((3-The))~~ (2) An operator ~~((providing central))~~ furnishing common foodhandling facilities ~~((for temporary workers))~~ shall provide:

(a) ~~((Meet requirements of the state board of health in chapter 246-215 WAC food service sanitation;~~

~~((b) Ensure that there are))~~ A room or building separate from and convenient to dwelling units, dormitories, and spaces;

(b) An operable cook stove or hot plate with a minimum of one cooking surface for every two adult occupants or four cooking surfaces for every two families;

(c) Sinks with hot and cold running water under pressure;

(d) Food storage areas and easily-cleanable food preparation counters situated off the floor;

(e) Mechanical refrigeration capable of maintaining a temperature of forty-five degrees Fahrenheit or below with space for storing perishable food items for all occupants;

(f) Tables and chairs or equivalent seating;

(g) Fire-resistant, nonabsorbent, nonasbestos, and easily-cleanable wall coverings adjacent to cooking areas;

(h) Nonabsorbent, easily-cleanable floors; and

(i) No direct openings ~~((from))~~ to living or sleeping areas ~~((into))~~ from the ~~((central))~~ common foodhandling facility ~~((; and~~

~~((e) Provide fire resistant, nonasbestos, nonabsorbent, and easily-cleanable wall coverings adjacent to the cooking area)).~~

~~((4-The))~~ (3) An operator ~~((with common))~~ furnishing a central foodhandling ~~((facilities))~~ facility shall ~~((provide));~~

(a) ~~((A room or building separate from and convenient to dwelling units;~~

~~((b) An operable cook stove or hot plate with a minimum of two cooking surfaces for two occupants or four cooking surfaces for two to ten occupants or two families;~~

~~((c) Sinks with hot and cold running water under pressure;~~

~~((d) Food storage areas and food preparation counters which are off the floor;~~

~~((e) Mechanical refrigeration, capable of maintaining temperatures of forty-five degrees Fahrenheit or below, which has space for storing perishable food items for all affected temporary workers and those who accompany them;~~

~~((f))~~ Comply with chapter 246-215 WAC, Food service;

(b) Provide tables and chairs or equivalent seating;

~~((g))~~ (c) Provide fire-resistant, nonabsorbent, nonasbestos, and easily-cleanable wall coverings adjacent to cooking areas; and

~~((h) Nonabsorbent, easily-cleanable floors))~~ (d) Ensure the central foodhandling facility has no direct openings to living or sleeping areas.

AMENDATORY SECTION (Amending Order 242B, filed 2/5/92, effective 3/7/92)

WAC 246-358-135 Beds and bedding and personal storage. ~~((The))~~ An operator shall:

(1) Provide beds or bunks furnished with clean mattresses in good condition for ~~((numbers of occupants specified on the permit))~~ the maximum occupancy approved by the department for operator-supplied housing;

(2) ~~((If choosing to provide bedding,))~~ Ensure bedding, if provided by the operator, is clean and maintained in a sanitary condition;

(3) Provide a minimum of twelve inches between each bed or bunk and the floor;

(4) ~~((If))~~ When single beds are used((;
(a)) ~~separate ((single)) beds((, in dormitories,))~~ laterally and end to end by at least thirty-six inches;

~~((b) Separate single beds, in housing units, laterally and end to end by at least thirty-six inches.))~~

(5) ~~((If))~~ When bunk beds are used:
(a) ~~Separate ((double deck bunks, in dormitories,))~~ beds laterally and end to end by at least forty-eight inches;

(b) ~~((Separate double deck bunks, in housing units, laterally and end to end by at least forty-eight inches;~~

~~((c))~~ Maintain a minimum space of twenty-seven inches between the upper and lower bunks; and

~~((d))~~ (c) Prohibit triple bunks.

(6) Provide storage facilities for clothing and personal articles in ~~((dwelling units or dormitories))~~ each room used for sleeping.

NEW SECTION

WAC 246-358-140 Emergency use of tents. An operator may use tents for a limited time in emergency situations provided the operator:

- (a) Has prior written approval by the department; and
- (b) Follows board guidelines for the use of tents.

AMENDATORY SECTION (Amending Order 242B, filed 2/5/92, effective 3/7/92)

WAC 246-358-145 Health and safety ((provisions)). ~~((The))~~ An operator shall:

(1) ~~((Provide two means of escape in every sleeping and eating area of temporary worker housing (e.g., doors, windows);~~

~~((2) Meet requirements of))~~ Use pesticides in and around the housing area consistent with chapters 15.58 and 17.21 RCW, chapter 16-228 WAC, and pesticide label instructions;

(2) Prohibit, in the housing area, the use, storage, and mixing of flammable, volatile, or toxic substances other than those intended for household use;

(3) Provide readily accessible first-aid equipment meeting the requirements of Part A-1 of chapter 296-24 WAC;

(4) Ensure that a person trained in basic first aid and cardiopulmonary resuscitation is accessible to occupants;

(5) Provide smoke detection devices in accordance with the Washington state fire marshal regulations in chapter 212-10 WAC ((for smoke detection devices));

~~((3))~~ Prevent potential health, safety, and fire hazards by:

~~((a) Storing and using dangerous materials away from the temporary worker housing; and~~

~~((b) Prohibiting:~~

~~((i) Storing flammable or volatile liquids or materials other than those intended for use in the housing unit or adjacent to temporary worker housing; and~~

~~((ii) Storing or mixing pesticides or other toxic substances in temporary worker housing other than those substances intended for occupant use in the dwelling unit.~~

~~((c) Providing readily accessible, available first aid equipment meeting requirements of WAC 296-24-060 (Part A-1); and~~

~~((d) Provide a person trained in basic first aid and cardiopulmonary resuscitation (CPR) who is accessible to occupants of the temporary workers housing;~~

~~((e) Storing))~~ (6) Store or remove unused refrigerator units to prevent ((harm to)) access by children ((e.g., crushing, suffocation)); and

(7) Fill abandoned privy pits with earth; and lock or otherwise secure unused privy buildings.

AMENDATORY SECTION (Amending Order 242B, filed 2/5/92, effective 3/7/92)

WAC 246-358-155 Refuse disposal. ~~((The))~~ An operator shall:

(1) Establish and maintain a refuse disposal system((s including:));

~~((1) Protecting))~~ (2) Protect against rodent harborage, insect breeding, and other health hazards while storing, collecting, transporting, and disposing of refuse;

~~((2) Storing))~~ (3) Store refuse in enclosed, sound, fly-tight, rodent-tight, impervious, and cleanable ((enclosed)) containers;

~~((3) Providing))~~ (4) Keep refuse containers clean;

(5) Provide an accessible container ((if necessary)) on a wooden, metal, or concrete stand within one hundred feet of ((all)) each dwelling unit((s or dormitories)), dormitory, and space;

~~((4) Emptying))~~ (6) Empty refuse containers ((when full)) at least twice ((every)) each week, ((if possible, or more often if necessary)) and when full;

~~((5) Removing))~~ (7) Remove refuse from ((temporary worker)) housing areas and dispose of refuse in a manner consistent with local sanitation codes; and

~~((6) Properly disposing of all refuse consistent with sanitation codes approved by the local jurisdiction.~~

~~((7) Whenever the camp is closed for the season or permanently, all garbage, manure, and other refuse shall be collected and so disposed of as))~~ (8) Ensure the housing area is free of refuse when housing is closed for the season to prevent a nuisance.

AMENDATORY SECTION (Amending Order 124B, filed 12/27/90, effective 1/31/91)

WAC 246-358-165 Rodent and insect control. ~~((The))~~ An operator shall take ((appropriate)) measures necessary to control rodents and insects in and around ((temporary worker)) the housing.

AMENDATORY SECTION (Amending Order 242B, filed 2/5/92, effective 3/7/92)

WAC 246-358-175 Disease prevention and control. ((The)) An operator shall:

(1) Make reasonable efforts to know if disease is present among occupants ((of temporary worker housing));

(2) Report immediately to the local health officer:

(a) The name((s)) and address((es)) of ((individuals)) any occupant suspected of having an infectious or communicable disease((s such as food poisoning or other));

(b) Any case of suspected food poisoning; and

(c) Any unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting, jaundice, productive cough, or weight loss is a prominent symptom among occupants ((of temporary worker housing to the local health officer)); ((and))

(3) When aware of an occupant's illness, assist ((temporary workers)) the occupant to obtain medical diagnosis and treatment ((when ill));

(4) Establish rules and inform occupants of their responsibilities related to maintaining housing consistent with the requirements in this chapter; and

(5) Post information regarding temporary-worker health and sanitation when provided by the department or contracted health officer.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-358-035 Supervision and responsibility.

WSR 93-03-033

PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Order 135—Filed January 13, 1993, 9:11 a.m.]

Date of Adoption: January 7, 1993.

Purpose: To implement an access management program for state highways as directed by the legislature.

Statutory Authority for Adoption: RCW 47.01.101.

Other Authority: Chapter 47.50 RCW.

Pursuant to notice filed as WSR 92-24-074 on December 1, 1992.

Changes Other than Editing from Proposed to Adopted Version: A minor change has been made to restrict access to right turns only on multilane facilities under class two design standards.

Effective Date of Rule: Thirty-one days after filing.

January 7, 1993

S. A. Moon

Deputy Secretary

Chapter 468-52 WAC HIGHWAY ACCESS MANAGEMENT—ACCESS CONTROL CLASSIFICATION SYSTEM AND STANDARDS

NEW SECTION

WAC 468-52-010 Purpose. This chapter is adopted in accordance with chapter 47.50 RCW for the implementation of an access control classification system and standards for the regulation and control of vehicular ingress to, and egress from the state highway system.

NEW SECTION

WAC 468-52-020 Definitions. For the purposes of this chapter, the following definitions of the terms shall apply unless the context clearly indicates otherwise:

"Conforming connection" means a connection that meets current department location, spacing, and design criteria.

"Connection" means approaches, driveways, turnouts, or other means of providing for the right of access to or from controlled access facilities on the state highway system.

"Connection permit" means a written authorization given by the department for a specifically designed connection to the state highway system at a specific location for a specific type and intensity of property use and specific volume of traffic for the proposed connection, based on the final stage of proposed development of the applicant's property. The actual form used for this authorization will be determined by the department.

"Controlled access facility" means a transportation facility (excluding limited access facilities as defined in chapter 47.52 RCW) to which access is regulated by the governmental entity having jurisdiction over the facility. Owners or occupants of abutting lands and other persons have a right of access to and from such facility at such points only and in such manner as may be determined by the governmental entity.

"Comer clearance" means the distance from an intersection of a public or private road to the nearest connection along a controlled access facility. This distance is measured from the closest edge of the traveled way of the intersecting road to the closest edge of the traveled way of the connection measured along the traveled way (through lanes).

"Department" means the Washington state department of transportation.

"Governmental entity" means, for the purpose of this chapter, a unit of local government or officially designated transportation authority that has the responsibility for planning, construction, operation, maintenance, or jurisdiction over transportation facilities.

"Intersection" means an at grade connection on a state highway with a road or street duly established as a public road or public street by the local governmental entity.

"Joint use connection" means a single connection point that serves as a connection to more than one property or development, including those in different ownerships or in which access rights are provided in the legal descriptions.

"Limited access facility" means a highway or street especially designed or designated for through traffic, and over, from, or to which owners or occupants of abutting land, or other persons have no right or easement, or only a limited right or easement of access, light, view, or air by reason of the fact that their property abuts upon such limited access facility, or for any other reason to accomplish the purpose of a limited access facility.

"Nonconforming connection" means a connection not meeting current department location, spacing, or design criteria.

"Permit" means written approval issued by the department, subject to conditions stated therein, authorizing construction, reconstruction, maintenance, or reclassification of a state highway connection and associated traffic control devices on or to the department's right of way.

"Permitting authority" means the department or any county, municipality, or transportation authority authorized to regulate access to their respective transportation systems.

"State highway system" means all roads, streets, and highways designated as state routes pursuant to chapter 47.17 RCW.

NEW SECTION

WAC 468-52-030 General. The connection and intersection spacing distances specified in this chapter are minimums. Greater distances may be required by the department on individual permits issued in accordance with chapter 468-51 WAC to provide desirable traffic operational and safety characteristics. If greater distances are required, the department will document, as part of the response to a connection permit application pursuant to chapter 468-51 WAC, the reasons, based on traffic engineering principles, that such greater distances are required. Nonconforming permits may be issued in accordance with chapter 468-51 WAC allowing less than minimum spacing where no other reasonable access exists, or where it can be substantiated by a traffic analysis in the permit application that allowing less than the minimum spacing would not adversely affect the desired function of the state highway in accordance with the assigned access classification, and would not adversely affect the safety or operation of the state highway.

NEW SECTION

WAC 468-52-040 Access control classification system and standards. This section provides an access control classification system consisting of five classes. The functional characteristics and the access control design standards for each class are described. The classes are arranged from the most restrictive, class one, to the least restrictive, class five. This access control classification system does not include highways or portions thereof that have been established as limited access highways pursuant to chapter 47.52 RCW. For state highways that are planned for the establishment of limited access control in accordance with the *Master Plan for Limited Access Highways*, an access control classification will be assigned to each highway segment to remain in effect until such time that the facility is established as a limited access facility.

On all access classes, property access shall be located and designed to minimize interference with transit facilities and/or high occupancy vehicle (HOV) facilities on state highways where such facilities exist or where such facilities are proposed in a state, regional, metropolitan, or local transportation plan. In such cases, if reasonable access is available from the general street system, primary property access shall be provided from the general street system rather than from the state highway.

(1) Class one.

(a) Functional characteristics:

These highways have the capacity for safe and efficient high speed and/or high volume traffic movements, providing for interstate, interregional, and intercity travel needs and some intracity travel needs. Service to abutting land is subordinate to providing service to major traffic movements. Highways in this class are typically distinguished by a highly controlled, limited number of public and private connections, restrictive medians with limited median openings on multilane facilities, and infrequent traffic signals.

(b) Access control design standards:

(i) It is the intent that the design of class one highways be generally capable of achieving a posted speed limit of fifty to fifty-five mph. Spacing of intersecting streets, roads, and highways shall be planned with a minimum spacing of one mile. One-half mile spacing may be permitted, but only when no reasonable alternative access exists.

(ii) Private direct access to the state highway shall not be permitted except when the property has no other reasonable access to the general street system. The following standards will be applied when direct access must be provided:

(A) The access connection shall continue until such time that other reasonable access to a highway with a less restrictive access control classification or access to the general street system becomes available and is permitted.

(B) The minimum distance to another public or private access connection shall be one thousand three hundred twenty feet. Nonconforming connection permits may be issued to provide access to parcels whose highway frontage, topography, or location would otherwise preclude issuance of a conforming connection permit. No more than one connection shall be provided to an individual parcel or to contiguous parcels under the same ownership.

(C) All private direct access shall be for right turns only on multilane facilities, unless special conditions warrant and are documented by a traffic analysis in the connection permit application, signed and sealed by a qualified professional engineer, registered in accordance with chapter 18.43 RCW.

(D) No additional access connections to the state highway shall be provided for newly created parcels resulting from property divisions. All access for such parcels shall be provided by internal road networks. Access to the state highway will be at existing permitted connection locations or at revised connection locations, as conditions warrant.

(iii) A restrictive median shall be provided on multilane facilities to separate opposing traffic movements and to prevent unauthorized turning movements.

(2) Class two.

(a) Functional characteristics:

These highways have the capacity for medium to high speeds and medium to high volume traffic movements over medium and long distances in a safe and efficient manner, providing for interregional, intercity, and intracity travel needs. Direct access service to abutting land is subordinate to providing service to traffic movement. Highways in this class are typically distinguished by existing or planned restrictive medians, where multilane facilities are warranted, and minimum distances between public and private connections.

(b) Access control design standards:

(i) It is the intent that the design of class two highways be generally capable of achieving a posted speed limit of thirty-five to fifty mph in urbanized areas and forty-five to fifty-five mph in rural areas. Spacing of intersecting streets, roads, and highways shall be planned with a minimum spacing of one-half mile. Less than one-half mile intersection spacing may be permitted, but only when no reasonable alternative access exists. In urban areas and developing areas where higher volumes are present or growth that will require signalization is expected in the foreseeable future, it is imperative that the location of any public access be planned carefully to ensure adequate signal progression. Addition of all new connections, public or private, that may require signalization will require an engineering analysis signed and sealed by a qualified professional engineer, registered in accordance with chapter 18.43 RCW.

(ii) Private direct access to the state highway system shall be permitted only when the property has no other reasonable access to the general street system or if access to the general street system would cause traffic operational conditions or safety concerns unacceptable to the local governmental entity. When direct access must be provided, the following conditions shall apply:

(A) The access connection shall continue until such time that other reasonable access to a highway with a less restrictive access control classification or acceptable access to the general street system becomes available and is permitted.

(B) The minimum distance to another public or private access connection shall be six hundred sixty feet. Nonconforming connection permits may be issued to provide access to parcels whose highway frontage, topography, or location would otherwise preclude issuance of a conforming connection permit. No more than one connection shall be provided to an individual parcel or to contiguous parcels under the same ownership unless the highway frontage exceeds one thousand three hundred twenty feet and it can be shown that the additional access would not adversely affect the desired function of the state highway in accordance with the assigned access classification, and would not adversely affect the safety or operation of the state highway.

(C) All private direct access shall be for right turns only on multilane facilities, unless special conditions warrant and are documented by a traffic analysis in the connection permit application, signed and sealed by a qualified professional engineer, registered in accordance with chapter 18.43 RCW.

(D) No additional access connections to the state highway shall be provided for newly created parcels resulting from property divisions. All access for such parcels shall be provided by internal road networks. Access to the state highway will be at existing permitted connection locations or at revised connection locations, as conditions warrant.

(iii) On multilane facilities a restrictive median shall be provided to separate opposing traffic movements and to prevent unauthorized turning movements.

(3) Class three.

(a) Functional characteristics:

These highways have the capacity for moderate travel speeds and moderate traffic volumes for medium and short travel distances providing for intercity, intracity, and intercommunity travel needs. There is a reasonable balance

between direct access and mobility needs for highways in this class. This class is to be used primarily where the existing level of development of the adjoining land is less intensive than maximum buildout and where the probability of significant land use change and increased traffic demand is high. Highways in this class are typically distinguished by planned restrictive medians, where multilane facilities are warranted, and minimum distances between public and private connections. Two-way left-turn-lanes may be utilized where special conditions warrant. Development of properties with internal road networks and joint access connections are encouraged.

(b) Access control design standards:

(i) It is the intent that the design of class three highways be generally capable of achieving a posted speed limit of thirty to forty mph in urbanized areas and forty-five to fifty-five mph in rural areas. In rural areas, spacing of intersecting streets, roads, and highways shall be planned with a minimum spacing of one-half mile. Less than one-half mile intersection spacing may be permitted, but only when no reasonable alternative access exists. In urban areas and developing areas where higher volumes are present or growth that will require signalization is expected in the foreseeable future, it is imperative that the location of any public access be planned carefully to ensure adequate signal progression. Where feasible, major intersecting roadways that may ultimately require signalization shall be planned with a minimum of one-half mile spacing. Addition of all new connections, public or private, that may require signalization will require an engineering analysis signed and sealed by a qualified professional engineer, registered in accordance with chapter 18.43 RCW.

(ii) Private direct access:

(A) No more than one access shall be provided to an individual parcel or to contiguous parcels under the same ownership unless it can be shown that additional access points would not adversely affect the desired function of the state highway in accordance with the assigned access classification, and would not adversely affect the safety or operation, of the state highway.

(B) The minimum distance to another public or private access connection shall be three hundred thirty feet. Nonconforming connection permits may be issued to provide access to parcels whose highway frontage, topography, or location would otherwise preclude issuance of a conforming connection permit.

(4) Class four.

(a) Functional characteristics:

These highways have the capacity for moderate travel speeds and moderate traffic volumes for medium and short travel distances providing for intercity, intracity, and intercommunity travel needs. There is a reasonable balance between direct access and mobility needs for highways in this class. This class is to be used primarily where the existing level of development of the adjoining land is more intensive and where the probability of major land use changes is less probable than on class three highway segments. Highways in this class are typically distinguished by existing or planned nonrestrictive medians. Restrictive medians may be used as operational conditions warrant to mitigate turning, weaving, and crossing conflicts. Minimum

connection spacing standards should be applied if adjoining properties are redeveloped.

(b) Access control design standards:

(i) It is the intent that the design of class four highways be generally capable of achieving a posted speed limit of thirty to thirty-five mph in urbanized areas and thirty-five to forty-five mph in rural areas. In rural areas, spacing of intersecting streets, roads, and highways shall be planned with a minimum spacing of one-half mile. Less than one-half mile intersection spacing may be permitted, but only when no reasonable alternative access exists. In urban areas and developing areas where higher volumes are present or growth that will require signalization is expected in the foreseeable future, it is imperative that the location of any public access be planned carefully to ensure adequate signal progression. Where feasible, major intersecting roadways that may ultimately require signalization shall be planned with a minimum of one-half mile spacing. Addition of all new connections, public or private, that may require signalization will require an engineering analysis signed and sealed by a qualified professional engineer, registered in accordance with chapter 18.43 RCW.

(ii) Private direct access:

(A) No more than one access shall be provided to an individual parcel or to contiguous parcels under the same ownership unless it can be shown that additional access points would not adversely affect the desired function of the state highway in accordance with the assigned access classification, and would not adversely affect the safety or operation of the state highway.

(B) The minimum distance to another public or private access connection shall be two hundred fifty feet. Nonconforming connection permits may be issued to provide access to parcels whose highway frontage, topography, or location would otherwise preclude issuance of a conforming connection permit.

(5) Class five.

(a) Functional characteristics:

These highways have the capacity for moderate travel speeds and moderate traffic volumes for primarily short travel distances providing for intracity and intracommunity trips primarily for access to state highways of higher classification. Access needs may generally be higher than the need for through traffic mobility without compromising the public health, welfare, or safety. These highways will generally have nonrestrictive medians.

(b) Access control design standards:

(i) It is the intent that the design of class five highways be capable of achieving a posted speed limit of twenty-five to thirty-five mph. In rural areas, spacing of intersecting streets, roads, and highways shall be planned with a minimum spacing of one-quarter mile. Less than one-quarter mile spacing may be permitted where no reasonable alternative exists. In urban areas and developing areas where higher volumes are present or growth that will require signalization is expected in the foreseeable future, it is imperative that the location of any public access be planned carefully to ensure adequate signal progression. Where feasible, major intersecting roadways that may ultimately require signalization shall be planned with a minimum of one-quarter mile spacing. Addition of all new connections, public or private, that may require signalization will require

an engineering analysis signed and sealed by a qualified professional engineer, registered in accordance with chapter 18.43 RCW.

(ii) Private direct access:

(A) No more than one access shall be provided to an individual parcel or to contiguous parcels under the same ownership unless it can be shown that additional access points would not adversely affect the desired function of the state highway in accordance with the assigned access classification, and would not adversely affect the safety or operation of the state highway.

(B) The minimum distance to another public or private access connection shall be one hundred twenty-five feet. Nonconforming connection permits may be issued to provide access to parcels whose highway frontage, topography, or location would otherwise preclude issuance of a conforming connection permit.

(6) Interim standards. The interim standards set forth in this section shall be effective for all segments of the state highway system, except where access rights have been previously acquired pursuant to chapter 47.52 RCW, until superseded by an adopted access control classification as defined in this chapter. These interim standards are mandatory for all state highways where the department is the permitting authority, and are advisory for city streets designated as state highways pursuant to chapter 47.24 RCW where incorporated cities or towns are the permitting authority. Permit applications received after adoption of this chapter, but before the classification of a highway segment is adopted, shall be reviewed for consistency with the interim standards. After a highway segment has been classified pursuant to this chapter, the standards described for that particular class shall supersede the interim standards for the classified highway segment.

INTERIM STANDARDS		
Posted Speed	Minimum Private Connection Spacing	Minimum Public Intersection Spacing
MPH	Feet	Miles
35 or less	Rural: 250 Urban: 125	0.5
36 - 45	Rural: 330 Urban: 250	0.5
Over 45	Rural: 660 Urban: 330	1.0

(7) Corner clearance. Corner clearances for connections shall meet or exceed the minimum connection spacing requirements of the interim standards, or of the applicable access class where the highway segment has been assigned a classification. A single connection may be placed closer to the intersection, pursuant to the permit application process specified in chapter 468-51 WAC, and in accordance with the following criteria:

(a) If, due to property size, corner clearance standards of this chapter cannot be met, and where joint access meeting or exceeding the minimum corner clearance standards cannot be obtained, or is determined by the department to be not feasible because of conflicting land use or conflicting traffic volumes or operational characteristics, then the following minimum corner clearance criteria may be used:

PERMANENT

CORNER CLEARANCE AT INTERSECTIONS		
With Restrictive Median		
Position	Access Allowed	Minimum (feet)
Approaching intersection	Right In/Right Out	115
Approaching intersection	Right In Only	75
Departing intersection	Right In/Right Out	230 *
Departing intersection	Right Out Only	100
Without Restrictive Median		
Position	Access Allowed	Minimum (feet)
Approaching intersection	Full Access	230 *
Approaching intersection	Right In Only	100
Departing intersection	Full Access	230 *
Departing intersection	Right Out Only	100

*For Access Class 5 and for speeds less than 35 MPH, 125 feet may be used.

*For Access Class 5 and for speeds less than thirty-five mph, one hundred twenty-five feet may be used.

(b) In cases where connections are permitted under the above criteria, the permit issued pursuant to chapter 468-51 WAC shall contain the following additional conditions:

(i) There shall be no more than one connection per property frontage on the state highway.

(ii) When joint or alternate access meeting or exceeding the minimum corner clearance standards becomes available, the permittee will close the permitted connection, unless the permittee shows to the department's satisfaction that such closure is not feasible.

NEW SECTION

WAC 468-52-050 Application of access control classification system standards. (1) Review of permits on classified highway segments. Connection permit applications on controlled access facilities of the state highway system received on a particular segment that has been classified in accordance with this chapter shall be reviewed subject to the requirements of this chapter pursuant to the permit application process specified in chapter 468-51 WAC.

(2) Prior approvals. Connections permitted prior to the adoption of this chapter and unpermitted connections that do not require closure in accordance with WAC 468-51-030 are not required to meet the interim standards or the standards of assigned access classifications adopted pursuant to this chapter.

(3) New permits required by chapter 468-51 WAC. All new connection permits required due to significant changes in property site use pursuant to WAC 468-51-110, or permit modification pursuant to WAC 468-51-120 shall be reviewed subject to the requirements of this chapter.

(4) Permits approved under interim standards. Connection permits issued in accordance with the interim standards in WAC 468-52-040 on a highway segment where an access classification has not been adopted shall remain in effect after adoption of an access classification on that highway segment unless a new permit is required due to changes in property site use pursuant to WAC 468-51-110 or unless permit modification, revocation, or closure of the permitted connection is required pursuant to WAC 468-51-120.

(5) Nonconforming permits. Nonconforming permits may be issued in accordance with WAC 468-51-100 for certain connections not meeting the interim standards in WAC 468-52-040 or the access classification location and spacing standards adopted for a particular highway segment.

NEW SECTION

WAC 468-52-060 Assignment of access control classifications to highway segments. The assignment of an access control classification to all controlled access segments of the state highway system shall be the responsibility of the department. The process to be followed in assigning the classifications is as follows:

(1) Defining segments. The determination of the length and termini of segments shall be the responsibility of the department working in cooperation with the Regional Transportation Planning Organizations, Metropolitan Planning Organizations, and the appropriate local governmental entities.

(a) Segments of highways to be assigned to a particular access control classification shall be defined by the department in cooperation with local governments. The length and termini of segments shall take into consideration the mobility and access needs of the traveling public, the access needs of the existing and proposed land use abutting the highway segment, and the existing and desired mobility characteristics of the roadway. The number of classification changes occurring along a particular highway shall be minimized to provide highway system continuity, uniformity, and integrity to the maximum extent feasible. The segments shall not necessarily be confined by local jurisdictional boundaries. Points of transition between classifications along a particular route should be located on boundaries, or coincident with identifiable physical features.

(2) Assignment of classifications. All segments of all controlled access facilities on the state highway system shall be assigned to one of the access control classes one through five. The assignment of a classification to a specific segment of highway shall be the responsibility of the department. The classification shall be made in cooperation with the Regional Transportation Planning Organization, Metropolitan Planning Organization, and the appropriate local governmental entities. For city streets that are designated as state highways pursuant to chapter 47.24 RCW, the department will obtain concurrence in the final class assignment from the city or town for those state highways where the city or town is the permitting authority. The assignment of a classification shall take into consideration the following factors:

(a) Local land use plans, zoning, and land development regulations as set forth in adopted comprehensive plans;

(b) The current and potential functional classification of the highway;

(c) Existing and projected future traffic volumes;

(d) Existing and projected state, local, and metropolitan planning organization transportation plans and needs including consideration of new or improved parallel facilities;

(e) Drainage requirements;

(f) The character of the lands adjoining the highway;

(g) The type and volume of traffic requiring access;

(h) Other operational aspects of access, including corridor accident history;

(i) The availability of reasonable access to the state highway by way of county roads or city streets as an alternative to a connection to the state highway;

(j) The cumulative effect of existing and projected connections on the state highway system's ability to provide

for the safe and efficient movement of people and goods within the state.

(3) Changes in jurisdiction. When the boundaries of an incorporated city or town are revised to include a portion of a controlled access state highway resulting in a change in the permitting authority from the department to the city or town in accordance with chapter 47.24 RCW, the access classification of that portion of the state highway shall remain unchanged unless modified in accordance with WAC 468-52-070.

NEW SECTION

WAC 468-52-070 Review and modification of classifications. (1) Department initiated action. The department may, at any time, initiate a review of the access control classification of any segment of any state highway. When a major change occurs in any of the factors noted in WAC 468-52-060(2), the department shall review the access classification for the specific segments of any state highway affected by the change. Prior to the initiation of any change in classification of a highway segment, the department shall notify in writing the appropriate Regional Transportation Planning Organization, Metropolitan Planning Organization, and local governmental entities. The department will consult with the RTPO, MPO, and local governmental entities and shall take into consideration, any comments or concerns received during the review process. For city streets that are designated as state highways pursuant to chapter 47.24 RCW, the department will obtain concurrence in the final class assignment from the city or town for those state highways where the city or town is the permitting authority. The department shall notify the RTPO, MPO, and local governmental entities in writing of the final determination of the reclassification action.

(2) Requests for departmental review. A Regional Transportation Planning Organization, Metropolitan Planning Organization, or local governmental entity may request, in writing, at any time that the Secretary of Transportation initiate a review of the access control classification of a specific segment or segments of a state highway(s). Such written request shall identify the segment(s) of state highway for which the review is requested and shall include a specific recommendation for the reclassification of the highway segment(s) involved. Justification for the requested change shall be provided in the request taking into account the standards and criteria in WAC 468-52-040 and 468-52-060. The department will consult with the RTPO, MPO, and local governmental entities involved and shall take into consideration, any comments or concerns received during the review process. The department shall notify the RTPO, MPO, and local governmental entities in writing of the final determination of the reclassification action.

Other interested persons or organizations who wish to initiate a review of the access control classification of a specific highway segment shall do so through the local governmental entity, MPO, or RTPO.

WSR 93-03-047

PERMANENT RULES

DEPARTMENT OF HEALTH

[Order 325—Filed January 14, 1993, 2:58 p.m.]

Date of Adoption: January 12, 1993.

Purpose: To implement provisions of chapter 70.119A RCW regarding the requirement that all Group A public water systems obtain an annual operating permit.

Statutory Authority for Adoption: Chapter 70.119A RCW.

Pursuant to notice filed as WSR 92-22-098 on November 3, 1992.

Effective Date of Rule: Thirty-one days after filing.

January 12, 1993
Kristine M. Gebbie
Secretary

Chapter 246-294 WAC

DRINKING WATER OPERATING PERMITS

WAC

- 246-294-001 Purpose.
- 246-294-010 Definitions.
- 246-294-020 Applicability.
- 246-294-030 Application process.
- 246-294-040 Operating permit categories.
- 246-294-050 Permit issuance.
- 246-294-060 Transfer of ownership.
- 246-294-070 Fees.
- 246-294-080 Public notification.
- 246-294-090 Enforcement.
- 246-294-100 Severability.

NEW SECTION

WAC 246-294-001 Purpose. The rules set forth in this chapter are adopted for the purpose of implementing the provisions of chapter 70.119A RCW and to assure that Group A water systems provide safe and reliable drinking water to the public in accordance with chapter 246-290 WAC, state board of health drinking water regulations.

NEW SECTION

WAC 246-294-010 Definitions. Abbreviations:

- EPA - Environmental Protection Agency
- MCL - maximum contaminant level
- NTNC - nontransient noncommunity
- SMA - satellite system management agency
- SNC - significant noncomplier
- TNC - transient noncommunity
- VOC - volatile organic chemical
- WFI - water facilities inventory

"Community water system" means any Group A water system:

With fifteen or more services used by residents for one hundred eighty or more days within a calendar year, regardless of the number of people; or

Regularly serving twenty-five or more residents for one hundred eighty or more days within the calendar year, regardless of the number of services.

"Department" means the Washington state department of health.

"Group A water system" and "system" means a public water system:

With fifteen or more service connections, regardless of the number of people; or

Serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections.

"Maximum contaminant level (MCL)" means the maximum permissible level of a contaminant in water the purveyor delivers to any public water system user, measured at the locations identified under WAC 246-290-300, Table 4.

"New Group A water system" means a system designed for fifteen or more services or to serve twenty-five or more people which:

The department has not acknowledged receipt of the form titled *Construction Report for Public Water System Projects* before the effective date of this chapter; or

Has been in existence but has not received department as-built approval or does not have a WFI on record with the department.

"Nonresident" means a person without a permanent home or without a home served by the system, such as travelers, transients, employees, students, etc.

"Nontransient noncommunity water system (NTNC)" means a Group A water system regularly serving twenty-five or more of the same nonresidents for one hundred eighty or more days within a calendar year.

"Owner" means any agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity, that holds as property, a public water system.

"Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with the system, including:

Any collection, treatment, storage, and distribution facilities under control of the purveyor and used primarily in connection with such system; and

Any collection or pretreatment storage facilities not under control of the purveyor which are primarily used in connection with such system.

"Resident" means an individual living in a dwelling unit served by a public water system.

"Satellite system management agency (SMA)" means a person or entity that is certified by the department to own and/or operate more than one public water system on a regional or county-wide basis, without the necessity for a physical connection between such systems.

"Service" means a connection to a public water system designed to serve a single-family residence, dwelling unit, or equivalent use. When the connection is a group home or barracks-type accommodation, two and one-half persons shall be equivalent to one service.

"Significant noncomplier (SNC)" means a Group A water system that is in violation of state drinking water rules and such violation or violations may present an immediate risk to the health of consumers.

"Transient noncommunity (TNC)" means a Group A water system:

Having fifteen or more services used less than one hundred eighty days within a calendar year; or

Serving twenty-five or more different nonresidents for sixty or more days within a calendar year; or

Serving twenty-five or more of the same nonresidents for sixty or more days, but less than one hundred eighty days within a calendar year; or

Serving twenty-five or more residents for sixty or more days, but less than one hundred eighty days within a calendar year:

"Water facilities inventory (WFI)" means the department form summarizing each public water system's characteristics.

NEW SECTION

WAC 246-294-020 Applicability. Owners of all Group A water systems and owners of satellite system management agencies (SMAs) shall obtain an annual operating permit from the department for each system owned. The operating permit shall be valid until the next renewal date in accordance with WAC 246-294-050. Any change in ownership of the permitted system shall require a new permit in accordance with WAC 246-294-060.

NEW SECTION

WAC 246-294-030 Application process. (1) No person may operate and no owner shall permit the operation of a Group A water system unless the owner annually submits an application along with the required fee to the department and the department has issued an operating permit to the system owner. Any owner operating a system or SMA may continue to operate until the department takes final action on granting or denying the operating permit, in accordance with WAC 246-294-050.

(2) The department shall begin the operating permit application process for the initial and succeeding years based on size and type of system as follows:

(a) During the first calendar quarter of each year - community water systems greater than or equal to five hundred services and SMAs shall be sent operating permit applications;

(b) During the second calendar quarter of each year - community water systems less than five hundred services shall be sent operating permit applications;

(c) During the third calendar quarter of each year - nontransient noncommunity (NTNC) and transient noncommunity (TNC) water systems shall be sent operating permit applications; and

(d) During the fourth calendar quarter of each year - all remaining Group A water systems.

(3) In addition to the schedule outlined in subsection (2) of this section, new or revised operating permits shall be required when:

(a) The owner of a new Group A system receives all required department approvals relating to water system operation (see WAC 246-294-030(4)); or

(b) Ownership of a Group A system changes (see WAC 246-294-060).

(4) New Group A systems shall be sent operating permit applications at the time construction documents are submitted to the department for approval. The deadline for submitting the completed application and full payment to the department shall be the same date as:

(a) The *Construction Report for Public Water System Projects* required by WAC 246-290-040(2); or

(b) The as-built approval required by WAC 246-290-140(4).

(5) Initial and renewal applications shall be based on information from the most recent WFIs on file with the department, and sent to owners according to the phase-in schedule in subsection (2) of this section. In the case of a SMA, a complete list of systems owned, along with the corresponding system identification numbers, shall also be included with the application.

(6) Upon receipt of the application, the owner shall:

(a) Complete portions of the form which need completing;

(b) Ensure that information on the form is accurate; and

(c) Return the application to the department within seventy days of the department's mailing date, accompanied by the applicable fee.

(7) The application shall be signed by the owner or other legally authorized person:

(a) In the case of a corporation, by an authorized corporate officer;

(b) In the case of a partnership, by a general partner;

(c) In the case of a sole proprietorship, by the proprietor;

(d) In the case of a municipal or other public facility, by a legally authorized officer; or

(e) In the case of an association, by the head of the association or a person responsible for operation of the system.

(8) The applicable fee shall be in the form of a check or money order made payable to the "Department of Health" and mailed to Department of Health, Revenue Unit, P.O. Box 1099, Olympia, Washington 98507-1099, or such successor organization or address as designated by the department.

(9) Systems which do not return operating permit applications along with the required fee by the deadline specified shall:

(a) Not be issued an operating permit;

(b) Be subject to the enforcement provisions in WAC 246-294-090.

(10) An additional charge of ten percent or twenty-five dollars, whichever is greater, shall be added to the applicable fee listed in WAC 246-294-070 if the owner fails to return the completed application with applicable fee to the department within seventy days.

(11) The department shall review each submitted application to verify the information contained in the application. Any changes made on the application by the applicant shall result in updating the system's WFI and shall be reflected on the next renewal application.

(12) If after issuing an operating permit, the department determines that the permit holder has made false statements, the department may, in addition to taking other actions

provided by law, revise both current and previously granted permit fee determinations and charge the owner accordingly.

(13) If the department discovers that an owner has been operating a system without an operating permit and such system is covered by the requirements of this chapter, the department may charge the owner an operating permit fee that is the total of the one-time five-dollar per service fee for new Group A water systems plus permit fees owed for each year, including late fees, since the effective date of this chapter.

NEW SECTION

WAC 246-294-040 Operating permit categories. (1)

The department shall evaluate each system for placement into one of the categories listed in Table 1, except as noted in subsection (3)(d) of this section. Each permit issued shall clearly identify the category into which the system is placed. The department shall provide a determination of system adequacy and the reasons for this determination, to any person on request.

(2) The criteria used for evaluation may include, but not be limited to the following:

(a) Whether the system is subject to an order under WAC 246-290-050, for one or more of the following:

(i) Failure to have approved construction documents; or

(ii) Stopping work on system improvements; or

(iii) Failure to meet pressure requirements; or

(iv) Failure to meet water treatment requirements; or

(v) Failure to have a certified water treatment plant operator; or

(vi) Failure to meet water quality maximum contaminant levels; or

(vii) Placement of a moratorium on the system.

(b) Whether the system is in violation of any departmental order issued under WAC 246-290-050 or federal administrative order issued under §1414(g) of the Safe Drinking Water Act, 42 U.S.C. §300g-3(g);

(c) Whether the system is confirmed by the department as an unresolved significant noncomplier (SNC). Unresolved shall mean any system which:

(i) The department determines has not returned to compliance;

(ii) Does not have a signed compliance agreement with the department; or

(iii) Has not been issued a departmental order under WAC 246-290-050.

(d) Whether the system has reached the maximum number of services allowed in the distribution system by department approval;

(e) Whether the system has complied with water system plan provisions of WAC 246-290-100;

(f) Whether the system has complied with the water system financial viability provisions of RCW 70.119A.100 and WAC 246-290-100 (4)(d);

(g) Whether the system has complied with operator certification provisions of chapter 246-292 WAC;

(h) Whether the system has complied with coliform and inorganic chemical monitoring provisions of WAC 246-290-300; and

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(i) Whether the system has complied with inorganic chemical and volatile organic chemical MCLs in accordance with WAC 246-290-310.

(3) Operating permit categories shall be as follows:

(a) Category green. This category shall identify systems which are substantially in compliance with all the applicable criteria in subsection (2) of this section. Placement in this category shall result in:

(i) Permit issuance without conditions; and

(ii) Determination that the system is adequate.

(b) Category yellow. This category shall represent systems which are substantially in compliance with the applicable criteria in subsection (2)(a), (b), (c), and (d) of this section, but which do not satisfy one or more of the criteria in subsection (2)(e) through (i) of this section and any additional criteria as determined by the department. Placement in this category shall result in:

(i) Permit issuance with conditions; and

(ii) Determination that the system is adequate or inadequate, depending on the nature of noncompliance.

(c) Category red. This category shall represent systems which do not satisfy one or more of the criteria in subsection (2)(a), (b), (c), or (d) of this section. Such systems shall also be evaluated against subsection (2)(e) through (i) of this section and any additional criteria as determined by the department. Placement in this category shall mean that the system is inadequate and result in:

(i) Permit issuance with conditions; or

(ii) Permit denial with appropriate enforcement.

(d) Category blue. This category shall identify systems which the department has elected to evaluate at a later date. Placement in this category shall result in no conditions and no determination that the system is adequate until the system is evaluated.

(3) At the time of permit issuance, the department may impose such permit conditions and compliance schedules as the department determines are reasonable and necessary to ensure that the system will provide safe and reliable drinking water, including, but not limited to, conditions necessary to ensure that the system is brought into compliance with the provisions of chapter 246-290 WAC.

(4) The department may modify an operating permit at any time based on review of the evaluation criteria in WAC 246-294-040 (2). When modification occurs, a revised permit with the same expiration date will be sent to the owner. The appropriate local jurisdiction shall also be notified of the change in status.

(5) The department may revoke an operating permit or deny an operating permit application if the department determines that the system operation constitutes or would constitute a public health hazard to consumers.

(6) The department shall follow the steps outlined in RCW 43.70.115 when taking action to deny, condition, modify, or revoke an operating permit.

(7) An applicant for an operating permit shall be entitled to file an appeal in accordance with chapter 34.05 RCW if the department denies, conditions, modifies, or revokes the operating permit. To appeal, the owner shall file in writing with the department in a manner that shows proof of receipt within twenty-eight days of the applicant's receipt of the adverse notice.

The appeal shall state:

(a) The issue or issues and law involved; and

(b) The grounds for contesting the department decision.

(8) Any owner that requests a hearing under chapter 34.05 RCW may continue to operate the system until a final departmental decision is issued, unless protection of the public health, safety, and welfare requires summary action.

TABLE 1
OPERATING PERMIT CATEGORIES

Category	Basic Description	Response to Adequacy Requests	Conditions
Green	Substantial Compliance	Yes	No
Yellow	Conditional Compliance	Yes or No ¹	Yes
Red	Substantial Noncompliance	No	Yes
Blue	Undetermined	(Will be evaluated at a later date)	

¹ Response will be determined on a case-by-case basis for each system and shall depend on the nature of noncompliance.

NEW SECTION

WAC 246-294-050 Permit issuance. (1) The department shall grant or deny the operating permit within one hundred twenty days of receipt of the completed application and full payment.

(2) Issuance of an operating permit shall mean that the owner may operate the permitted system until the date specified on the permit unless protection of the public health, safety, and welfare requires immediate response or the imposition of conditions.

NEW SECTION

WAC 246-294-060 Transfer of ownership. (1) A prospective new owner of a Group A water system shall not take possession of the system without first obtaining a new operating permit.

(2) The prospective new owner shall secure department approval of a new, updated, or altered water system plan as required by WAC 246-290-100 (2)(e) before the new permit is issued. The water system plan required under WAC 246-290-100 shall be prepared with special emphasis on sections dealing with implications of the change of ownership.

(3) The department shall send an application to the prospective new owner at the time the department is notified of transfer of ownership in accordance with WAC 246-290-430(1). The new owner shall proceed with the permit process in accordance with WAC 246-294-030, except the deadline for submitting the completed application to the department shall be the same date the water system plan is submitted for department approval.

(4) The department shall not charge a fee for a new permit resulting from a change in ownership. The permit shall be effective from the date of issuance by the department until the next scheduled permit renewal date, at which time a fee shall be charged.

(5) Change of ownership operating permit requirements of this section affect the prospective owner, and shall be in

addition to the continuity of service requirements of WAC 246-290-430 affecting the owner transferring the system.

NEW SECTION

WAC 246-294-070 Fees. (1) The fees for Group A water system operating permits shall be as indicated in Table 2.

**TABLE 2
OPERATING PERMIT FEES**

Classification	Fee
0 - 14 services	None
15 - 49 services	\$25.00 per year
50 - 3,333 services	\$1.50 per service per year
3,334 - 53,333 services	\$4,999.50 + .10 per service over 3,333 services per year
53,334 or more services	\$10,000.00 per year
Satellite System Management Agency (based on total services in all systems owned by SMA)	\$1.00 per service per year or the fee from the appropriate category above, whichever is less
New Group A water system	One-time charge of \$5.00 per service
Late charge	Additional 10% of applicable charge stated above or \$25.00, whichever is greater

(2) For NTNC and TNC systems, owners shall pay the applicable fee from Table 2 based on equivalent number of services. Population information used in calculating equivalent number of services shall come from the WFI. The following formulas shall be used in determining equivalent number of services:

(a) For NTNC divide the average population served each day by two and one-half; and

(b) For TNC divide the average population served each day by twenty-five.

(3) Where systems serve both resident and nonresident populations, the permit fee category shall be determined by adding the number of services and an equivalent for the nonresident population served.

(4) In addition to submitting an annual fee, all new Group A water systems shall be charged a one-time fee of five dollars for each service or equivalent, based on the department approved design or as-built approval (see WAC 246-294-030(4)).

(5) Any county or SMA assuming ownership of a Group A water system, or court appointed receiver of a Group A water system shall be exempt from the operating permit fee for a period of one year after the next renewal date.

NEW SECTION

WAC 246-294-080 Public notification. An owner issued a category red operating permit shall notify the water system users in accordance with WAC 246-290-330 and shall include mandatory language contained in the department publication titled *Mandatory Language For Drinking Water Public Notification*. The mandatory language will be included with issuance of a category red operating permit, or may be obtained from the department on request by contacting the Division of Drinking Water, Airdustrial Center #3, P.O. Box 47822, Olympia, Washington 98504-7822.

NEW SECTION

WAC 246-294-090 Enforcement. When any owner is out of compliance with these rules or any conditions identified on the operating permit, the department may initiate appropriate enforcement actions. These actions may include any one or combination of the following:

- (1) Issuance of informal letters instructing or requiring appropriate corrective measures; or
- (2) Issuance of a compliance schedule; or
- (3) Issuance of departmental orders requiring any person to apply for an operating permit as required by these rules and RCW 70.119A.110 or to comply with any conditions or requirements imposed as part of an operating permit; or
- (4) Issuance of civil penalties for up to five thousand dollars per day per violation for failure to comply with departmental orders issued in accordance with subsection (3) of this section; or
- (5) Legal action by the attorney general or local prosecutor.

NEW SECTION

WAC 246-294-100 Severability. If any provision of this chapter or its application to any person or circumstances is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected.

**WSR 93-03-048
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**
[Filed January 15, 1993, 10:19 a.m.]

Date of Adoption: January 15, 1993.

Purpose: WAC 296-46-935 defines the licensing exemption for serving electrical utilities and their contractors under chapter 19.28 RCW; and WAC 296-401-075 defines the employee licensing exemptions and sets forth conditions under which employees of serving utilities and contractors hired by the serving utilities may work on electrical equipment owned by a serving electrical utility.

Citation of Existing Rules Affected by this Order: Amending WAC 296-46-935 addition to define the licensing exemption for serving electrical utilities under chapter 19.28 RCW; and WAC 296-401-075 addition to define the employee licensing exemption for serving electrical utilities or their contractors under chapter 19.28 RCW.

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Statutory Authority for Adoption: WAC 296-46-935 is RCW 19.28.060; and WAC 296-401-075 is RCW 19.28.600.
Pursuant to notice filed as WSR 92-22-099 on November 4, 1992.

Effective Date of Rule: Thirty-one days after filing.

January 15, 1993

Joseph A. Dear
Director

NEW SECTION

WAC 296-46-935 Exemptions. (1) Definitions. The following definitions apply throughout this section.

(a) "Electrical equipment" includes electric lines, wires, apparatus, materials, and equipment.

(b) "License" means a license required under RCW 19.28.120.

(c) "Point of contact" means the point at which a customer's electrical system connects to the serving electrical utilities system.

(d) "Solicit" means to initiate the sale of services by advertisement or other means of offering one's services.

(e) For the purposes of RCW 19.28.200, electrical equipment not owned by a utility is "under the control of the serving electrical utility":

(i) If the equipment is located in a vault, room, closet, or similar enclosure that is secured by a lock or seal such that access is restricted to the serving electrical utilities personnel; or

(ii) If the serving electrical utility is obligated by contract to maintain the equipment and the contract provides that access to the equipment is restricted to the serving electrical utilities personnel.

(f) "Utility system" means electrical equipment owned by or under the control of a serving electrical utility that is used for the transmission or distribution of electricity from the source of supply to the point of contact at the premises or property to be supplied.

(g) "Utilization voltage" means the voltage level employed by the utilities customer for connection to lighting fixtures, motors, heaters, or other electrically operated equipment other than power transformers.

(2) Utility system exemption. Neither a serving electrical utility nor a contractor employed by the serving electrical utility is required to have a license for work on the "utility system" or on service connections or on meters and other apparatus or appliances used to measure the consumption of electricity.

(3) Street lighting exemption. A serving electrical utility is not required to have a license to work on electrical equipment used in the lighting of streets, alleys, ways, or public areas or squares.

(4) Customer owned equipment exemption. A serving electrical utility is not required to have a license to work on electrical equipment owned by a commercial, industrial, or public institution customer if:

(a) The utility has not solicited such work; and

(b) Such equipment:

(i) Is located outside a building or structure; and

(ii) The work performed is on the primary side of the customer's transformer(s) which produces power at the customer's utilization voltage.

(5) Independent power production equipment exemption. A serving electrical utility is not required to have a license to work on electrical equipment owned by a customer that is an independent power producer if:

(a) The customer has entered into an agreement to sell electricity to a utility or to a third party; and

(b) The electrical equipment is used to transmit electricity from the terminals of an electrical generating unit located on premises used by the customer to the point of interconnection with the utility system.

(6) Exempted equipment and installations. No person, firm, partnership, corporation, or other entity is required to have a license for work on electrical equipment and installations thereof that are exempted by RCW 19.28.010.

(7) Exemption from inspection.

(a) The work of a serving electrical utility and its contractors on the utility system is not subject to inspection.

(b) Work covered by the National Electrical Code is subject to inspection except for work exempted by Section 90-2(B)(5) of the 1981 edition of the National Electrical Code.

(8) Permits to be obtained by customers. Whenever a serving electrical utility does work for a customer under one of the exemptions in this section and the work is subject to inspection, the customer is responsible for obtaining all permits that are required.

NEW SECTION

WAC 296-401-075 Electrical linemens exemption.

No journeyman electrician certificate or electrical trainee certificate shall be required of employees of serving electrical utilities or of employees of electrical contractors licensed under RCW 19.28.120 for performing work found in WAC 296-46-935 when:

(1) The employees have graduated from an approved lineman's apprenticeship course approved by the department of labor and industries; or

(2) The employees are presently registered in a department of labor and industries approved lineman's apprenticeship course and are under the direct supervision of a certified journeyman electrician; or an employee having met the requirements of subsection (1) of this section; and

(3) The employees carry on their person, acceptable evidence that the requirements of subsection (1) or (2) of this section have been complied with; and

(4) The training received in the approved apprenticeship course includes training in the applicable articles of the currently adopted edition of the National Electrical Code as determined by the department.

WSR 93-03-078
PERMANENT RULES
TACOMA COMMUNITY COLLEGE

[Filed January 19, 1993, 9:29 a.m.]

Date of Adoption: January 14, 1993.

Purpose: To establish rules governing the filing of grievances based on sex discrimination, sexual harassment, or handicapped discrimination.

Statutory Authority for Adoption: RCW 28B.50.140(13).

Pursuant to notice filed as WSR 92-24-052 on November 30, 1992.

Effective Date of Rule: Thirty-one days after filing.
 January 14, 1993
 Robert Yamashita
 Chair

Chapter 132V-300 WAC
GRIEVANCE PROCEDURE—SEXUAL
HARASSMENT, SEX DISCRIMINATION, AND
HANDICAPPED DISCRIMINATION

NEW SECTION

WAC 132V-300-010 Statement of policy. Tacoma Community College is covered by Title IX of the Education Amendments of 1972 prohibiting sex discrimination in education and Section 504 of the Rehabilitation Act of 1973 prohibiting discrimination on the basis of handicap. The college is committed to protecting the rights and dignity of each individual in the campus community and so will not tolerate discrimination of any kind, at any level.

Further, it is the policy of Tacoma Community College to provide an environment in which employees can work free from sexual harassment or sexual intimidation. Sexual harassment is a form of sex discrimination. As such it is a violation of Title VII of the 1964 Civil Rights Act and Title IX of the 1972 Education Amendments.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

(1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic standing; or

(2) Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decision affecting such individual; or

(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working or educational environment.

NEW SECTION

WAC 132V-300-020 Jurisdiction. This chapter shall serve as a Title IX/Section 504 grievance for all employees of Tacoma Community College including classified staff, faculty, and administrators, applicants for employment; and enrolled students and applicants for admission.

NEW SECTION

WAC 132V-300-030 Grievance procedure. Internal review and consultative processes have proven to be a desirable means of resolving problems. Any employee, applicant for employment, enrolled student, or applicant for admission to Tacoma Community College who believes he/she has been discriminated against on the basis of sex or on the basis of a handicap is encouraged to resolve the complaint with the individual believed to have committed the discriminatory act. If the complaint is not resolved, the individual may lodge a formal institutional grievance according to the following procedures:

(a) Step 1: Official hearing.

(i) Sexual discrimination/harassment complaints shall be lodged with the Title IX Officer or the Affirmative Action Officer. Handicapped discrimination complaints shall be lodged with the 504 Officer or the Affirmative Action Officer. The complainant shall request a meeting with the designated college officer as the first step in the grievance process.

(ii) To request an official hearing, the complainant shall file a written complaint with the designated college officer describing the specific grievance(s), including dates, times, places, circumstances, and any witnesses. A copy of the written complaint will be provided to the person to whom the grievance is directed.

(iii) Within ten (10) instructional days of receiving the written request, the designated college officer shall arrange a meeting to hear the complaint. It shall be at the discretion of the complainant to determine whether the officer will meet with the complainant and the person to whom the complaint has been directed separately or in a single meeting. If the complainant requests a single meeting, unless otherwise mutually agreed by the parties, attendance shall be limited to the complainant, the person to whom the complaint is directed, and the college officer, who shall chair the meeting. Either the complainant or the person to whom the complaint is directed may call witnesses at the discretion of the person presiding.

At this step and all subsequent steps in the grievance procedure, the complainant may elect to be represented by an attorney in preparing and presenting the grievance. The complainant shall notify the appropriate college officer at least five (5) instructional days in advance of such action. In such cases, the college may choose to be assisted by an assistant attorney general.

(iv) Following the hearing and within thirty (30) calendar days of receiving the written request, the college officer will report his/her findings in writing to both the complainant and the person to whom the complaint has been directed. This decision is final absent appeal to the college president.

(v) The Affirmative Action officer and Title IX Office are to be informed of any sex discrimination/harassment complaint or 504 complaint lodged, as well as the resolutions of such complaints.

(b) Step 2: Presidential appeal.

(i) Either the complainant or the person to whom the complaint is directed has a right to present a statement to the

college president appealing the findings of the designated college officer.

(ii) The request must be made in writing within ten (10) days of written notification of the results of the official hearing.

(iii) Within ten (10) instructional days of receiving the appeal request, the college president or the president's designee will review the record of the hearing and the appeal and report the findings in writing to both the complainant and the person to whom the complaint is directed.

(iv) The written findings of the presidential appeal will be considered final. No further intra-institutional appeal exists.

(v) If the findings indicate that the person against whom the complaint is lodged engaged in sexual harassment or other discriminatory acts, disciplinary proceedings may be commenced against the person pursuant to appropriate procedures, depending on whether the person is a student, a member of classified staff, administrative exempt, or faculty.

If desired, inquiries or appeals beyond the institutional level may be directed to:

(a) United States Department of Education, Office of Civil Rights, 1915 2nd Avenue, Room 3310, Seattle, Washington 98174-1099.

(b) United States Equal Opportunity Commission, 2815 2nd Avenue, Suite 500, Seattle, Washington 98121.

(c) The Washington State Human Rights Commission, 711 South Capitol Way, Suite 402, PO Box 42490, FJ-41, Olympia, Washington 98504-2490.

(d) City of Tacoma, Human Rights Department, 747 Market Street, Room 808, Tacoma, Washington 98402.

WSR 93-03-079

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed January 19, 1993, 10:42 a.m.]

Date of Adoption: January 19, 1993.

Purpose: Inspection fees for weighing, measuring and counting devices provided for by chapter 237, Laws of 1992; reporting requirements for city sealers; requirements for railroad scale testing.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-674-002 and 16-674-020; and amending WAC 16-674-010.

Statutory Authority for Adoption: Chapter 237, Laws of 1992.

Pursuant to notice filed as WSR 92-23-071 on November 18, 1992; and WSR 93-02-016 on December 30, 1992.

Effective Date of Rule: Thirty-one days after filing, January 19, 1993

Michael V. Schwisow
Acting Director

AMENDATORY SECTION (Amending Order 1145, filed 2/27/70, effective 4/1/70)

WAC 16-674-010 Exemptions (~~((from sealing or marking and/or annual retesting of weights and measures devices))~~ **and definitions.** (1) The ~~((weights and measures))~~ weighing or measuring instruments or devices listed below shall be specifically exempted from the sealing or marking inspection and testing requirements of ~~((section 25, chapter 67, laws of 1969))~~ RCW 19.94.250 because they are of such character or size that such sealing or marking inspection and testing would be inappropriate, impractical, or damaging to the apparatus in question:

- (a) Measure containers
- (b) Milk bottles
- (c) Lubricating oil bottles
- (d) Berry baskets and boxes.

(2) The classes of ((weights and measures)) weighing or measuring instruments or devices listed below shall be specifically exempted from ~~((the annual retesting requirement of sections 20 and 21, chapter 67, Laws of 1969 and shall be retested only as required by the director))~~ section 6 of Chapter 237, Laws of 1992 because they are of such character that periodic testing is unnecessary to ensure continued accuracy:

- (a) Vehicle tanks used as measures*
- (b) Farm milk tanks*
- (c) Liquid measures*
- (d) Glass graduates
- (e) Measures containers
- (f) Milk bottles
- (g) Lubricating oil bottles
- (h) Linear measures*
- (i) Dry measures*
- (j) Berry baskets and boxes.

*Whenever an item of this class is damaged, repaired or modified in any way that affects the accuracy of measurement, it shall not thereafter be used for measurement until it has been officially inspected and reaproved.

(3) Unless the context clearly requires otherwise, the definitions provided for in chapter 19.94 RCW shall apply to this chapter.

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

NEW SECTION

WAC 16-674-060 Inspection and testing fees. The following fees shall be charged for the inspection and testing of weighing or measuring instruments or devices included in this fee schedule:

- (1) Weighing devices:
 - (a) Small scales "zero to four hundred pounds capacity" \$ 12.00
 - (b) Intermediate scales "four hundred and one pounds to five thousand pounds capacity" \$ 50.00

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- (c) Large scales "over five thousand pounds capacity" \$ 105.00
- (d) Large scales with supplemental devices \$ 125.00
- (e) Railroad track scales \$ 800.00
- (2) Liquid fuel metering devices:
- (a) Motor fuel meters with flows of less than twenty gallons per minute \$ 12.00
- (b) Motor fuel meters with flows of more than twenty but not more than one hundred and fifty gallons per minute \$ 40.00
- (c) Motor fuel meters with flows over one hundred and fifty gallons per minute . . \$ 50.00
- (3) Liquid petroleum gas meters:
- (a) With one inch diameter or smaller dispensers that are not compensated for temperature variations \$ 50.00
- (b) With one inch diameter or smaller dispensers that are compensated for temperature variations \$ 50.00
- (c) With greater than one inch diameter dispensers that are not compensated for temperature variations \$ 75.00
- (d) With greater than one inch diameter dispensers that are compensated for temperature variations \$ 75.00
- (4) Fabric meters \$ 12.00
- (5) Cordage meters \$ 12.00
- (6) Mass flow meters \$ 35.00
- (7) Taxi meters \$ 12.00

The fees in this schedule shall only be paid once every two years, except for railroad track scales for which the fee will be paid annually if an annual inspection is performed. The fees to be charged for the inspection of any device used in an agency or institution to which moneys are appropriated by the legislature or of the federal government shall be the same fees as those that are listed above for commercial devices.

NEW SECTION

WAC 16-674-070 Late fees. Payment of inspection fees is due and payable thirty days after billing. A late penalty of one and one half percent per month will be assessed on the unpaid balance of any unpaid billing more than thirty days in arrears after billing.

NEW SECTION

WAC 16-674-080 Fees for federal grain elevator scales. Scales in use in grain elevators which are licensed by the Federal Grain Inspection Service shall be subject to random and necessary inspections. The fees for such inspections shall be thirty-one dollars fifty cents per hour, as adopted under WAC 16.212.060 (15)(d), and shall be payable to the commodity inspection division of the state department of agriculture, which has entered into a cooperative agreement with the Weights and Measures Program.

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

NEW SECTION

WAC 16-674-090 Fees for railroad track scales. All railroad track scale owners in this state shall provide suitable facilities for testing track scales. Track scale owners shall provide a suitable car or other device or facility to be used in testing track scales. The cost of providing the car, device, or facility shall be equitably and reasonably apportioned by the department among all track scale owners. The car, device, or facility shall be used by the department to test the accuracy of all track scales and the railroad companies shall, without charge, move the car, device, or facility to locations designated by the department.

NEW SECTION

WAC 16-674-100 City sealers report forms prescribed. City sealers are required, as provided in RCW 19.94.280(3), to adopt the fee schedule for weighing or measuring instruments or devices established by the director pursuant to section 6 of Chapter 237, Laws of 1992. On the thirtieth day of each month, city sealers shall remit ten percent of the total fees collected by the city during the preceding month. The fees that the cities must charge are set forth in WAC 16-674-020. These fees shall only be charged once every two years for each device inspected and approved. The following form shall be completed and returned with the city's payment.

City	Month	Year	WEIGHING AND MEASURING DEVICES INSPECTED AND APPROVED		
			No.	Fees Collected	10% to State
Small scales zero to 400 lbs. capacity
Intermediate scales 401 to 5,000 lbs.
Large scales over 5,000 lbs. capacity
Large scales with supplemental devices
Railroad track scales
Motor fuel meters w/flow < 20 gal./min.
Motor fuel meters w/flow > 20 gal./min. and < 100 gal./min.
Motor fuel meters w/flow >100 gal./min
LPG meters w/ 1 inch or smaller disp. not compensated for temperature var.
LPG meters w/ 1 inch or smaller disp. that are compensated for temp. var.
LPG meters w/> 1 inch disp. not compensated for temperature var.
LPG meters w/> 1 inch dis. that are compensated for temperature var.
Fabric meters
Cordage meters
Mass flow meters
Taxi meters
TOTAL TO BE PAID TO STATE				

PERMANENT

Please make your check payable to the State Department of Agriculture and mail it to P.O. Box 42560, Olympia, WA, 98504-2560. Thank you.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 16-674-002 Promulgation.
- WAC 16-674-020 Disposition of condemned and confiscated weights and measures.

WSR 93-03-080
PERMANENT RULES
BOARD OF
PILOTAGE COMMISSIONERS

[Filed January 19, 1993, 1:26 p.m.]

Date of Adoption: January 14, 1993.

Purpose: To amend the pilotage tariff rate for the Grays Harbor pilotage district.

Citation of Existing Rules Affected by this Order: Amending WAC 296-116-185.

Statutory Authority for Adoption: RCW 88.16.035.

Pursuant to notice filed as WSR 92-24-055 on November 30, 1992.

Changes Other than Editing from Proposed to Adopted Version: The proponents sought to repeal the tariff adopted June 11, 1992, and increase the 1992 pilotage rate by 27.5% over the 1992 tariff. The rule adopted does not repeal the 1992 tariff, but amends it as of the effective date. The rule as amended reflects a 3.27% increase over the original 1992 tariff.

Effective Date of Rule: Thirty-one days after filing.
January 14, 1993
C. A. Richmond, Jr.
Chairman

[AMENDATORY SECTION (Amending WSR 92-14-069, filed 6/26/92)]

WAC 296-116-185 Tariffs, and pilotage rates for the Grays Harbor pilotage district.

CLASSIFICATION OF PILOTAGE SERVICE RATE

Piloting of vessels in the inland waters and tributaries of Grays Harbor:

Each vessel shall be charged according to its draft and tonnage. The draft charges shall be \$((41.56)) 42.92 per meter (or \$((12.65)) 13.06 per foot) and the tonnage charge shall be \$((0.1326)) 0.1369 per net registered ton. The minimum net registered tonnage charge is \$((463.73))

478.90. The charge for an extra vessel (in case of tow) is \$((265.00)) 273.67.

Boarding fee:

Per each boarding/deboarding from a boat \$((199.93))
206.47

Harbor shifts:

For each shift from dock to dock, dock to anchorage, anchorage to dock, or anchorage to anchorage \$((332.42))
343.29

Delays per hour \$ ((79.26))
81.86

Cancellation charge (pilot only) . . . \$((132.49))
136.83

Cancellation charge (pilot boat only) \$((397.48))
410.49

Travel allowance:

Boarding or deboarding a vessel off Grays Harbor entrance \$ ((61.51))
63.53

Pilot when traveling to an outlying port to join a vessel or returning through an outlying port from a vessel which has been piloted to sea shall be paid \$((463.74)) 478.91 for each day or fraction thereof, and the travel expense incurred \$((463.74))
478.91

Bridge transit:

Charge for each bridge transited . . . \$((145.52))
150.28

Miscellaneous:

The balance of amounts due for pilotage rates not paid within 30 days of invoice will be assessed at 1 1/2% per month late charge.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

WSR 93-03-086
PERMANENT RULES
LAKE WASHINGTON
TECHNICAL COLLEGE
[Filed January 19, 1993, 2:45 p.m.]

Date of Adoption: January 13, 1993.

Purpose: To set time and place of board meetings.

Citation of Existing Rules Affected by this Order: Amending WAC 495D-104-010.

Statutory Authority for Adoption: RCW 28B.50.140.

Pursuant to notice filed as WSR 92-24-093 on December 2, 1992.

Effective Date of Rule: Thirty-one days after filing.

PERMANENT

January 14, 1993
Donald W. Fowler
President

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-104-010 Time and place of board meetings. The board of trustees shall hold one regular meeting on the second Wednesday of each month at 7:30 a.m. in February, April, June, August, October, and December, and at 6:30 p.m. in January, March, May, July, September, and November and such special meetings as may be requested by the chair of the board or by a majority of the members of the board and announced in accordance with law. All regular and special meetings of the board of trustees shall be held at Lake Washington Technical College, unless scheduled elsewhere, and are open to the general public, except for lawful executive sessions. No official business may be conducted by the board of trustees except during a regular or special meeting.

WSR 93-03-089

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 92-42—Filed January 20, 1993, 10:21 a.m.]

Date of Adoption: January 19, 1993.

Purpose: The purpose of the rule is to control the release of gasoline vapors from storage and transfer operations. This revision provides for a more equitable phase-in schedule of the portion of the regulation requiring controls during vehicle refuel.

Citation of Existing Rules Affected by this Order: Amending WAC 173-491-050 Compliance schedules.

Statutory Authority for Adoption: RCW 70.94.331.

Pursuant to notice filed as WSR 92-19-016 on September 4, 1992.

Effective Date of Rule: Thirty-one days after filing.

January 20, 1993

Terry Husseman
Acting Director

AMENDATORY SECTION (Amending Order 90-63 filed 7/2/91, effective 8/2/91)

WAC 173-491-050 Compliance schedules. (1) Fixed-roof gasoline storage tanks. All fixed roof gasoline storage tanks subject to WAC 173-491-040(1) shall comply no later than December 31, 1993.

(2) Gasoline loading terminals. All gasoline loading terminals subject to WAC 173-491-040(2) shall comply no later than December 31, 1993.

(3) Bulk gasoline plants. All bulk gasoline plants subject to the requirements of WAC 173-491-040(3) shall comply no later than December 31, 1993.

(4) Gasoline dispensing facilities - Stage I. All gasoline dispensing facilities subject to the requirements of WAC

173-491-040(4) shall comply no later than December 31, 1993, or whenever the facility is upgraded.

(5) Gasoline dispensing facilities - Stage II. All gasoline dispensing facilities subject to the requirements of WAC 173-491-040(5) shall comply:

(a) When upgraded except any gasoline dispensing facility upgraded or with new tank(s) installed after the effective date of this regulation but before May 1, 1992, need not comply earlier than May 1, 1992.

(b) For businesses which own ten or more gasoline dispensing facilities in the state of Washington, facilities subject to Stage II requirements as indicated in WAC 173-491-040 (5)(a) must comply according to the following schedule:

(i) ~~((At least)) Fifty percent of ((the)) all gasoline dispensing facilities with an annual throughput greater than 1.2 million gallons ((owned by a business which owns ten or more gasoline dispensing facilities in the state of Washington must comply not later than)) by May 1, 1993. ((In meeting this requirement, businesses that lease some facilities and operate others must ensure that the percentage of facilities owned and operated which are required to comply with this provision at least equals the percentage of leased facilities required to comply with this provision.))~~

(ii) All remaining gasoline dispensing facilities with an annual throughput greater than 1.2 million gallons ~~((not previously required to comply))~~ must comply ~~((not later than))~~ by May 1, 1994.

(iii) ~~((All gasoline dispensing facilities with an annual throughput greater than six hundred thousand gallons not previously required to comply must comply not later than))~~ Businesses which own ten or more gasoline dispensing facilities in King, Pierce, Snohomish, and Clark counties must, in addition, meet the following requirements at their facilities within King, Pierce, Snohomish, and Clark counties:

(A) At least fifty percent of the gasoline dispensing facilities with an annual throughput greater than 840,000 gallons must comply by May 1, 1994;

(B) The remaining gasoline dispensing facilities with an annual throughput greater than 840,000 gallons must comply by May 1, 1995.

(iv) All gasoline dispensing facilities must be in compliance not later than December 31, 1998.

(v) In meeting this requirement, businesses that lease some facilities and operate others must ensure that the percentage of facilities owned and operated which are required to comply with this provision at least equals the percentage of leased facilities required to comply with this provision.

(c) For businesses which own fewer than ten gasoline dispensing facilities in the state of Washington:

(i) All facilities with an annual throughput of 1.2 million gallons must comply by May 1, 1994;

(ii) All remaining facilities must comply by December 31, 1998.

WSR 93-03-025
EMERGENCY RULES
DEPARTMENT OF REVENUE
[Filed January 12, 1993, 2:27 p.m.]

Date of Adoption: January 12, 1993.

Purpose: To comply with the statute and provide current interest rate to be applied to refunds of property taxes.

Citation of Existing Rules Affected by this Order: Amending WAC 458-18-220.

Statutory Authority for Adoption: RCW 84.08.010 and 84.69.100.

Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Statute requires that rule be amended to reflect the current rate of interest by first of every year per RCW 84.69.100.

Effective Date of Rule: Immediately.

January 12, 1993
William N. Rice
Assistant Director

AMENDATORY SECTION (Amending 92-17-027, filed 8/11/92)

WAC 458-18-220 Refunds—Rate of interest. The following rates of interest shall apply on refunds of taxes made pursuant to RCW 84.69.010 through 84.69.090 in accordance with RCW 84.69.100. The following rates shall also apply to judgments entered in favor of the plaintiff pursuant to RCW 84.68.030. The interest rate is derived from the equivalent coupon issue yield of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted after June 30th of the calendar year preceding the date the taxes were paid or the claim for refund is filed, whichever is later. The rate thus determined shall be applied to the amount of the judgment or the amount of the refund, until paid:

Year tax paid (chapter 84.68 RCW); Year tax paid or claim filed (whichever is later)

(chapter 84.69 RCW)	Auction Year	Rate
1985	1984	11.27%
1986	1985	7.36%
1987	1986	6.11%
1988	1987	5.95%
1989	1988	7.04%
1990	1989	8.05%
1991	1990	8.01%
1992	1991	5.98%
1993	1992	3.42%

WSR 93-03-028
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Public Assistance)

[Order 3496—Filed January 12, 1993, 2:47 p.m., effective January 13, 1993, 12:01 a.m.]

Date of Adoption: January 12, 1993.

Purpose: Clarify language. Include burial space purchase agreements and accrued interest as exempt resources. Clarify treatment of a sales contract. Deletes language and makes technical changes for easier reading.

Citation of Existing Rules Affected by this Order: Amending WAC 388-83-026 Availability of resources—General, 388-83-041 Income—Eligibility, and 388-92-045 Exempt resources.

Statutory Authority for Adoption: RCW 74.08.090.

Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Clarification of language. Clarify treatment of sales contracts. Add burial space purchase agreements as exempt resources.

Effective Date of Rule: January 13, 1993, 12:01 a.m.

January 12, 1993
Rosemary Carr
Acting Director
Administrative Services

AMENDATORY SECTION (Amending Order 3093, filed 11/20/90, effective 12/21/90)

WAC 388-83-026 Availability of resources—General.

(1) ~~((To be eligible for medical care, a person's resources shall not exceed the specified limits for the appropriate eligibility standards for non-cash or cash assistance categorically needy, medically needy, qualified Medicare beneficiaries, or qualified working disabled individual groups.~~

~~((2) In establishing eligibility for medical care,))~~ The department shall consider ~~((only those))~~ resources ~~((actually))~~ available ~~((or in hand that a person))~~ when the client or spouse:

(a) Owns the resource; and

(b) Has the authority ~~((or power))~~ to convert the resource to cash ~~((, or cash))~~; and

(c) Is not legally restricted from using the resource for the person's support and maintenance.

~~((3) In establishing eligibility for medical assistance for))~~ (2) The department shall exempt noncash ((assistance)) resources when the client:

(a) Applies for categorically ((and)) needy or medically needy ((persons, the department shall not consider)) medical assistance; and

(b) Can not convert the noncash resource((s, that cannot be expected to be converted into)) to cash within twenty work days((, available to the extent that there is an ongoing bona fide effort)); and

EMERGENCY

(c) Makes an ongoing attempt to convert the noncash resources ~~((int))~~ to cash.

(3) The department shall consider the availability of a sales contract under WAC 388-92-045(2).

AMENDATORY SECTION (Amending Order 3366, filed 4/7/92, effective 5/8/92)

WAC 388-83-041 Income—Eligibility. (1) For cash assistance ~~((recipients))~~ clients of AFDC, FIP, GA-U, or SSI, the department shall find a person eligible for medical care programs without a separate determination of eligibility.

(2) For a noncash medical assistance ~~((recipients or applicants))~~ client, the department shall determine countable income according to AFDC, FIP, or SSI methodology, except the department shall:

(a) Budget income prospectively as defined under WAC 388-28-483;

(b) Not use mandatory monthly income reporting;

(c) Consider financial relative responsibility as described under WAC 388-83-130 and 388-92-025;

(d) Exclude lump sum payments as described under WAC 388-92-045;

(e) Consider the AFDC earned income exemption as described under WAC 388-83-130; and

(f) ~~((Count))~~ Consider the principle and interest payment from a sales or real estate contract as described under WAC 388-92-045 (2)(a) as unearned income;

(g) Consider the ((payment and)) interest payment from a sales or real estate contract(s) as described under WAC 388-92-045 (2)(b) as unearned income;

~~((e))~~ (h) Require clients to take all necessary steps to obtain any annuities, pensions, retirement, and disability benefits to which they are entitled, unless they can show good cause for not doing so. The client's annuities, pensions, retirement, and disability benefits may include, but are not limited to, veteran's compensation and pensions, OASDI benefits, railroad retirement benefits, and unemployment compensation;

~~((h))~~ (i) Allow child care expenses ((paid by)) the client pays as an income deduction; and

~~((i) Exclude))~~ (j) Exempt earned income tax credit refunds and payments, the person receives on or after January 1, 1991, during the month of receipt and the following month.

AMENDATORY SECTION (Amending WSR 92-08-037, filed 3/24/92, effective 4/24/92)

WAC 388-92-045 ((Excluded)) Exempt resources.

(1) The department shall ~~((exclude))~~ exempt the following resources in determining eligibility for medical care programs:

(a) Home.

(i) A home means any shelter:

(A) In which the client has ownership interest; and

(B) The client uses as the principal place of residence.

The department shall consider only one home as the client's principal place of residence.

(ii) Client's absence from the home shall not affect the home exclusion. The client's home shall remain the principal place of residence as long as:

(A) The client intends to return home. The department shall accept the client's statement of intent without challenge; or

(B) A client's spouse or dependent relative uses the home during the client's absence. The department shall:

(I) Consider a person a dependent relative when such person is either financially or medically dependent on the client; and

(II) Accept the client's or dependent relative's written statement of dependency or relationship unless the department has reason to question ~~((it))~~ such statement.

(iii) The department shall exclude the client's proceeds from the sale of the excluded home providing the client uses the proceeds to purchase another home within three months of the receipt of the proceeds. Proceeds ~~((shall))~~ include real estate contracts, or any similar home financing arrangements, and the income produced.

(iv) The department shall evaluate transfers of the home by an institutional client or client's spouse under WAC 388-95-395.

(b) Household goods and personal effects.

(c) Automobile or automobiles.

(i) The department shall ~~((exclude))~~ exempt one automobile regardless of its value if, for the client or a member of the client's household, the automobile is:

(A) Necessary for employment; or

(B) Necessary for the ~~((person's medical))~~ treatment of a specific or regular medical problem; or

(C) Modified for operation by, or transportation of, a handicapped ~~((client))~~ person; or

(D) Necessary due to climate, terrain, distance, or similar factors to provide ~~((the client))~~ transportation to perform essential daily activities.

(ii) The department shall:

(A) ~~((Exclude))~~ Exempt one of the client's automobiles to the extent its current market value does not exceed four thousand five hundred dollars;

(B) Count any excess against the resource limit; and

(C) ~~((Exclude))~~ Exempt an automobile under this subdivision only if an automobile is not ~~((excluded))~~ exempt under subsection (1)(c)(i) of this section.

(iii) The department shall treat the client's ownership of other automobiles as nonexempt resources and count the client's automobile equity value toward the resource limit.

(d) Property essential to self-support. The department shall ~~((exclude))~~ exempt:

(i) Property regardless of value, when the client uses the property:

(A) In a trade or business;

(B) As an employee for work; or

(C) As authorized by the government for income producing activity.

(ii) Nonbusiness property up to six thousand dollars equity, when the client uses the property for producing goods or services essential to daily activities, solely for the client's household.

(iii) Nonbusiness property up to six thousand dollars equity, when the client uses the property to produce an annual income return of six percent or more of the ~~((excluded))~~ exempt equity or is expected to produce at least a six percent return within a twenty-month period as long as the client:

(A) Currently uses the property in items (1)(d)(i), (ii), and (iii) of this section in the described activity; or

(B) Is expected to resume the use of the property in items (1)(d)(i), (ii), and (iii) of this section in the described activity within twelve months.

(e) Resources of a blind or disabled person. The department shall ~~((exclude))~~ exempt resources necessary to fulfill an approved plan for a client to achieve self-support as long as such plan remains in effect.

(f) Alaska Native Claims Settlement Act. The department shall exempt:

~~((Exclusions before February 3, 1988, the department shall exclude))~~ (i) Shares of stock held in a regional or village corporation ~~((during the period of twenty years ending January 1, 1992, in which such stock is inalienable under the Alaska Native Claims Settlement Act.))~~;

~~((Exclusions beginning February 3, 1988:~~

~~((A)))~~ (A) Cash received from a native corporation ~~((€))~~, including cash dividends on stock received from a native corporation ~~((to the extent it does not exceed two thousand dollars per person per year))~~;

~~((B)))~~ (iii) Stock issued or distributed by a native corporation as a dividend or distribution on the stock;

~~((C)))~~ (iv) A partnership interest;

~~((D)))~~ (v) Land or an interest in land ~~((€))~~, including land or an interest in land received from a native corporation as a dividend or distribution on stock~~((€))~~;

~~((E)))~~ (vi) An interest in a settlement trust.

(g) Life insurance.

(i) The department shall ~~((exclude))~~ exempt the total cash surrender value if the total face value of all the policies held by each person is ~~((over))~~ one thousand five hundred dollars or less.

(ii) The cash surrender value applies to the resource limit if the face value of all the policies held by each person is over one thousand five hundred dollars.

(iii) When determining total face value in subsection (1)(g)(i) of this section, the department shall ~~((exclude))~~ exempt term or burial insurance with no cash surrender value.

(h) Restricted allotted land. The department shall ~~((exclude))~~ exempt restricted allotted land owned by an enrolled tribal member and spouse, if married, if such land cannot be sold, transferred, or otherwise disposed of without permission of other persons, the tribe, or an agency of the federal government.

(i) Insurance settlements. The department shall ~~((exclude))~~ exempt cash the client receives from an insurance company for purposes of repairing or replacing ~~((an excluded))~~ a resource providing the client uses the total amount of the cash to repair or replace ~~((such excluded))~~ the exempt resource within nine months. The department may extend the nine-month period based on circumstances beyond the control of the client to a maximum of nine additional months. The department shall consider any cash not used within the time period as an available resource.

(j) Burial spaces. The department shall ~~((exclude))~~ exempt the value of burial spaces for the client, the client's spouse, or any member of the client's immediate family.

(i) Burial spaces ~~((shall))~~ include conventional gravesites, crypts, mausoleums, urns, and other repositories

customarily and traditionally used for the remains of deceased persons.

(ii) Burial spaces include a burial space purchase agreement as well as any interest accrued on and left to accumulate as part of the value of the burial space purchase agreement.

(iii) For purposes of subsection (1)(j) and (k) of this section, immediate family means a client's minor and adult children, including adopted children and stepchildren; a client's brothers, sisters, parents, adoptive parents, and the spouses of those persons. The department shall consider neither dependency nor living-in-the-same-household as factors in determining whether a person is an immediate family member.

(k) Burial funds.

(i) Funds specifically set aside for the burial arrangements of a client or the client's spouse shall not ~~((to))~~ exceed one thousand five hundred dollars for each spouse. The department shall count burial funds in excess of this limit toward the resource limit in WAC 388-92-050.

(ii) The department shall require funds set aside for burial expenses be kept separate from all other resources not intended for the burial of the client or the client's spouse and separately identified and designated as set aside for burial. If the ~~((excluded))~~ exempt burial funds are mixed with resources not intended for burial, ~~((this exclusion))~~ the department shall not apply this exemption to any portion of the funds. The department may ~~((exclude))~~ exempt designated burial funds retroactively back to the first day of the month in which the person intended the funds to be set aside for burial ~~((or to November 1, 1982, whichever is later))~~.

(iii) Funds set aside for burial include revocable burial contracts, burial trusts, other burial arrangements, cash, accounts, or other financial instruments with a definite cash value the person clearly designates as set aside for the person's ~~((€))~~ or spouse's ~~((, if any))~~ burial expenses.

(iv) The department shall reduce the one~~((-))~~thousand~~((-))~~ five~~((-))~~hundred~~((-))~~dollar~~((s-exclusion))~~ exemption by:

(A) The face value of the client's insurance policies owned by the person or spouse on the life of the person if the policies have been ~~((excluded))~~ exempted as provided in subsection (1)(g) of this section; and

(B) Amounts in an irrevocable trust.

(v) The department shall ~~((exclude))~~ exempt the interest earned on ~~((excluded))~~ exempt burial funds and appreciation in the value of ~~((excluded))~~ exempt burial arrangements if the ~~((excluded))~~ exempt interest and appreciation are left to accumulate and become part of the separately identified burial fund.

(vi) When used for other purposes, the department shall consider any ~~((excluded))~~ exempt burial funds, interest, or appreciated values set aside for burial expenses as ~~((an))~~ available ~~((resource))~~ income if, at the first of the month of use, when added to other nonexempt resources, the total exceeds the resource limit.

(l) Other resources ~~((excluded))~~ considered exempt by federal statute.

(m) Retroactive payments. The department shall ~~((exclude))~~ exempt retroactive SSI payments including benefits a client receives under the interim assistance reimbursement agreement with the Social Security administration, or OASDI payments~~((€))~~

~~(i)~~ for six months following the month of receipt this ~~((exclusion))~~ exemption applies to:

~~((A))~~ (i) Payments the client ~~((received from October 1, 1984 through September 30, 1987 and after September 30, 1989;~~

~~(B) Payments received by the client,~~ spouse, ~~((and))~~ or any other person ~~((whose income))~~ receives that the department considers available to meet the ~~((applicant's or recipient's))~~ client's needs;

~~((C))~~ (ii) SSI payments made to the client for benefits due for a month before the month of payment;

~~((D))~~ (iii) OASDI payments made to the client for benefits due for a month that is two or more months before the month of payment; and

~~((E))~~ (iv) Payments that remain in the form of cash, checking accounts or saving accounts. ~~((This exclusion))~~ The department shall not apply this exemption once the retroactive payment has been converted to any other form.

~~((ii))~~ For nine months following the month of receipt if:

~~(A) Subsection (1)(m)(i)(B), (C), (D), and (E) of this section is met; and~~

~~(B) The payment is received during the period beginning October 1, 1987, and ending September 30, 1989.)~~

(n) Payments for medical or social services. The department shall ~~((exclude))~~ exempt, from resources for ~~((the))~~ one-calendar month following the month of receipt, certain cash payments an SSI person receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services.

(o) Restitution to civilians relocated and interned during war time. The department shall ~~((exclude))~~ exempt payments to persons of Japanese or Aleut ancestry under P.L. 100-383.

(p) The annuity payment of trust funds to Puyallup Tribal Indians received under P.L. 101-41.

(q) Funds received from the Agent Orange Settlement Fund or any other funds established to settle Agent Orange liability claims under P.L. 101-201.

(r) Payments to certain survivors of the Holocaust under the Federal Republic of Germany's law for compensation of National Socialist Persecution or German Restitution Act. Interest earned on conserved payment is not ~~((excluded))~~ exempt.

(s) Unspent assistance payments the client receives because of a presidentially declared major disaster, under P.L. 93-288, ~~((is))~~ are ~~((excluded))~~ exempt for nine months from date of receipt.

(i) The ~~((exclusion))~~ exemption may extend an additional nine months, if circumstances beyond the client's control:

(A) Prevents the client from repairing or replacing the damaged or destroyed property; or

(B) Keeps the client from contracting for such repair or replacement.

(ii) Interest earned on the ~~((excluded))~~ exempt resource is ~~((excluded))~~ exempt for the period the exclusion applies.

(t) Earned income tax credit refunds and payments, received on or after January 1, 1991, during the month of receipt and the following month.

(u) Payments from a state administered victim's compensation program for a period of nine calendar months after the month of receipt.

(v) Payments, or interest accrued on payments received under the Radiation Exposure Compensation Act received by the injured person, the surviving spouse, children, grandchildren, or grandparents.

(w) Effective September 1, 1991, payments under section 500 through 506 of the Austrian General Social Insurance Act:

(i) The department shall not consider such payments as income or resources for determining eligibility or post eligibility;

(ii) The earned interest from such payments is countable income for the ~~((recipient))~~ client.

(2) The department shall ~~((not))~~ consider a sales contract ~~((s as countable resources to the extent that the sales contracts are not transferred. WAC 388-83-027 shall apply to sales contract income and interest payments))~~:

(a) An exempt resource when the current market value of the contract:

(i) Is zero; or

(ii) Exceeds the resource limit; and

(iii) The department shall consider payment of principal and interest on a sales contract meeting the criteria of subsection (2)(a)(i) or (ii) under WAC 388-83-041 (2)(f).

(b) An available resource when the value of the sales contract, combined with other countable resources, is within the resource limit. For a sales contract the department determines an available resource, the department shall consider payment that represents:

(i) Principal, an available resource.

(ii) Interest, under WAC 388-83-041 (2)(g).

(c) An available resource when transferred by the client to a person other than the client's spouse. See WAC 388-95-395.

(3) ~~((Applicants or recipients))~~ The client may transfer or exchange exempt resources except the home or a sales contract. The department shall consider cash received from the sale of an exempt resource as a nonexempt resource to the extent that the cash is not used to:

(a) Replace ~~((another))~~ an exempt resource; or

(b) Be ~~((reinvested))~~ invested in ~~((another))~~ an exempt resource within the same month, ~~((except as))~~ unless specified differently under this section.

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

WSR 93-03-029
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)

[Order 3495—Filed January 12, 1993, 2:48 p.m., effective January 13, 1993, 12:01 a.m.]

Date of Adoption: January 12, 1993.

Purpose: Adds that child support is the income of the child. Changes the post-eligibility treatment of veteran's aid and attendance allowance. Separates exempt and disregarded income into separate subsection to clarify the treatment of income when determining eligibility and post-eligibility.

Removes the requirement that spouse's income and resources are considered available to each other for six months. Removes redundant language. Adds agent orange, German restitution, radiation exposure, and Austrian social insurance funds as income exemptions. Updates community spouse allowance to \$1,769 effective January 1, 1993.

Citation of Existing Rules Affected by this Order: Amending WAC 388-95-340 Computation of available income and resources and 388-95-360 Allocation of income and resources—Institutionalized client.

Statutory Authority for Adoption: RCW 74.08.090.

Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Update for changes in allocation and computation of income and/or resources for institutionalized client.

Effective Date of Rule: January 13, 1993, 12:01 a.m.

January 12, 1993

Rosemary Carr

Acting director

Administrative Services

AMENDATORY SECTION (Amending Order 2411, filed 8/21/86)

WAC 388-95-340 Computation of available income and resources. (1) The department shall limit financial responsibility of relatives to:

(a) A spouse for a spouse; and

(b) A parent for a child.

(2) Financial responsibility of spouses((-));

(a) ~~((If both spouses apply or are eligible as aged, blind, or disabled and cease to live together their income and resources are considered available to each other for the time periods specified below. After the appropriate time period only the income and resources that are actually contributed by one spouse to the other are considered available.~~

(i) ~~If spouses cease to live together because of the institutionalization of one spouse—~~

~~(A) Consider their income as available to each other through the month in which they cease to live together. Mutual consideration of income ceases with the month after the month in which separation occurs.~~

~~(B) Consider their resources as available to each other for the month during which they cease to live together and the six months following that month.~~

~~(ii) If spouses cease to live together for any reason other than institutionalization consider their income and resources as available to each other for the month during which they cease to live together and the six months following that month. If the mutual consideration of income and resources causes the individuals to lose eligibility as a couple, the agency will determine if an individual is eligible in accordance with subsection (b) of this section.~~

~~(b) If only one spouse in a couple applies or is eligible, or both spouses apply and are not eligible as a couple, and they cease to live together consider only the income and~~

~~resources of the ineligible spouse that are actually contributed to the eligible spouse beginning with the month after the month in which they cease to live together.~~

~~(c) When both spouses are eligible and institutionalized income and resources are considered separately even if they share the same room.~~

~~(d) When only one spouse is eligible and both are institutionalized consider only the income and resources of the ineligible spouse that are actually contributed to the eligible spouse, even if they share the same room.~~

~~(e) If the community income received in the name of the nonapplicant spouse exceeds the community income received in the name of the applicant spouse, the applicant's interest in that excess is considered unavailable to the applicant.~~

~~(2) Relative responsibility shall be limited to spouse for spouse and parent for child.~~

~~(3) For children age eighteen to twenty one the parents' income is not deemed to the child. Count only the income that is actually contributed to the child.~~

~~(4) Exclusions from income. The following shall be excluded)) The department shall consider, in the month the spouses stopped living together, the:~~

(i) Resources available to each spouse;

(ii) Income available to the applying spouse:

(A) In the name of the applying spouse; and

(B) Community income received in the name of the nonapplying spouse that does not exceed the community income received in the name of the applying spouse.

(b) The department shall consider, in the month after the month the spouses stopped living together, the spouses' income and resources only when a spouse actually contributes such income and resources; and

(c) The department shall consider the income and resources of spouses living in the same household as available to each other.

(3) The department shall consider institutionalized spouses as not living together even if such spouses share a room.

(4) Financial responsibility of parent to child. The department shall consider available only the parent's income actually contributed to an institutionalized person twenty years of age or younger.

(5) The department shall consider a client's income exemptions as unavailable income when determining initial eligibility or post-eligibility. The department shall exempt sequentially from income:

(a) Any ((amount received from any)) public ((agency as a return of)) agency's refund of taxes paid on real property or on food ((purchased by such individual or spouse));

(b) Supplemental security income (SSI) and state public assistance based on financial need;

(c) Any portion of ((any)) a grant, scholarship, or fellowship ((received for use in paying the cost of)) used to pay tuition ((and)), fees, or other necessary educational expenses at any educational institution;

(d) ((Income that is not reasonably anticipated, or received infrequently or irregularly, if such income does not exceed twenty dollars per month if unearned, or ten dollars per month if earned;

~~(e) One third of any payment for~~) Child support received by a parent, from an absent parent, for a minor child who is not institutionalized;

~~((f) The first twenty dollars per month of earned or unearned income. There is no exclusion on income which is paid on the basis of need and is totally or partially funded by the federal government or by a private agency;~~

~~(g)) (e) Tax exempt payments received by Alaska natives under the Alaska Native Claims Settlement Act;~~

~~((h)) (f) Tax rebates or special payments excluded by other statutes;~~

~~((i)) (g) Compensation provided to volunteers in ACTION programs established by ((Public Law)) P.L. 93-113, the Domestic Volunteer Service Act of 1973;~~

~~((j)) (h) Veteran's benefits((, only the following portions are excluded.~~

~~(i) The veteran's aid and attendance/house bound allowance.~~

~~(ii) The portion attributable to)) designated for the veteran's dependent((.~~

~~(k) A fee charged by a guardian to reimburse himself or herself for services provided. (l));~~

(i) Income received by an ineligible or nonapplying spouse from a governmental agency for services provided to an eligible ((recipient)) client (e.g. chore services)((--(5) Earned income exclusions));

(i) Funds received from the Agent Orange Settlement Fund or any other funds established to settle Agent Orange liability claims under P.L. 101-201;

(k) Payments to certain survivors of the Holocaust under the Federal Republic of Germany's law for compensation of National Socialist Persecution or German Restitution Act. Interest earned on conserved payment is not exempt;

(l) Payments under the Radiation Exposure Compensation Act received by the injured person, the surviving spouse, children, grandchildren, or grandparents;

(m) Payments under section 500 through 506 of the Austrian General Social Insurance Act. The department shall consider the earned interest from such payments as countable income;

(n) Certain cash payments a client receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;

(o) Restitution payment to a civilian of Japanese or Aleut ancestry under P.L. 100-383;

(p) The amount of expenses directly related to a client's impairment that allows the permanently and totally disabled client to continue to work;

(g) The amount of blindness related work expenses of a blind client;

(r) Interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement which are left to accumulate and become part of the separately identified burial funds set aside on or after November 1, 1982;

(s) Earned income tax credit (EITC);

(t) Victim's compensation.

(6) The department shall consider disregarded income as unavailable income when determining initial eligibility but shall consider the income available during post-eligibility. See WAC 388-95-360 for post-eligibility treatment of

income. The department shall disregard sequentially from a client's income:

(a) Income that is not reasonably anticipated, or is received infrequently or irregularly, when such income does not exceed:

(i) Twenty dollars per month if unearned; or

(ii) Ten dollars per month if earned.

(b) The first twenty dollars per month of earned or unearned income. The department may not exclude income paid to a client on the basis of need and is totally or partially funded by the federal government or by a private agency;

(c) The veteran's aid and attendance/house bound allowance;

(d) For an SSI-related ((individuals shall be)) person, the first sixty-five dollars per month of earned income not excluded according to subsection ((4)) (5) of this section, plus one-half of the remainder((--(6));

(e) Money voluntarily withheld from SSA Title II benefits by the Social Security Administration (for the recovery of SSI overpayment) ((is considered as available income for the institutionalized individual's contribution toward the cost of care)); and

(f) A fee charged by a guardian as reimbursement for provided services.

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

AMENDATORY SECTION (Amending Order 3356A, filed 3/31/92 and 5/5/92, effective 5/5/92 and 6/5/92)

WAC 388-95-360 Allocation of income and resources—Institutionalized ((recipient)) client. (1) In reducing payment to the institution, the department shall consider the institutionalized ((recipient's)) client's:

(a) Income under WAC 388-95-335 (3)(a), (b), (c), and (d);

(b) Resources under WAC 388-95-380 and 388-95-395.

(2) In reducing payment to the institution, the department shall consider the eligible institutional client's excess resources available to meet cost of care after the following allocations:

(a) Health insurance and Medicare premiums, deductions, and co-insurance not paid by a third party; and

(b) Noncovered medical bills which are the liability of the client and not paid by a third party.

(3) The department shall not use allocations used to reduce excess resources under WAC 388-95-360(2) to reduce income under WAC 388-95-360(4).

(4) The department shall deduct the following amounts, in the following order, from the institutionalized ((recipient's)) client's total income, including amounts excluded in determining eligibility:

(a) Specified personal needs allowance;

(b) An amount an SSI, AFDC, or FIP-related client in a medical facility receives as a cash assistance payment sufficient to bring the client's income up to the personal needs allowance;

(c) The current personal needs allowance plus wages the SSI-related client receives for work approved by the depart-

ment as part of a training or rehabilitative program designed to prepare the person for a less-restrictive placement when the total wages received plus the personal needs allowance do not exceed the one-person medically needy income level:

(i) A deduction is not allowed for employment expenses; and

(ii) The excess wages shall apply to the cost of care when the total wages received plus the initial personal needs allowance exceeds the one-person medically needy income level.

(d) A monthly needs allowance for the community spouse not to exceed one thousand seven hundred ~~((eighteen))~~ sixty-nine dollars, unless specified in subsection ~~((4))~~ (6) of this section. The monthly needs allowance shall be:

(i) An amount added to the community spouse's income to provide a total community spouse's income of one thousand two hundred fifty-eight dollars; and

(ii) Excess shelter expenses as specified in subsection ~~((3))~~ (5) of this section.

(e) An amount for the maintenance needs of each dependent family member residing with the community spouse. Child support received from an absent parent is the child's income:

(i) An amount

~~(A) Effective April 1, 1992, equal to one-third of the amount one thousand nineteen dollars exceeds the family member's income; and~~

~~(B) Effective July 1, 1992,))~~ equal to one-third of the amount one thousand one hundred forty-nine dollars exceeds the family member's income.

(ii) A family member is a:

(A) Dependent or minor child;

(B) Dependent parent; or

(C) Dependent sibling of the institutionalized or community spouse.

(f) If an institutional ~~((recipient))~~ client does not have a community spouse, an amount for the maintenance needs of family members residing in the ~~((recipient's))~~ client's home is equal to the medically needy income level for the number of legal dependents in the home less the income of the dependents;

(g) Amounts for incurred medical expenses not subject to third-party payment including, but not limited to:

(i) Health insurance premiums, co-insurance, or deductible charges; and

(ii) Necessary medical care recognized under state law, but not covered under Medicaid.

(h) Maintenance of the home of a single person or couple:

(i) Up to one hundred eighty dollars per month; and

(ii) Limited to a six-month period; and

(iii) A physician has certified that either of the persons is likely to return to the home within that period; and

(iv) Social service staff shall document initial need for the income exemption and review the person's circumstances after ninety days.

~~((3))~~ (5) For the purposes of this section, excess shelter expenses:

(a) Means the actual required maintenance expenses for the community spouse's principal residence for:

(i) Rent;

(ii) Mortgage;

(iii) Taxes and insurance;

(iv) Any maintenance care for a condominium or cooperative; and

(v) A food stamp standard allowance for utilities, provided the utilities are not included in the maintenance charges for a condominium or cooperative.

(b) Shall not exceed three hundred five dollars and seventy cents, effective April 1, 1992; and

(c) Shall not exceed three hundred forty-four dollars and seventy cents, effective July 1, 1992.

~~((4))~~ (6) The amount allocated from the institutional spouse to the community spouse may be greater than the amount in subsection ~~((2))~~ (4)(d)(i) of this section only when:

(a) A court enters an order against the institutional client for the community spouse support; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

~~((5) The department shall not deduct specified personal needs allowance, community spouse, needy dependent maintenance needs, or home maintenance needs from a veteran's aid and attendance allowance.~~

~~(6))~~ (7) The ~~((recipient))~~ client shall use the income remaining after allocations specified in subsection ~~((2))~~ (4) of this section, toward payment of the recipient's cost of care at the department rate.

~~((7))~~ (8)(a) Effective July 1, 1988, SSI-related clients shall continue to receive total payment under 1611 (b)(1) of the Social Security Act (SSA) for the first three full calendar months of institutionalization in a public or Medicaid-approved medical institution or facility if the:

(i) Stay in the institution or facility is not expected to exceed three months; and

(ii) SSI-related clients plan to return to their former living arrangements.

(b) The department shall not consider the SSI payment when computing the participation amount.

~~((8))~~ (9) The department shall not consider income from reparation payments made by the Federal Republic of Germany when computing the participation amount.

WSR 93-03-039

EMERGENCY RULES

WILDLIFE COMMISSION

[Order 580—Filed January 13, 1993, 1:02 p.m.]

Date of Adoption: January 13, 1993.

Purpose: Emergency changes to the 1993 Winter steelhead fishing regulations.

Statutory Authority for Adoption: RCW 77.12.040.

Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Items 1 and 2: Wild steelhead escapements in 1992 were below escapement requirements in these rivers. The 1993 wild runsizes are

also predicted to be low. The Department of Wildlife is recommending total closure of these streams March 1, to allow as many wild fish to escape as possible. Continued low escapement will perpetuate low returns in the future. This proposal would eliminate hooking mortality on wild fish during a period when few hatchery steelhead are available for harvest. It would also eliminate the disturbance of fish on the spawning grounds from fishing activity. Item 3: Wild steelhead escapement in 1992 was below the goal. The 1993 wild runsize is also predicted to be low. The February 1 wild steelhead release regulations will protect wild spawners while allowing hatchery steelhead to be harvested. The March 1 closure would eliminate hooking mortality on wild fish during a period when few hatchery steelhead are available for harvest. It would also eliminate the disturbance of fish on the spawning grounds from fishing activity. Item 4: To protect underescapement wild winter steelhead. The wild steelhead in the Dungeness River system is far below escapement needs. The river was closed in the month of March starting in 1989 in response to low wild escapements. The wild escapements have remained low since 1989. The February 1 wild steelhead release regulation will further protect wild spawners while allowing hatchery steelhead to still be harvested. Items 5, 6 and 7: The harvestable number of wild fish in these streams are predicted to be taken by March 16. Wild fish harvest must be restricted beginning March 15th to insure that the escapement goal is met. The March 15th wild steelhead release regulation takes into consideration hooking mortality on caught and released wild fish and will allow hatchery steelhead to be harvested through March 31.

Effective Date of Rule: Immediately.

January 13, 1993
Curt Smith
Director
for Dean A. Lydig
Chair

NEW SECTION

WAC 232-28-61931 1992-94 Washington game fish seasons and catch limits - Emergency steelhead regulations. Notwithstanding the provisions of WAC 232-28-619, the following regulations apply to the game fish seasons for the Nooksack, Samish, Green, Dungeness, Snohomish and Snoqualmie Rivers, and Tokul Creek.

1) **NOOKSACK RIVER**, mainstem, North fork, Middle Fork and South Fork: CLOSED to fishing for all game fish, March 1, 1993 - March 31, 1993.

2) **SAMISH RIVER**: CLOSED to fishing for all game fish, March 1, 1993 - March 31, 1993.

3) **GREEN (DUWAMISH) RIVER**: **WILD STEELHEAD RELEASE**, February 1 - last day of February season. CLOSED to fishing for all game fish, March 1, 1993 - June 14, 1993.

4) **DUNGENESS RIVER**, from the mouth to the junction of Gray Wolf and Dungeness River: **WILD STEELHEAD RELEASE**, February 1, 1993 - last day of February 1993 season.

5) **SNOHOMISH RIVER**, all channels, sloughs and inter-connected waterways (excluding all tributaries) from

Puget Sound to Highway 529, **WILD STEELHEAD RELEASE**, March 15, 1993 - May 31, 1993.

From Highway 529 upstream (all channels): **WILD STEELHEAD RELEASE**, March 15, 1993 - March 31, 1993.

6) **SNOQUALMIE RIVER**, from mouth to falls: **WILD STEELHEAD RELEASE**, March 15, 1993 - March 31, 1993.

7) **TOKUL CREEK**, from mouth to posted cable boundary marker located approximately 700 feet upstream from the mouth: **WILD STEELHEAD RELEASE**, March 15, 1993 - March 31, 1993.

All other provisions of WAC 232-28-619 for these waters remain in effect and unchanged.

**WSR 93-03-061
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Public Assistance)

[Order 3497—Filed January 15, 1993, 1:13 p.m., effective January 16, 1993, 12:01 a.m.]

Date of Adoption: January 15, 1993.

Purpose: Based on a mandatory federal requirement, effective January 1, 1993, an eligible child under nineteen years of age may receive Medicaid coverage.

Citation of Existing Rules Affected by this Order: Amending WAC 388-82-115 Categorically needy medical assistance eligibility, 388-83-033 Children—Eligible to nineteen years of age, 388-83-130 Eligibility—Special situations, 388-84-105 Medical application, and 388-99-010 Persons eligible for medically needy assistance.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: CFR 435.712 and 435.724.

Pursuant to RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The current Title XIX state plan provides that children under nineteen years of age receive Medicaid coverage.

Effective Date of Rule: January 16, 1993, 12:01 a.m.

January 15, 1993

Rosemary Carr

Acting Director

Administrative Services

AMENDATORY SECTION (Amending Order 3307, filed 1/10/92, effective 2/10/92)

WAC 388-82-115 Categorically needy medical assistance eligibility. The department shall classify as eligible for categorically needy medical assistance:

(1) A client who:

(a) In August 1972, received:

(i) Old age assistance (OAA);

(ii) Aid to blind (AB);

(iii) Aid to families with dependent children (AFDC); or

(iv) Aid to the permanently and totally disabled (APTD); and

(b) Received retirement, survivors, and disability insurance (RSDI) benefits; and

(c) Is ineligible for OAA, AB, AFDC, or APTD solely because of the twenty percent increase in Social Security benefits under P.L. 92-336.

(2) A client who:

(a) Was entitled to RSDI benefits in August 1972; and

(b) Is ineligible for AFDC, family independence program (FIP), or supplemental security income (SSI) solely because of the twenty percent increase in Social Security benefits under P.L. 92-336.

(3) A family unit which becomes ineligible for AFDC before April 1, 1990, solely because of increased hours or increased income from employment shall remain categorically eligible for medical assistance (MA) for four calendar months beginning with the month of ineligibility provided:

(a) The family received AFDC in at least three of the six months immediately preceding the month of ineligibility; and

(b) A member of such family continues to be employed.

(4) A current recipient of Title II, Social Security Administration (SSA) benefits who:

(a) Was a concurrent recipient of Title II and SSI benefits;

(b) Is ineligible for SSI benefits and/or state supplementary payments (SSP); and

(c) Would be eligible for SSI benefits if the following are deducted from the current Title II benefit amount:

(i) All Title II cost-of-living benefit increases under P.L. 94-566, Section 503 received by the recipient since termination from SSI/SSP; and

(ii) All Title II cost-of-living benefit increases received during the time period in (c)(i) of this subsection by the recipient's spouse and/or other financially responsible family member living in the same household.

(5) A recipient of SSI, after January 1, 1981, who continues to be eligible for medical assistance (MA) under P.L. 96-265 and 99-643.

(6) A pregnant woman, with no other eligible children, who is ineligible for AFDC cash assistance solely because she has not reached the sixth month of pregnancy.

(7) A client who is denied AFDC or FIP cash payments solely because of a departmental recovery of an overpayment.

(8) A child (~~under seven years of age, who is born after September 30, 1983, and who meets the income and resource requirements of AFDC or FIP financial assistance~~) meeting residence, citizenship, and Social Security Number requirements whose family income is:

(a) Under one hundred eighty-five percent of the federal poverty level (FPL) for a child under one year of age; or

(b) Under one hundred thirty-three percent of the FPL for a child under six years of age;

(c) Under one hundred percent of the FPL for a child under eighteen years of age; or

(d) Effective January 1, 1993, under one hundred percent of the FPL for a child eighteen years of age.

(9) A family unit shall remain categorically eligible for medical assistance for nine calendar months beginning with the month of ineligibility for AFDC, when terminated before April 1, 1990, from AFDC financial assistance solely because of:

(a) The loss of the thirty dollars plus one-third exemption; or

(b) The thirty-dollar income exemption.

(10) A child, born to a woman eligible for and receiving medical assistance on the date of the child's birth, from the date of birth for a period of one year when the child remains a member of the mother's household.

(11) A family unit ineligible for AFDC or FIP financial assistance as a result (wholly or partly) of the collection or increased collection of child or spousal support shall be eligible for medical assistance for four months beginning with the month of ineligibility; provided the family unit:

(a) Received AFDC or FIP financial assistance in at least three of the six months immediately preceding the month of ineligibility; and

(b) Became ineligible for AFDC or FIP on or after August 16, 1984.

(12) A pregnant woman who does not meet the deprivation requirements of AFDC or FIP financial assistance if:

(a) She would meet the AFDC or FIP financial assistance income requirements if the number in the household is increased by one before being compared to the payment standard; and

(b) She meets the AFDC or FIP financial assistance resource requirements.

(13) An alien denied AFDC, FIP, or SSI cash assistance solely because of deeming of income of the alien's sponsors.

(14) A current disabled client receiving widow's or widower's benefits under section 202 (e) or (f) of the Social Security Act if the disabled client:

(a) Was entitled to a monthly insurance benefit for December 1983 under Title II of the Social Security Act;

(b) Was entitled to and received a widow's or widower's benefit for January 1984 based on a disability under section 202 (e) or (f) of the Social Security Act;

(c) Became ineligible for SSI/SSP in the first month in which the increase provided under section 134 of P.L. 98-21 was paid to the client;

(d) Has been continuously entitled to a widow's or widower's benefit under section 202 (e) or (f) of the act;

(e) Would be eligible for SSI/SSP benefits if the amount of that increase, and any subsequent cost-of-living increases provided under section 215(i) of the act, were disregarded;

(f) Is fifty through fifty-nine years of age; and

(g) Filed an application for Medicaid coverage before July 1, 1988.

(15) Effective January 1, 1991, any person receiving Title II widow/widower benefits under section 202 (e) or (f) of the SSA, if the person:

(a) Is not eligible for the hospital insurance benefits under Medicare Part A of Title XVIII;

(b) Received SSI/SSP payments in the month before receiving such Title II benefits;

(c) Became ineligible for SSI/SSP due to receipt of or increase in such Title II benefits; and

(d) Would be eligible for SSI/SSP if the amount of such Title II benefits or increase in such Title II benefits under section 202 (e) or (f) of the SSA, and any subsequent cost-of-living increases provided under section 215(i) of the act were disregarded.

(16) A family unit suspended from FIP financial assistance because of increased earned income. This period

of eligibility shall not exceed twelve months as determined by WAC 388-77-737.

(17) A family unit which becomes ineligible for FIP before April 1, 1990, solely because of increased hours of employment shall remain categorically eligible for medical assistance for four calendar months beginning with the month of ineligibility provided:

(a) The family unit received FIP in at least three of the six months immediately preceding the month of ineligibility;

(b) A member of such family continues to be employed.

(18) A disabled or blind client receiving Title II disabled adult childhood (DAC) benefits under section 202(d) of the SSA if the client:

(a) Has attained eighteen years of age;

(b) Lost SSI/SSP on or after July 1, 1988, due to receipt of or increase in DAC benefits; and

(c) Would be eligible for SSI/SSP if the amount of the DAC benefits or increase under section 202(d) of the SSA and any subsequent cost-of-living increases provided under section 215(i) of the SSA act were disregarded.

AMENDATORY SECTION (Amending Order 3389, filed 5/19/92, effective 6/19/92)

WAC 388-83-033 Children—Eligible to ~~((eighteen))~~ nineteen years of age. (1) The department shall find a child who has not yet attained ~~((eighteen))~~ nineteen years of age eligible for Medicaid when the child meets citizenship, residence, and Social Security Number requirements under this chapter and the income requirement corresponding to the age levels under the following subsections:

(a) ~~((Effective January 1, 1992,))~~ A child ((born on or before September 30, 1983, but has not attained eighteen)) under nineteen years of age, shall be eligible as categorically needy when the family income is equal to or less than ((the AFDC income standards;

~~((b) A child six years of age or older born on or after October 1, 1983, shall be eligible as categorically needy when the total family countable income does not exceed one hundred percent of the poverty income guidelines as published and updated by the secretary of health and human services))~~ one hundred percent of the federal poverty level (FPL). One hundred percent of the current federal poverty income guidelines is:

	Family Size	Monthly
(i)	One	\$ 568
(ii)	Two	766
(iii)	Three	965
(iv)	Four	1,163
(v)	Five	1,361
(vi)	Six	1,560
(vii)	Seven	1,758
(viii)	Eight	1,956

(ix) For family units with more than eight members, add \$199 to the monthly income for each additional member.

~~((e))~~ (b) A child ~~((who attains))~~ under six years of age, shall be eligible as categorically needy when the total family countable income does not exceed one hundred thirty-three percent of the federal poverty income guidelines as published and

updated by the secretary of health and human services. One hundred thirty-three percent of the current federal poverty income guidelines is:

	Family Size	Monthly
(i)	One	\$ 755
(ii)	Two	1,019
(iii)	Three	1,283
(iv)	Four	1,547
(v)	Five	1,810
(vi)	Six	2,074
(vii)	Seven	2,338
(viii)	Eight	2,602

(ix) For family units with more than eight members, add \$264 to the monthly income for each additional member.

~~((d))~~ (c) An infant under one year of age shall be eligible as categorically needy when the infant is a member of a family whose total family countable income does not exceed one hundred eighty-five percent of the current federal poverty income guidelines. See income guidelines as described under WAC 388-83-032 (3)(a).

(2) The department shall:

~~((a) ((Find an infant under one year of age and born before January 1, 1991, eligible as categorically needy when the infant:~~

~~((i) Is born to a woman eligible for and receiving medical assistance on the date of the infant's birth; and~~

~~((ii) Remains a member of the mother's household and the mother remains eligible for medical assistance.~~

~~((b))~~ Find an infant under one year of age ~~((and born on or after January 1, 1991,))~~ eligible as categorically needy when the infant:

(i) Is born to a woman eligible for and receiving medical assistance on the date of the infant's birth; and

(ii) Remains a member of the mother's household.

~~((e))~~ (b) Not consider citizenship, application for, or possession of, a Social Security Number, income, or resource requirements for infants under this subsection.

(3) Effective January 1, 1991, regardless of citizenship or application for, or possession of a Social Security Number, the department shall determine a child from birth to eighteen years of age, eligible for state-funded medical services with the same medical coverage as categorically needy, if the:

(a) Child is not eligible for any federally-funded Medicaid program; and

(b) Child's total family countable income does not exceed one hundred percent of the current federal poverty income guidelines. See income guidelines as described under subsection (1)~~((b))~~(a) of this section.

(4) The department shall determine family income according to AFDC methodology, and apply the special situations as required under WAC 388-83-130.

(5) The department shall not consider resources in determining eligibility of a child under this section.

(6) A child shall remain eligible under this section until the later of the end of the month:

(a) Of the child's birthday that exceeds the age requirement; or

(b) In which the child receives inpatient services if:

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(i) The child is receiving inpatient services on the last day of the month of the child's birthday that exceeds the age requirement; and

(ii) The child's stay for inpatient services continues into the following month or months; and

(iii) Except for the age requirement, the child would be eligible for assistance under this section.

(7) A child eligible under subsection (3) of this section if pregnant, shall remain eligible:

(a) Regardless of the changes in family income; and

(b) Through the end of the month including the sixtieth day from the day the pregnancy ends.

AMENDATORY SECTION (Amending Order 3174, filed 5/1/91, effective 6/1/91)

WAC 388-83-130 Eligibility—Special situations. (1) In determining eligibility for medical services, the department shall:

(a) Consider parent's income available whether or not actually contributed, when determining:

(i) Eligibility of a non SSI-related person under ~~(eighteen)~~ nineteen years of age residing in the same family unit with parents; ~~(except)~~ or

(ii) SSI-related eligibility of a person under eighteen years of age residing in the same family unit with parents.

(b) In determining a pregnant minor's medical eligibility, the department shall:

(i) Not consider the income of her natural, adoptive or stepparents unless the income is actually contributed; and

(ii) Consider a pregnant minor as living on her own.

(2) The department shall not allow the AFDC earned income exemption of thirty dollars plus one-third of remainder to clients:

(a) Applying solely for medical assistance, except for families applying for medical assistance who received AFDC or FIP cash assistance in any of the four preceding months; and

(b) After the client receives the thirty dollars plus one-third income disregard for a maximum of four consecutive months. A client is not eligible for the disregard until the client does not receive AFDC or FIP cash assistance for twelve consecutive months.

(3) For family units determined ineligible for AFDC or FIP cash assistance solely due to the requirements of WAC 388-24-050 or 388-77-210 that certain siblings be included in the assistance unit, at the applicant's option, such individuals and their income may be excluded from the assistance unit when determining eligibility of the remaining assistance unit members for categorically needy medical assistance.

(4) For family units determined ineligible for AFDC or FIP financial assistance solely due to the requirements of WAC 388-28-500(4) or 388-77-285 that income of the nonapplying parents of a minor parent be considered available to the assistance unit of the minor parent and such minor's child or children, such income shall be disregarded when determining eligibility of such minor's child or children.

(5) The department shall consider AFDC and FIP children sixteen and seventeen years of age, terminated from cash assistance, as eligible for Medicaid on the same basis

as dependent children when termination was solely due to the:

(a) AFDC or FIP children ceasing to attend school; or

(b) AFDC children refusing to participate in the Job Opportunities and Basic Skills Training program.

(6) The department shall consider a person eligible for Medicaid when the person is denied AFDC or FIP cash assistance solely because:

(a) Of income and resources deemed available from the following person who is not a member of the AFDC or FIP unit, unless actually available to the assistance unit:

(i) Stepparent who is not legally liable for support of stepchildren;

(ii) Grandparent;

(iii) Legal guardian who is not a parent;

(iv) Alien sponsor; or

(v) Sibling.

(b) Of counting a sibling's income or resources or both to determine AFDC or FIP cash assistance when the sibling is residing in the same residence, unless the sibling actually contributes or makes available the income or resources or both to the AFDC or FIP assistance unit; and

(c) After July 1, 1989, a member of the family transferred a resource without receiving adequate compensation. If the family member is institutionalized, refer to chapter 388-95 WAC.

(7) The department shall consider a person eligible for Medicaid when the person is denied SSI cash assistance solely because of income and resources deemed available from an alien sponsor.

AMENDATORY SECTION (Amending Order 3285, filed 11/19/91, effective 12/20/91)

WAC 388-84-105 Medical application. (1) The department shall accept and process applications for medical programs as described under subsections of WAC 388-38-010, 388-38-030, 388-38-040, 388-38-045, and 388-38-050 except as specified under this section.

(2) The department shall accept applications for medical programs without delay.

(a) The department shall provide clients with:

(i) An explanation of the Civil Rights Act;

(ii) Fair hearing information;

(iii) Information about early and periodic screening, diagnosis, and treatment (EPSDT) also known as the healthy kids program, when appropriate; and

(iv) Information about family planning, when appropriate.

(v) Information about the special supplemental food program for women, infants and children's (WIC), when appropriate.

(b) The request for medical programs shall be in writing on a department designated form.

(c) A relative or representative may complete the application on a client's behalf, when the client is unable to complete the application or if the client dies.

(3) The department shall complete the application process by conducting a face-to-face interview in the local community services office CSO, unless the client or their representative:

(a) Requests the office interview be waived and the:

- (i) Client is unable to come to the CSO; and
 - (ii) Client has no representative to complete the interview; or
 - (iii) Client is unable to name a representative to complete the interview; and
 - (iv) Department has adequate information to determine eligibility for medical programs without a face-to-face interview.
- (b) Is a pregnant woman applying only for a medical program; or
- (c) Is a child (~~up to eighteen~~) under nineteen years of age and the application is only for a medical program.
- (4) If the client meets the requirements of subsection (3)(a), the department may complete the application process through:
- (a) A face-to-face home visit;
 - (b) A telephone interview; or
 - (c) The mail.
- (5) The department shall find clients who receive cash assistance under AFDC, FIP, SSI, or state supplement eligible for medical assistance without a separate application.
- (6) A spouse ineligible for SSI benefits solely because of the spouse's income level shall apply individually for a medical program.
- (7) A Washington state resident temporarily out of the state may make application directly to the CSO in the resident's area of the state through either a person or agency acting in the client's behalf.

AMENDATORY SECTION (Amending Order 3105, filed 11/30/90, effective 1/1/91)

WAC 388-99-010 Persons eligible for medically needy assistance. The department shall determine as medically needy a resident of the state of Washington who meets the income and resource levels in WAC 388-99-020 and 388-99-035 and is:

- (1) Categorically needy as defined under WAC 388-82-010 but for income and/or resources; or
- (2) The aged, blind, or disabled ineligible spouse of an SSI beneficiary; or
- (3) A child (~~seventeen~~) under nineteen years of age (~~and under~~) as defined under WAC 388-83-033(1) but for income and resources; or
- (4) A pregnant woman who the department considers categorically needy but for income and resource requirements. For the purposes of this subsection, the department shall increase the number in the household by the number of unborns before comparing the pregnant woman's:
 - (a) Income to the medically needy income level in WAC 388-99-020; and
 - (b) Resources to the resource level in WAC 388-99-035.
- (5) Not an inmate of a public institution.

**WSR 93-03-067
EMERGENCY RULES**

DEPARTMENT OF ECOLOGY

[Order 92-36—Filed January 19, 1993, 9:16 a.m.]

Date of Adoption: January 19, 1993.

Purpose: Redefine and establish a waste discharge general permit program.

Citation of Existing Rules Affected by this Order: Amending chapters 173-216 and 173-220 WAC.

Statutory Authority for Adoption: RCW 90.48.035, 90.48.160, and 90.48.260.

Pursuant to RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Existing rules governing the adoption and administration of waste discharge general permits. Define a permitting process which makes compliance with recent federal stormwater regulations administratively impossible.

Effective Date of Rule: Immediately.

January 19, 1993

Fred Olson

Acting Director

AMENDATORY SECTION (Amending Order 86-03, filed 3/4/86)

WAC 173-216-010 Purpose. (1) The purpose of this chapter is to implement a state permit program, applicable to the discharge of waste materials from industrial, commercial, and municipal operations into ground and surface waters of the state and into municipal sewerage systems. However, this regulation (~~excludes the point source discharge of pollutants into navigable waters of the state which is regulated by National Pollutant Discharge Elimination System (NPDES) Permit Program, chapter 173-220 WAC. This regulation also excludes the injection of fluids through wells which is regulated by underground injection control program, chapter 173-218 WAC~~) does not apply to the following:

(a) The injection of fluids through wells which are regulated by the Underground injection control program, chapter 173-218 WAC.

(b) The point source discharge of pollutants into navigable waters of the state which are regulated by the National Pollutant Discharge Elimination System (NPDES) Permit Program, chapter 173-220 WAC.

(c) The discharge of pollutants into waters of the state which are regulated by the Waste discharge general permit program, chapter 173-226 WAC.

(2) Permits issued under this chapter are designed to satisfy the requirement for discharge permits under the Water Pollution Control Act, chapter 90.48 RCW and to implement applicable pretreatment requirements under section 307 of the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.).

AMENDATORY SECTION (Amending Order 86-03, filed 3/4/86)

WAC 173-216-030 Definitions. For the purposes of this chapter the following definitions shall be applicable:

(1) "Beneficial uses" shall include, but not be limited to, use for domestic water, irrigation, fish, shellfish, game, and other aquatic life, municipal, recreation, industrial water, generation of electric power, and navigation.

(2) "Dangerous wastes" means any discarded, useless, unwanted, or abandoned nonradioactive substances, including but not limited to certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes:

(a) Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or

(b) Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means (Hazardous Waste Disposal Act, chapter 70.105 RCW).

(3) "Department" means department of ecology.

(4) "Domestic wastewater" means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments or other places, together with such ground water infiltration or surface waters as may be present (submission of plans and reports for construction of wastewater facilities, chapter 173-240 WAC).

(5) "Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim, or dispose of domestic wastewater together with such industrial waste as may be present. In case of subsurface sewage treatment and disposal, the term is restricted to mean those facilities treating and disposing of domestic wastewater only from:

(a) A septic tank with subsurface sewage treatment and disposal and an ultimate design capacity exceeding fourteen thousand five hundred gallons per day at any common point; or

(b) A mechanical treatment system or lagoon followed by subsurface disposal with an ultimate design capacity exceeding three thousand five hundred gallons per day at any common point (submission of plans and reports for construction of wastewater facilities, chapter 173-240 WAC).

(6) "FWPCA" means Federal Water Pollution Control Act as amended by 1981 amendment (33 U.S.C. § 466 et seq.).

(7) "General permit" means a permit which covers multiple dischargers within a designated geographical area, in lieu of individual permits being issued to each discharger.

(8) "Industrial wastewater" means water or liquid-carried waste from industrial or commercial processes, as distinct from domestic wastewater. These wastes may result from any process or activity of industry, manufacture, trade or business, from the development of any natural resource, or from animal operations such as feed lots, poultry houses, or dairies. The term includes contaminated stormwater and, also, leachate from solid waste facilities (Submission of plans and reports for construction of wastewater facilities, chapter 173-240 WAC).

~~((8))~~ (9) "Interfere with" means a discharge by an industrial user which, alone or in conjunction with discharges by other sources, inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal and which is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal by the POTW

in accordance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the FWPCA, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D or the SWDA, the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection Research and Sanctuaries Act.

~~((9))~~ (10) "Municipal sewerage system" or "publicly owned treatment works (POTW)" means a publicly owned domestic wastewater facility or a privately owned domestic wastewater facility that is under contract to a municipality.

~~((10))~~ (11) "NPDES" means National Pollutant Discharge Elimination System permit program under section 402 of FWPCA.

~~((11))~~ (12) "New source" means any building, structure, facility, or installation from which there is or may be a discharge, the construction of which commenced; after proposal of Pretreatment Standards under section 307(c) of the FWPCA which are applicable to such sources.

~~((12))~~ (13) "Pass through" means the discharge of pollutants through a municipal sewerage system into waters of the state in quantities or concentrations which are a cause of or significantly contribute to a violation of any requirement of water quality standards for waters of state of Washington, chapter 173-201 WAC, or of the NPDES or state waste discharge permit, including an increase in the magnitude or duration of a violation (section 307 of FWPCA). Failure to obtain approval of an application for a new or increased discharge or change in the nature of the discharge according to WAC 173-216-110(5) would constitute such a violation.

~~((13))~~ (14) "Person" includes any political subdivision, local, state or federal government agency, municipality, industry, public or private corporation, partnership, association, firm, individual, or any other entity whatsoever.

~~((14))~~ (15) "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW.

~~((15))~~ (16) "Pretreatment requirements" means any substantive or procedural state, local, or federal requirements or standards developed under chapter 90.48 RCW and sections 307 and/or 402 of the FWPCA.

~~((16))~~ (17) "Pretreatment standards," "categorical standards," or "standards," means any pollutant discharge limitations, including those developed under section 307(b) and (c) of the FWPCA and implemented through regulations in 40 CFR Subchapter N, that apply to the discharge of nondomestic wastes to POTWs. This term includes prohibitive discharge limits established pursuant to WAC 173-216-060.

~~((17))~~ (18) "Subsurface sewage treatment and disposal" means the physical, chemical, or biological treatment and disposal of domestic wastewater within the soil profile by placement beneath the soil surface in trenches, beds, seepage pits, mounds, or fills (Submission of plans and reports for construction of wastewater facilities, chapter 173-240 WAC).

~~((18))~~ (19) "Waste materials" means any discarded, abandoned, unwanted or unrecovered material(s), except the following are not waste materials for the purposes of this chapter:

(a) Discharges into the ground or ground water of return flow, unaltered except for temperature, from a ground water heat pump used for space heating or cooling: *Provided*, That such discharges do not have significant potential, either individually, or collectively, to affect ground water quality or uses.

(b) Discharges of stormwater that is not contaminated or potentially contaminated by industrial or commercial sources.

~~((19))~~ (20) "Waters of the state" means all lakes, rivers, ponds, streams, inland waters, ground waters, salt waters, and all other waters and water courses within the jurisdiction of the state of Washington.

~~((20))~~ (21) In the absence of other definitions as set forth herein, the definitions as set forth in 40 CFR Part 403.3 shall be used for circumstances concerning the discharge of waste into sewerage systems.

AMENDATORY SECTION (Amending Order DE 83-29, filed 11/18/83)

WAC 173-216-040 Authorization required. (1) No waste materials may be discharged from any commercial or industrial operation into waters of the state, or into any municipal sewerage system, nor may waste materials be discharged from any municipal sewerage system into waters of the state, except as authorized pursuant to this chapter ~~((or))~~, chapter 173-220 or 173-226 WAC.

(2) Any person who constructs or modifies or proposes to construct or modify wastewater facilities must first comply with the regulations for submission of plans and reports for construction of wastewater facilities, chapter 173-240 WAC.

AMENDATORY SECTION (Amending Order 86-03, filed 3/4/86)

WAC 173-216-050 Discharges not subject to permits. (1) The following discharges are not subject to permits under this chapter:

(a) Discharges to municipal sewerage systems of domestic wastewater from residential, commercial, or industrial structures.

(b) Any industrial or commercial discharge to a municipal sewerage system for which authority to issue permits has been granted to the municipality under RCW 90.48.165.

(c) Any industrial or commercial discharge to a municipal sewerage system operating under, and in compliance with, the applicable requirements of a local pretreatment program approved under section 307 of FWPCA and WAC 173-216-150. In the event of noncompliance, this exemption no longer applies and the discharger is immediately subject to enforcement action under chapter 90.48 RCW for discharging without a waste discharge permit.

(d) Discharges to municipal sewerage systems of wastes from industrial or commercial sources whose wastewater is similar in character and strength to normal domestic wastewater: *Provided*, That such discharges do not have the potential to adversely affect performance of the system. Examples of this type of discharge sources may include

hotels, restaurants, laundries and food preparation establishments.

(e) Discharges for which an NPDES permit from the department is required pursuant to chapter 173-220 WAC.

(f) Discharges which are otherwise subject to the permit requirements of this chapter but which are covered under a general permit issued pursuant to chapter 173-226 WAC.

(g) Discharges of domestic wastewater from a septic tank with subsurface sewage treatment and disposal and an ultimate design capacity less than or equal to fourteen thousand five hundred gallons per day. These systems are governed by on-site sewage disposal systems, chapter ~~((248-96))~~ 246-272 WAC which is administered by the Washington state department of ~~((social and))~~ health ~~((services))~~.

~~((g))~~ (h) Discharges of domestic wastewater from a mechanical treatment system or lagoon followed by subsurface disposal with an ultimate design capacity less than or equal to three thousand five hundred gallons per day. These systems are governed by on-site sewage disposal systems, chapter ~~((248-96))~~ 246-272 WAC which is administered by the Washington state department of ~~((social and))~~ health ~~((services))~~.

(2) A permit is required for any source subject to pretreatment standards promulgated under section 307 of FWPCA, unless exempted under subsections (1)(b) and (c) of this section.

(3) These exemptions shall not relieve any discharger from the requirement to apply all known, available, and reasonable methods to prevent and control waste discharges to the waters of the state, nor the requirement to obtain approval of plans and reports for the construction of wastewater facilities. Nothing herein shall limit the authority of the department to take enforcement action for any unlawful discharge of waste materials or other violations of the Water Pollution Control Act, chapter 90.48 RCW.

AMENDATORY SECTION (Amending Order 86-03, filed 3/4/86)

WAC 173-216-070 Application for a permit. (1) Any person not exempt under WAC 173-216-050, who proposes to discharge waste materials into waters of the state or into a municipal sewerage system, must file an application with the department at least sixty days prior to discharging, or in the case of an expiring permit, at least sixty days prior to the expiration of the permit.

(2) Applications for permits shall be on forms as prescribed by the department.

(3) The applicant must pay applicable fees pursuant to Wastewater discharge permit fees, chapter ~~((173-222))~~ 173-224 WAC.

(4) The requirement for a permit application will be satisfied, if the discharger files:

(a) A completed permit application;

(b) When applicable, signature of approval by an authorized representative of the municipal sewerage system; and

(c) Any other information determined as necessary by the department.

(5) The application shall be signed in case of:

(a) Corporations, by a principal executive officer of at least the level of vice-president;

- (b) A partnership, by a general partner;
- (c) A sole proprietorship, by the proprietor;
- (d) A municipal, state, federal, or other public facility, by either a principal executive officer or ranking elected official.

(6) In the case of application by a corporation, the principal executive officer shall personally examine the application and certify its truth, accuracy, and completeness.

AMENDATORY SECTION (Amending Order 88-8, filed 5/26/88, effective 7/1/88)

WAC 173-216-130 Modification, suspension, and revocation of permits. (1) Any permit issued under this chapter can be modified, suspended, or revoked, in whole or in part by the department for the following causes:

- (a) Violation of any permit term or condition;
- (b) Obtaining a permit by misrepresentation or failure to fully disclose all relevant facts;
- (c) A material change in quantity or type of waste disposal;
- (d) A material change in the condition of the waters of the state; or
- (e) Nonpayment of permit fees assessed pursuant to RCW 90.48.610.

(2) The department may modify a permit, including the schedule of compliance or other conditions, if it determines good and valid cause exists, which includes promulgation or revisions of categorical standards.

(3) Any permit issued under this chapter shall remain in effect until terminated in writing by the department, except that continuation of an expired permit (pursuant to RCW 90.48.200), shall terminate upon coverage under a general permit issued pursuant to chapter 173-226 WAC.

AMENDATORY SECTION (Amending Order DE 83-29, filed 11/18/83)

WAC 173-216-140 Relationship with NPDES permits. For a given facility, permit requirements under this chapter and NPDES permit requirements under Water Pollution Control Act, RCW 90.48.260, shall under normal circumstances, be contained in a single permit document(~~;~~ ~~except for general permits as provided for in NPDES permit program, WAC 173-220-045~~).

AMENDATORY SECTION (Amending Order 88-9, filed 11/1/88)

WAC 173-220-010 Purpose. The purpose of this chapter is to establish a state individual permit program, applicable to the discharge of pollutants and other wastes and materials to the surface waters of the state, operating under state law as a part of the National Pollutant Discharge Elimination System (NPDES) created by section 402 of the Federal Water Pollution Control Act (FWPCA). Permits issued under this chapter are designed to satisfy the requirements for discharge permits under both section 402(b) of the FWPCA and chapter 90.48 RCW.

AMENDATORY SECTION (Amending Order 88-9, filed 11/1/88)

WAC 173-220-020 Permit required. No pollutants shall be discharged to any surface water of the state from a point source, except as authorized by an individual (~~or general~~) permit issued pursuant to this chapter or as authorized by a general permit issued pursuant to chapter 173-226 WAC.

AMENDATORY SECTION (Amending Order 88-9, filed 11/1/88)

WAC 173-220-030 Definitions. For purposes of this chapter, the following definitions shall be applicable:

(1) "Administrator" means the administrator of the United States Environmental Protection Agency.

(2) "Combined waste treatment facility" means any publicly owned waste treatment facility in which the maximum monthly average influent from any one industrial category, or categories producing similar wastes, constitutes over eighty-five percent of the design load for biochemical oxygen demand or suspended solids. Each single industrial category must contribute a minimum of ten percent of the applicable load.

(3) "Department" means department of ecology.

(4) "Director" means the director of the department of ecology or his/her authorized representative.

(5) "Discharge of pollutant" and the term "discharge of pollutants" each means (a) any addition of any pollutant or combination of pollutants to surface waters of the state from any point source, (b) any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source, other than a vessel or other floating craft which is being used as a means of transportation.

(6) "Discharger" means owner or operator of any facility or activity subject to regulation under the NPDES program.

(7) "Domestic wastewater" means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments or other places, together with such groundwater infiltration or surface waters as may be present.

(8) "Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim or dispose of domestic wastewater together with such industrial waste as may be present. This term applies only to facilities discharging to surface water.

(9) "Effluent limitation" means any restriction established by the state or administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into surface waters of the state.

(10) "FWPCA" means the Federal Water Pollution Control Act as amended, 33 U.S.C. 1251 et seq.

(11) "General permit" means (~~an NPDES~~) a permit which covers multiple dischargers of a point source category within a designated geographical area, in lieu of individual permits being issued to each discharger.

(12) "Individual permit" means a permit for a single point source or a single facility.

(13) "Major discharger" means any discharger classified as such by the administrator in conjunction with the director and published in the annual state-EPA agreement.

(14) "Minor discharger" means any discharger not designated as major or covered under a general permit.

(15) "NPDES" means the National Pollutant Discharge Elimination System.

(16) "Permit" means an authorization, license, or equivalent control document issued by the director to implement this chapter.

(17) "Person" includes any political subdivision, local, state, or federal government agency, municipality, industry, public or private corporation, partnership, association, firm, individual, or any other entity whatsoever.

(18) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(19) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water. This term does not include sewage from vessels within the meaning of section 312 of the FWPCA nor does it include dredged or fill material discharged in accordance with a permit issued under section 404 of the FWPCA.

(20) "Regional administrator" means the regional administrator of Region X of the Environmental Protection Agency (EPA) or his/her authorized representative.

(21) "Surface waters of the state" means all waters defined as "waters of the United States" in 40 CFR 122.2 that are within the boundaries of the state of Washington. This includes lakes, rivers, ponds, streams, inland waters, wetlands, ocean, bays, estuaries, sounds, and inlets.

(22) "Water quality standards" means the state of Washington's water quality standards for surface waters of the state, which are codified in chapter 173-201 WAC.

AMENDATORY SECTION (Amending Order 88-9, filed 11/1/88)

WAC 173-220-040 Application for permit. (1) Any person presently discharging pollutants to surface waters of the state must file an application with the department on a form prescribed by the department. For the purpose of satisfying the requirements of this subsection, any completed application filed with the Environmental Protection Agency prior to the approval by the administrator under section 402(b) of the FWPCA of this state permit program shall constitute a filing with the department.

(2) Any person proposing to commence a discharge of pollutants to surface waters of the state must file an application with the department on a form prescribed by the department, (a) no less than one hundred eighty days in advance of the date on which it is desired to commence the discharge of pollutants, or (b) in sufficient time prior to commencement of the discharge of pollutants to insure

compliance with the requirements of section 306 of the FWPCA and any other applicable water quality standards or effluent standards and limitations.

(3) The applicant must pay any applicable fees required pursuant to RCW 90.48.610.

(4) The requirement for permit application will be satisfied if the discharger files:

(a) A complete application form which is appropriate for the type, category, or size of discharge per 40 CFR 122.21; or

(b) A complete request for coverage (~~by~~) under a general permit; and

(c) Any additional information required by the department pertaining to pollutant discharge.

(5) The application form shall bear a certification of correctness to be signed:

(a) In the case of corporations, by a responsible corporate officer.

(b) In the case of a partnership, by a general partner.

(c) In the case of sole proprietorship, by the proprietor.

(d) In the case of a municipal, state, or other public facility, by either a principal executive officer or ranking elected official.

(6) Applications for permits for domestic wastewater facilities that are either owned or operated by, or under contract to, a public entity shall be submitted by the public entity.

(7) No discharge of pollutants into the surface waters of the state is authorized until such time as a permit has been issued consistent with the terms and conditions of this chapter.

AMENDATORY SECTION (Amending Order 88-9, filed 11/1/88)

WAC 173-220-050 Public notice. (1) Public notice of every draft permit determination regarding an individual permit (~~(or general permit, and request for coverage by a general permit,)~~) shall be circulated in a manner designed to inform interested and potentially affected persons of the proposed discharge and of the proposed determination to issue or deny a permit for the proposed discharge, as follows:

(a) (~~For individual permits,)~~ Notice shall be circulated within the geographical area of the proposed discharge; such circulation may include any or all of the following, as directed by the department:

(i) Posting by the applicant for a period of thirty days in the post office, public library, and public places of the municipality nearest the premises of the applicant in which the effluent source is located;

(ii) Posting by the applicant for a period of thirty days near the entrance of the applicant's premises and nearby places;

(iii) Publishing by the applicant, at his own cost within such time as the director shall prescribe, through a notice form provided by the department, in major local newspapers of general circulation serving the area in which the discharge occurs: *Provided*, That if an applicant fails to publish notice within thirty days of the time prescribed by the director, the department may publish the notice and bill the applicant for the cost of publication;

(iv) Publishing by the applicant of paid advertisements;
 (v) Publishing by the department of news releases or newsletter articles.

~~(b) ((For general permits, such circulation shall include the following:~~

~~(i) Publishing by the department of a notice of intent to issue a general permit in a major local newspaper of general circulation in each affected area; and~~

~~(ii) Posting or publishing by the applicant of a request for coverage by a general permit in accordance with any or all methods listed in (a)(i), (ii), (iii), (iv), or (v) of this subsection, as directed by the department.~~

~~(e))~~ Notice shall be mailed to any person upon request; and

~~((d))~~ (c) The department shall add the name of any person upon request to a mailing list to receive copies of notices within the state or within a certain geographical area.

(2) The department shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written views on a draft permit determination ~~((or a request for coverage by a general permit))~~. All written comments submitted during the thirty-day comment period shall be retained by the department and considered in the formulation of its final determination with respect to the application. The period for comment may be extended at the discretion of the department.

(3) The department shall prepare the contents of the public notice, which shall, at a minimum, summarize the following:

(a) Name, address, phone number of agency issuing the public notice;

~~(b) ((Except when unknown in the case of general permit issuance,))~~ Name and address of each applicant, and if different, of the facility or activity to be regulated;

(c) Each applicant's activities or operations which result in a discharge (e.g., municipal waste treatment, steel manufacturing, drainage from mining activities);

~~(d) ((Except in the case of general permit issuance,))~~ Name of waterway to which each discharge is made and the location of each discharge on the waterway, indicating whether such discharge is a new or an existing discharge;

(e) The tentative determination to issue or deny a permit for the discharge;

~~(f) ((Where coverage by a general permit is replacing a current individual permit, notice of termination of the individual permit;~~

~~(g))~~ The procedures for the formulation of final determinations, including the thirty-day comment period required by subsection (2) of this section and any other means by which interested persons may comment upon those determinations; and

~~((h))~~ (g) Address and phone number of state premises at which interested persons may obtain further information.

(4) The department shall provide copies of permit applications, draft permit determinations, ~~((requests for coverage, and general permits upon request))~~ and final permits.

(5) The department shall notify the applicant and persons who have submitted written comments or requested notice of the final permit decision. This notification shall

include response to comments received and reference to the procedures for contesting the decision.

AMENDATORY SECTION (Amending Order 88-9, filed 11/1/88)

WAC 173-220-060 Fact sheets. (1) The department shall prepare a fact sheet for every draft permit determination ~~((regarding major dischargers, minor dischargers, and general permits))~~. Such fact sheets shall, at a minimum, summarize the following:

(a) The type of facility or activity which is the subject of the application;

(b) The location of the discharge in the form of a sketch or detailed description;

(c) The type and quantity of the discharge, including at least the following:

(i) The rate or frequency of the proposed discharge;

(ii) For thermal discharges, the average summer and winter temperatures; and

(iii) The average discharge in pounds per day, or other appropriate units, of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under RCW 90.48.010, 90.52.040, 90.54.020 and sections 301, 302, 306, or 307 of the FWPCA and regulations published thereunder;

(d) The conditions in the proposed permit;

(e) The legal and technical grounds for the draft permit determination, including an explanation of how conditions meet both the technology-based and water quality-based requirements of the FWPCA and chapters 90.48, 90.52, and 90.54 RCW;

(f) The effluent standards and limitations applied to the proposed discharge;

(g) The applicable water quality standards, including identification of the uses for which receiving waters have been classified;

(h) How the draft permit addresses use or disposal of residual solids generated by wastewater treatment; and

(i) The procedures for the formulation of final determinations (in more detailed form than that given in the public notice) including:

(i) The thirty-day comment period required by WAC 173-220-050(2);

(ii) Procedures for requesting a public hearing and the nature thereof; and

(iii) Any other procedures by which the public may participate in the formulation of the final determinations.

(2) The department shall send a fact sheet to the applicant and, upon request, to any other person.

(3) The department shall add the name of any person upon request to a mailing list to receive copies of fact sheets.

AMENDATORY SECTION (Amending Order 88-9, filed 11/1/88)

WAC 173-220-070 Notice to other government agencies. The department shall notify other appropriate government agencies of each draft permit determination ~~((or request for coverage))~~ and shall provide such agencies an opportunity to submit their written views and recommendations. Such notification shall include the following:

(1) Unless the regional administrator has agreed to waive review, transmission of an application, fact sheet, and draft permit to the regional administrator for comment or objection within thirty days (~~((ninety days for general permits))~~), or a longer period if requested up to a maximum of ninety days.

(2) At the time of issuance of public notice pursuant to WAC 173-220-050, transmission of the public notice to any other states whose waters may be affected by the issuance of a permit. Each affected state shall be afforded an opportunity to submit written recommendations to the department and to the regional administrator which the department may incorporate into the permit if issued. Should the department fail to incorporate any written recommendations thus received, it shall provide to the affected state or states (and to the regional administrator) a written explanation of its reasons for failing to accept any of the written recommendations.

(3) Unless waived by the respective agency, the public notice shall be sent to the appropriate district engineer of the Army Corps of Engineers, the United States Fish and Wildlife Service, the National Marine Fisheries Service, the state departments of fisheries, natural resources, wildlife, and social and health services, the archaeology and historic preservation office, the agency responsible for the preparation of an approved plan pursuant to section 208(b) of the FWPCA, applicable Indian tribes and any other applicable government agencies.

(4) A copy of any written agreement between the department and an agency identified in subsection (3) of this section which waives the receipt of public notices shall be forwarded to the regional administrator and shall be made available to the public for inspection and copying.

(5) Copies of public notices shall be mailed to any other federal, state, or local agency, Indian tribe or any affected country, upon request. Such agencies shall have an opportunity to respond, comment, or request a public hearing pursuant to WAC 173-220-090.

AMENDATORY SECTION (Amending Order 88-9, filed 11/1/88)

WAC 173-220-090 Public hearings. The applicant, any affected state, any affected interstate agency, any affected country, the regional administrator, or any interested agency or person may request a public hearing with respect to a draft permit determination (~~((or request for coverage by a general permit))~~). Any such request for a public hearing shall be filed within the thirty-day period prescribed in WAC 173-220-050(2) and shall indicate the interest of the party filing such request and the reasons why a hearing is warranted. The department shall hold a hearing if it determines there is a significant public interest. Instances of doubt will be resolved in favor of holding the hearing. Any hearing brought pursuant to this subsection shall be held at a time and place deemed appropriate by the department.

AMENDATORY SECTION (Amending Order 88-9, filed 11/1/88)

WAC 173-220-100 Public notice of public hearings.

(1) The department shall circulate public notice of any hearing held pursuant to WAC 173-220-090 at least as

widely as was the notice pursuant to WAC 173-220-050. Procedures for the circulation of public notice for hearings held under WAC 173-220-090 shall include at least the following:

(a) Notice shall be published in at least one major local newspaper of general circulation within the geographical area of the discharge;

(b) Notice shall be sent to all persons and government agencies who received a copy of the notice pursuant to WAC 173-220-050 or the fact sheet;

(c) Notice shall be mailed to any person upon request; and

(d) Notice shall be effected pursuant to (a) and (c) of this subsection at least thirty days in advance of the hearing.

(2) The contents of public notice of any hearing held in pursuant to WAC 173-220-090 shall include at least the following:

(a) Name, address, and phone number of agency holding the public hearing;

(b) A reference to the public notice issued pursuant to WAC 173-220-050, including identification number and date of issuance;

(c) The time and location for the hearing;

(d) The purpose of the hearing;

(e) Address and phone number of premises at which interested persons may obtain information;

(f) The nature of the hearing;

(g) The issues raised by the persons requesting the hearing, and any other appropriate issues which may be of interest to the public;

~~((i) Except when unknown in the case of general permit determinations;))~~ (h) The name and address of each applicant whose proposed discharge will be considered at the hearing;

~~((ii) Except when unknown in the case of general permit determinations;))~~ (i) The name of waterway to which each discharge is made and the location of each discharge on the waterway.

AMENDATORY SECTION (Amending Order DE 82-39, filed 12/1/82)

WAC 173-220-110 Permit preparation. The department will prepare tentative staff determinations with respect to a permit application (~~((or a determination that a class of dischargers is appropriately covered by a general permit))~~) in advance of public notice of the proposed issuance or denial of a permit. Such tentative determinations shall include at least the following:

(1) A proposed determination to issue or deny a permit for the discharge described in the application; and

(2) If the determination is to issue the permit, the following shall be included in a draft permit:

(a) Proposed effluent limitations for those pollutants proposed to be limited;

(b) A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations; and

(c) A brief description of any other proposed special conditions which will have a significant impact upon the discharge described in the application.

AMENDATORY SECTION (Amending Order 88-9, filed 11/1/88)

WAC 173-220-225 Appeals. ~~((+)) Individual permits are subject to appeals as specified in chapter 43.21B RCW.~~

~~((2) For general permits: (a) The terms and conditions of a general permit as they apply to the appropriate class of dischargers is subject to appeal within thirty days of issuance of a general permit in accordance with chapter 43.21B RCW; (b) the terms and conditions of a general permit as they apply to an individual discharger are subject to appeal in accordance with chapter 43.21B RCW within thirty days of the effective date of coverage of that discharger. Consideration of an appeal of general permit coverage of an individual discharger is limited to the general permit's applicability or nonapplicability to that discharger. Appeal of general permit coverage of an individual discharger does not affect any other individual dischargers. If the terms and conditions of a general permit are found to be inapplicable to any discharger, the matter shall be remanded to the department for consideration of issuance of an individual permit.))~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 173-220-045 General permits.

**Chapter 173-226 WAC
WASTE DISCHARGE GENERAL PERMIT PROGRAM**

NEW SECTION

WAC 173-226-010 Purpose. The purpose of this chapter is to establish a state general permit program, applicable to the discharge of pollutants, wastes, and other materials to waters of the state. Permits issued under this chapter are designed to satisfy the requirements for discharge permits under sections 307 and 402(b) of the federal Water Pollution Control Act (33 U.S.C. §1251) and the state law governing water pollution control (chapter 90.48 RCW).

NEW SECTION

WAC 173-226-020 Permit required. No pollutants shall be discharged to waters of the state from any point source, except as authorized by an individual permit issued pursuant to chapters 173-216 and 173-220 WAC, or as authorized through coverage under a general permit issued pursuant to this chapter. Coverage under a valid general permit issued prior to the existence of this chapter will satisfy the permit requirements of this section.

NEW SECTION

WAC 173-226-030 Definitions. For purposes of this chapter, the following definitions shall be applicable:

(1) "Administrator" means the administrator of the United States Environmental Protection Agency.

(2) "Application for coverage" means a form developed by, or approved by the department, which is used by a discharger to apply for coverage under a general permit.

(3) "Best management practices" (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(4) "Department" means the Washington state department of ecology.

(5) "Director" means the director of the department of ecology or the director's authorized representative.

(6) "Discharge of pollutant" and "discharge of pollutants" mean the addition of any pollutant or combination of pollutants to waters of the state, respectively.

(7) "Discharger" means the owner or operator of any operation, facility, or activity subject to regulation under chapter 90.48 RCW.

(8) "Domestic wastewater" means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments, or other places, together with such ground water infiltration or surface waters as may be present.

(9) "Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim, or dispose of domestic wastewater, together with such industrial waste as may be present.

(10) "Effluent limitation" means any restriction established by the department or the administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents discharged from point sources into waters of the state.

(11) "FWPCA" means the federal Water Pollution Control Act, as amended, 33 U.S.C. §1251 et seq.

(12) "Existing operation" means an operation that is not a new operation.

(13) "General permit" means a permit that covers multiple dischargers of a point source category within a designated geographical area, in lieu of individual permits being issued to each discharger.

(14) "Individual permit" means a permit for a single point source or a single facility.

(15) "Municipal sewerage system" means a publicly owned domestic wastewater facility or privately owned domestic wastewater facility that is under contract to a municipality.

(16) "New operation" means an operation that begins activities that result in a discharge, or a potential discharge to waters of the state on or after the effective date of the general permit.

(17) "Notice of intent" means an application for a general permit, a request for coverage under a general permit, or a registration form for a general permit.

(18) "NPDES" means the National Pollutant Discharge Elimination System.

(19) "Permit" means an authorization, license, or equivalent control document issued by the director to implement this chapter.

(20) "Person" includes any political subdivision, local, state, or federal government agency, municipality, industry,

public or private corporation, partnership, association, firm, individual, or any other entity whatsoever.

(21) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(22) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. This term does not include sewage from vessels within the meaning of section 312 of the FWPCA nor does it include dredged or fill material discharged in accordance with a permit issued under section 404 of the FWPCA.

(23) "Regional administrator" means the regional administrator of Region X of the Environmental Protection Agency (EPA) or his/her authorized representative.

(24) "Small business" has the meaning given in RCW 43.31.025(4).

(25) "Surface waters of the state" means all waters defined as "waters of the United States" in 40 CFR 122.2 that are within the boundaries of the state of Washington. This includes lakes, rivers, ponds, streams, inland waters, wetlands, ocean, bays, estuaries, sounds, and inlets.

(26) "Waters of the state" means all waters defined as "surface waters of the state" and all waters defined as "waters of the state" in RCW 90.48.020.

(27) "Water quality standards" means the state of Washington's water quality standards for ground waters of the state (chapter 173-200 WAC) and the state of Washington's water quality standards for surface waters of the state (chapter 173-201 WAC).

NEW SECTION

WAC 173-226-040 Relationship to chapters 173-216 and 173-220 WAC. This chapter defines a waste discharge general permit program within Washington state. Chapters 173-216 and 173-220 WAC define and establish permit programs for the development and issuance of individual permits.

NEW SECTION

WAC 173-226-050 General permit coverage. (1) The director may issue general permits to satisfy any or all of the waste water discharge permit requirements of chapter 90.48 RCW and the FWPCA.

(2) The director may issue general permits to cover categories of dischargers for geographic areas as described under subsection (3) of this section. The area shall correspond to existing geographic or political boundaries, such as:

- (a) Designated planning areas under section 208 or 303 of the FWPCA;
- (b) Sewer districts or other special purpose districts;
- (c) City, county, or state political boundaries;
- (d) State or county highway systems;

(e) Standard metropolitan statistical areas as defined by the federal Office of Management and Budget;

(f) Urbanized areas as designated by the Bureau of the Census; or

(g) Any other appropriate division or combination of boundaries.

(3) General permits may be written to cover the following within a described area:

(a) Storm water sources; or

(b) Categories of dischargers that meet all of the following requirements:

(i) Involve the same or substantially similar types of operations;

(ii) Discharge the same or substantially similar types of wastes;

(iii) Require the same or substantially similar effluent limitations or operating conditions, and require similar monitoring; and

(iv) In the opinion of the director are more appropriately controlled under a general permit than under individual permits.

NEW SECTION

WAC 173-226-060 General permit preparation—Preliminary determination. (1) For all general permits, the department shall make a preliminary determination to develop a general permit. Interested persons may petition the director requesting that a category of dischargers be considered for the development of a general permit. The department shall respond to such a petition within ninety days of receipt.

(2) The department shall provide public notice of all preliminary determinations to develop a general permit pursuant to WAC 173-226-130(1).

(3) In the event that the department determines not to develop a general permit after publishing a preliminary determination pursuant to WAC 173-226-130(2), the department shall provide public notice to that effect in the same manner as the preliminary determination public notice was provided.

NEW SECTION

WAC 173-226-070 Permit effluent limitations. Any general permit issued by the department shall apply and insure compliance with all of the following, whenever applicable:

(1) Technology-based treatment requirements and standards reflecting all known, available, and reasonable methods of prevention, treatment, and control required under RCW 90.48.010, 90.48.520, 90.52.040, and 90.54.020 may be imposed through any or all of the following methods:

(a) Effluent limitations and standards promulgated pursuant to sections 301, 302, 306, and 307 of the FWPCA;

(b) Discharge standards contained in chapters 173-221 and 173-221A WAC;

(c) On a case-by-case basis under section 402 of the FWPCA; and/or

(d) Through the use of best management practices.

(2) Water quality-based effluent limitations.

(a) Water quality-based effluent limitations shall be incorporated into a general permit if such limitations are

necessary to comply with chapter 173-200 and/or 173-201 WAC for the majority of the dischargers intended to be covered under the general permit and:

(i) The department determines that the use of a general permit rather than individual permits is appropriate; and

(ii) The conditions of coverage contained in WAC 173-226-050 are met.

(b) Water quality-based effluent limitations shall be developed for all pollutants or pollutant parameters which the department determines are or may be discharged at a level which will cause, have the potential to cause, or contribute to an exceedance of state ground or surface water quality standards.

(3) Any more stringent limitations or requirements, including those necessary to:

(a) Meet water quality standards, sediment quality standards, treatment standards, or schedules of compliance established pursuant to any state law or regulation under authority preserved to the state by section 510 of the FWPCA;

(b) Meet any federal law or regulation other than the FWPCA or regulations thereunder;

(c) Implement any legally applicable requirements necessary to implement total maximum daily loads established pursuant to section 303(d) and incorporated in the continuing planning process approved under section 303(e) of the FWPCA and any regulations and guidelines issued pursuant thereto;

(d) Prevent or control pollutant discharges from plant site runoff, spillage or leaks, sludge or waste disposal, or materials handling or storage;

(e) Meet the permit by rule provisions of the state dangerous waste regulation, WAC 173-303-802 (4) or (5);

(f) Comply with a plan approved pursuant to section 208(b) of the FWPCA; and/or

(g) Meet such conditions as the department determines are necessary to carry out the provisions of the FWPCA, prior to promulgation by the administrator of applicable effluent standards and limitations pursuant to sections 301, 302, 306, and 307 of the FWPCA.

(4) In addition to the other applicable requirement of this chapter, general permits authorizing the discharge into a municipal sewerage system shall satisfy the applicable pretreatment requirements of the FWPCA.

(5) Requirements pursuant to other laws, including the state's Hazardous Waste Management Act (chapter 70.105 RCW), the Solid Waste Management—Reduction and Recycling Act (chapter 70.95 RCW), the Resource Conservation and Recovery Act of 1976 (Public Law 95.190), or any other applicable local ordinances, state or federal statute, to the extent that they pertain to the prevention or control of waste discharges into the waters of the state;

(6) In the application of effluent standards and limitations, water quality standards and other legally applicable requirements pursuant to subsections (1) through (4) of this section, each general permit shall specify:

(a) For industrial wastewater facilities, average monthly and maximum daily quantitative mass and/or concentration limitations, or other such appropriate limitations for the level of pollutants and the authorized discharge;

(b) For domestic wastewater facilities, average weekly and monthly quantitative concentration and mass limitations,

or other such appropriate limitations for the level of pollutants and the authorized discharge; and

(c) If a dilution zone is authorized within which water quality standards are modified, the dimensions of such dilution zone.

NEW SECTION

WAC 173-226-080 Other terms and conditions. (1) In addition to the requirements of WAC 173-226-070, 173-226-090, and 173-226-180, each general permit shall require:

(a) All discharges authorized by the general permit shall be consistent with the terms and conditions of the permit.

(b) Any facility expansions, production increases, or process modifications that would result in new or increased discharges of pollutants causing effluent limitations in the general permit to be exceeded or beyond which was reported in the application for coverage, must be reported to the department by submission of a new application or supplement thereto.

(c) Unless notified to the contrary by the department all notices submitted pursuant to (b) of this subsection shall comply with the application requirements of WAC 173-226-200(3).

(d) Any discharge of any pollutant more frequent than or at a level in excess of that identified and authorized by the general permit shall constitute a violation of the terms and conditions of the general permit.

(e) The director may terminate coverage under a general permit for cause. Cases where coverage under a general permit may be terminated include, but are not limited to, those contained in WAC 173-226-240(1).

(f) The director may require any discharger to apply for and obtain an individual permit, or to apply for and obtain coverage under another more specific general permit.

(g) General permits may be issued, modified, revoked and reissued, or terminated in accordance with the other provisions of this chapter. Grounds for modification or revocation and reissuance include but are not limited to those contained in WAC 173-226-230.

(h) The permittee shall allow the department or its authorized representative, upon the presentation of credentials and such other documents as may be required by law, at reasonable times:

(i) To enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the permit;

(ii) To have access to, and to copy at reasonable cost, any records required to be kept under terms and conditions of the permit;

(iii) To inspect any monitoring equipment or method required in the permit; and/or

(iv) To sample any discharge of pollutants.

(i) The permittee shall at all times properly operate and maintain any facilities or systems of control to achieve compliance with the terms and conditions of the general permit. Where design criteria have been established, the permittee shall not allow flows or waste loadings to exceed approved design criteria, or approved revisions thereto.

(j) The discharge of pollutants resulting from activities not covered under the general permit for which the discharg-

er has requested coverage, shall be a violation of the terms and conditions of the general permit.

(2) General permits shall specify the contents of the application for coverage, the deadlines for submitting applications for coverage, the date(s) and/or the process by which coverage is granted, and the criteria for coverage.

(3) Any discharger authorized by a general permit may request to be excluded from coverage under the general permit by applying for and being issued an individual permit. The discharger shall submit to the director an application as described in WAC 173-220-040, with reasons supporting the request. The director shall either issue an individual permit or deny the request with a statement explaining the reason for denial.

(4) When an individual permit is issued to a discharger otherwise subject to a general permit, the applicability of the general permit to that permittee is automatically terminated on the effective date of the individual permit.

NEW SECTION

WAC 173-226-090 Monitoring, recording, and reporting. (1) Monitoring.

(a) Any discharge authorized by a general permit may be subject to such monitoring requirements as may be reasonably required by the department, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods). These monitoring requirements would normally include but are not limited to:

- (i) Flow (in gallons per day or other appropriate units);
- (ii) All pollutants on which limitations have been placed pursuant to WAC 173-226-070;
- (iii) Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) that are subject to reduction or elimination under the terms and conditions of the permit;
- (iv) Pollutants that the department finds could have a significant impact on the quality of waters and sediments of the state; and

(v) Pollutants specified by the administrator, in regulations issued pursuant to the FWPCA, as subject to monitoring.

(b) Each effluent flow or pollutant required to be monitored pursuant to (a) of this subsection shall be monitored at intervals sufficiently frequent to yield data that reasonably characterizes the nature of the discharge of the monitored effluent flow or pollutant.

(c) Monitoring for compliance with limitations imposed pursuant to WAC 173-226-070 shall be no less than once per year.

(d) Variable effluent flows and pollutant levels may be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels, which may be monitored at less frequent intervals.

(e) Monitoring of intake water, influent to treatment facilities, internal waste streams, and/or receiving waters may be required by the department, to verify compliance with net discharge limitations or removal requirements, to verify that proper waste treatment or control practices are being maintained, or to determine the effects of the discharge on the waters and sediments of the state.

(2) Recording of monitoring activities and results. Any general permit which requires monitoring of an authorized discharge shall require that:

(a) The permittee maintain records of all information resulting from any monitoring activities required as a condition of the application for, or as a condition of coverage under a general permit;

(b) Any records of monitoring activities and results shall include for all samples:

- (i) The date, exact place, and time of sampling;
- (ii) The dates analyses were performed;
- (iii) Who performed the analyses;
- (iv) The analytical techniques/methods used; and
- (v) The results of such analyses; and

(c) The permittee retain for a minimum of five years any records of monitoring activities and all results of those activities including all original strip chart recording for continuous monitoring instrumentation and calibration and maintenance records. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee, or when requested by the department or regional administrator.

(3) Reporting of monitoring results.

(a) The department may require the permittee to periodically report on the proper reporting form, the monitoring results obtained pursuant to monitoring requirements in a general permit. In addition to the required reporting form, the department may require submission of such other reports as it determines to be necessary.

(b) Monitoring reports shall be signed by:

(i) In the case of corporations, a responsible corporate officer or duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge originates.

(ii) In the case of a partnership, a general partner.

(iii) In the case of a sole proprietorship, the proprietor.

(iv) In the case of a municipal, state, or other public facility, either a principal executive officer, ranking elected official, or other duly authorized employee.

(4) Except for flow, temperature, and internal process control parameters, all monitoring data required as a condition of a general permit, or required as part of an application for coverage under a general permit shall be prepared by a laboratory accredited under the provisions of chapter 173-50 WAC no later than:

(a) July 1, 1992, for major dischargers;

(b) July 1, 1993, for permittees with a permitted average flow rate greater than five million gallons per day;

(c) July 1, 1994, for all other permittees.

NEW SECTION

WAC 173-226-100 Prohibited discharges. (1) No general permit issued by the department shall authorize any person to:

(a) Discharge any radiological, chemical, or biological warfare agent or high-level radioactive waste into waters of the state;

(b) Discharge any pollutants that the Secretary of the Army acting through the Chief, Corps of Engineers, finds would substantially impair anchorage and navigation;

(c) Discharge any pollutant which the regional administrator, not having waived his/her right to object pursuant to section 402(e) of the FWPCA, has objected in writing pursuant to section 402(d) of the FWPCA;

(d) Discharge any pollutant in conflict with plans or amendment thereto approved pursuant to section 208(b) of the FWPCA;

(e) Discharge any pollutant subject to a toxic pollutant discharge prohibition under section 307 of the FWPCA; or

(f) Discharge any dangerous waste as defined in the Dangerous waste regulations, chapter 173-303 WAC, into a subsurface disposal system such as a well or drainfield.

(2) The following discharges to municipal sewerage systems are also prohibited:

(a) Waste materials that pass through the treatment works untreated or interfere with its operation or performance;

(b) Liquids, solids, or gases that, by reason of their nature or quantity, are or may be sufficient either alone or by interaction to:

(i) Cause fire or explosion;

(ii) Create a public nuisance or hazard to life;

(iii) Prevent entry into the sewers for their maintenance and repair; or

(iv) Be injurious in any other way to the operation of the system or the operating personnel;

(c) Solid or viscous substances which may cause obstruction to the flow in a sewer or other interference with the operation of the system;

(d) Any wastewater having a pH less than 5.0 or greater than 11.0, or having any other corrosive property capable of causing damage or hazard to structures, equipment, or personnel of the system, unless the system is specifically designed to accommodate such discharge and the discharge is authorized by a permit under this chapter;

(e) Wastewater that would cause the influent temperature to exceed 40°C (104°F), unless the system is specifically designed to accommodate such discharge and the discharge is authorized by a permit under this chapter. In any case, any wastewater having a temperature which will interfere with the biological activity in the system is prohibited;

(f) Waste materials, including, but not limited to, oxygen demanding waste materials (BOD, etc.) released in either a slug load or continuous discharge of such volume or strength as to cause interference to the system;

(g) Any other discharge prohibited by federal or state law or regulation; and

(h) Any of the following discharges, unless approved by the department under extraordinary circumstances (such as lack of direct discharge alternatives due to combined sewer service or need to augment sewage flows due to septic conditions):

(i) Noncontact cooling water in significant volumes;

(ii) Storm water and other direct inflow sources;

(iii) Waste waters significantly affecting system hydraulic loading that do not require treatment or would not be afforded a significant degree of treatment by the system.

NEW SECTION

WAC 173-226-110 Fact sheets. (1) The department shall prepare a fact sheet for every draft general permit determination. Such fact sheets shall summarize the following:

(a) The type of facility or activity which is the subject of the general permit;

(b) The geographical area for which the general permit is valid;

(c) The criteria for which coverage under a general permit will be approved;

(d) A listing or some other means of identifying the facilities proposed to be covered under the general permit;

(e) The information required by WAC 173-226-200(3), to be submitted as part of the application for coverage under the general permit;

(f) The effluent characteristics for the category of dischargers being authorized under the general permit, including the following:

(i) The average rate or frequency of the proposed discharge;

(ii) For thermal discharges, the average summer and winter temperatures; and

(iii) The average and estimated range in pounds per day, or other appropriate units, of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under RCW 90.48.010, 90.52.040, 90.54.020, and sections 301, 302, 306, or 307 of the FWPCA and regulations published thereunder;

(g) The effluent standards and limitations applied;

(h) The applicable water quality standards, including identification of the uses for which receiving waters have been classified;

(i) The conditions in the proposed general permit;

(j) The legal and technical grounds for the conditions contained in the general permit, including:

(i) An explanation of how conditions meet both the technology-based and water quality-based requirements of the FWPCA and chapters 90.48, 90.52, and 90.54 RCW;

(ii) An explanation of how the conditions meet the water quality standards of chapters 173-200 and 173-201 WAC; and

(iii) An explanation of how the conditions meet the sediment standards contained in chapter 173-204 WAC;

(k) If a dilution zone is authorized, pursuant to chapter 173-201 WAC, within which water quality standards are modified:

(i) A description of the allowed dilution zone;

(ii) The legal basis for providing a dilution zone; and

(iii) The technical basis for allowing a dilution zone and the basis for determining the size of the dilution zone;

(l) Any compliance schedules proposed as part of the general permit or as a part of the application process pursuant to WAC 173-226-180 and 173-226-200;

(m) How the draft permit addresses use or disposal of residual solids generated by wastewater treatment; and

(n) The procedures for the formulation of final determinations (in more detailed form than that given in the public notice) including:

(i) The thirty-day comment period required by WAC 173-226-130(3);

- (ii) The time and place of the public hearing(s); and
 - (iii) Any other procedures by which the public may participate in the formulation of the final determination.
- (2) The department shall provide copies of general permit fact sheets to any interested person upon request.

NEW SECTION

WAC 173-226-120 Economic impact analysis. (1) The department shall prepare an economic impact analysis on all draft general permits developed and intended for issuance pursuant to this chapter. The economic impact analysis shall be prepared on the draft general permit for which public notice is being provided pursuant to WAC 173-226-130(3).

(2) The purpose of the economic impact analysis is to reduce the economic impact of the general permit on small business by doing one or more of the following when it is legal and feasible in meeting the stated objectives of the FWPCA and chapter 90.48 RCW:

- (a) Establishing differing compliance or reporting requirements or timetables for small businesses;
- (b) Clarifying, consolidating, or simplifying the compliance and reporting requirements under the general permit for small businesses;
- (c) Establishing performance rather than design standards;
- (d) Exempting small businesses from parts of the general permit.

(3) The contents of an economic impact analysis of a proposed general permit shall include, at a minimum, the following:

(a) A brief description of the compliance requirements of the general permit, including:

- (i) The minimum technology based treatment requirements identified as necessary under WAC 173-226-070;
- (ii) The monitoring requirements contained in the general permit;
- (iii) The reporting and recordkeeping requirements; and
- (iv) Any plan submittal requirements;

(b) The estimated costs of compliance, based upon existing data for facilities intended to be covered under the general permit. Costs shall include, consistent with subsection (2) of this section the following:

- (i) The costs associated with (a) of this subsection; and
- (ii) The costs of equipment, supplies, labor, and any increased administrative costs;

(c) A comparison, to the greatest extent possible, of the cost of compliance for small businesses with the cost of compliance for the largest ten percent of the facilities intended to be covered under the general permit. The economic impact analysis shall use one or more of the following as a basis for comparing costs:

- (i) Cost per employee;
- (ii) Cost per hour of labor;
- (iii) Cost per one hundred dollars of sales.

(4) The following compliance costs associated with a general permit shall not be included in the economic impact analysis:

- (a) The costs necessary to comply with chapters 173-200, 173-201, 173-204, and 173-224 WAC; and

- (b) The costs associated with requirements of the general permit which result from conformity or compliance, or both, with federal law or regulations.

NEW SECTION

WAC 173-226-130 Public notice. The department shall provide public notice of all preliminary determinations to develop a general permit, all determinations not to develop a general permit after publishing such a preliminary determination, all draft general permit determinations, and the issuance of a final general permit. All public notices shall be circulated in a manner designed to inform interested and potentially affected persons of the proposed general permit.

(1) The department shall provide public notice of all preliminary determinations to develop a general permit as follows:

(a) The public notice shall be circulated within the geographical area of the proposed general permit. Such notice may include any or all of the following:

(i) Publishing, as a paid advertisement or legal notice, the department's preliminary determination in one or more major local newspapers throughout the area of proposed coverage;

(ii) Issuance of news releases, focus sheets, or newsletters;

(b) The department shall request comments on whether a general permit is appropriate for the proposed category of dischargers or whether individual permits are necessary;

(c) The public notice shall provide an opportunity for any interested or potentially affected party to submit information on dischargers proposed to be covered under a general permit including:

(i) Any documented information on the characteristics of the discharge including effluent quantity, quality, and any receiving water impacts. Information may be from an individual facility or be representative of the category as a whole; and

(ii) Any other relevant information;

(d) The department shall add the name of any person upon request to a general permit specific mailing list to receive information and notices related to the development of the general permit.

(2) In the event that the department determines not to develop a general permit after publishing a preliminary determination pursuant to subsection (1) of this section, the department shall provide public notice to that effect in the same manner as the preliminary determination public notice was provided.

(3) The department shall provide public notice of every draft general permit as follows:

(a) The notice shall be circulated throughout the geographical area covered by the general permit. Such circulation may include any or all of the following:

(i) Posting for a period of thirty days in post offices, public libraries, and public places within the geographical area covered by the general permit;

(ii) Publishing the notice as a paid advertisement, display advertisement, or legal notice, in one or more major local newspapers of general circulation serving the area covered by the general permit;

(iii) Issuance of news releases, focus sheets, or newsletters.

(b) Notice shall be mailed to any person upon request, including all persons on the general permit specific mailing list established pursuant to subsection (1)(d) of this section and all persons on the mailing lists established pursuant to WAC 173-220-050 (1)(d).

(c) At least thirty days before the public hearing on the general permit the department shall have the following published in the State Register:

(i) The public notice contents contained in (f) of this subsection;

(ii) A reference to the relevant sections of chapter 90.48 RCW as the statutory authority for issuing the general permit;

(iii) The date on which the agency intends to issue the general permit;

(iv) A short explanation of the permit, its purpose, and anticipated effects; and

(v) A summary of the economic impact analysis required in WAC 173-226-120.

(d) The department shall provide a period of not less than thirty days following the last publication of the public notice, during which time interested persons may submit their written views on a draft general permit determination. All written comments submitted during the comment period shall be retained by the department and considered in the formulation of its final determination with respect to the draft general permit. The period for comment may be extended at the discretion of the department.

(e) The department shall make available during the public comment period:

(i) The draft general permit;

(ii) The fact sheet on the draft general permit required pursuant to WAC 173-226-110;

(iii) The economic impact analysis required pursuant to WAC 173-226-120; and

(iv) A copy of the proposed application for coverage.

(f) The contents of the draft general permit public notice shall, at a minimum, summarize the following:

(i) The name, address, and phone number of the agency issuing the public notice;

(ii) The type of facilities and activities which are the subject of the general permit;

(iii) The geographical area for which the general permit is valid;

(iv) The criteria for which coverage under a general permit will be approved;

(v) A listing or some other means of generally identifying the facilities proposed to be covered under the general permit;

(vi) The tentative determination to issue a general permit;

(vii) The procedures for the formulation of final determinations, including the thirty-day comment period required by (d) of this subsection and any other means by which interested persons may comment upon those determinations;

(viii) The date, time, and place when public hearings will be held on the draft general permit;

(ix) The address and phone number of state premises at which interested persons may obtain further information; and

(x) The date and time after which comments will not be considered by the department in formulating the final determination on the draft general permit.

(4) The department shall provide public notice of the issuance of a final general permit as follows:

(a) The notice of general permit issuance shall be circulated in a manner similar to that used to circulate the notice on the draft general permit in subsection (3)(a) of this section and shall be published in the State Register; and

(b) The notice of general permit issuance shall be provided to all persons on the general permit specific mailing list established pursuant to subsection (1)(d) of this section and all persons on the mailing lists established pursuant to WAC 173-220-050 (1)(d).

(c) The public notice of the issuance of a general permit shall contain:

(i) The name, address, and phone number of the agency issuing the public notice;

(ii) The type of facilities and activities which are the subject of the general permit;

(iii) The geographical area for which the general permit is valid;

(iv) The criteria for which coverage under a general permit will be approved;

(v) A listing or some other means of generally identifying the facilities proposed to be covered under the general permit;

(vi) A summary of the application process by which eligible dischargers may obtain coverage under the general permit;

(vii) A notice that the terms and conditions of the general permit may be appealed only by filing an appeal with the pollution control hearings board and by serving it upon the department within thirty days, and the process for doing so as contained in RCW 43.21B.310; and

(viii) The date after which the general permit shall be effective. The effective date of a general permit shall be no sooner than thirty days after the publication in the State Register of the public notice required pursuant to (a) of this subsection.

(5) For new operations, or for operations previously under permit for which an increase in volume or change in the character of the effluent is requested over that which was previously authorized, only:

(a) The applicant for coverage under a general permit shall cause notice to be circulated within the geographical area of the proposed discharge. Such circulation shall include:

(i) Publishing twice a notice in a newspaper of general circulation within the county in which the discharge is proposed to be made; and

(ii) Any other method the department may direct.

(b) The notice published pursuant to (a) of this subsection shall contain:

(i) The name, address, and location of the facility requesting coverage under the general permit;

(ii) The applicant's activities or operations that result in a discharge (e.g., storm water, fish farming, gravel washing);

(iii) The name of the general permit under which coverage is being requested; and

(iv) The statement: "Any person desiring to present their views to the department of ecology regarding this

application may do so in writing within thirty days of the last date of publication of this notice. Comments shall be submitted to the department of ecology. Any person interested in the department's action on this application may notify the department of their interest within thirty days of the last date of publication of this notice."

NEW SECTION

WAC 173-226-140 Notice to other government agencies. The department shall notify other appropriate government agencies of each draft general permit determination and shall provide such agencies an opportunity to submit their written views and recommendations. Such notification for NPDES and combined NPDES/state waste discharge general permits only, shall include the following:

(1) Transmission of the fact sheet, application form, and draft general permit to the regional administrator for comment or objection. The regional administrator shall be provided ninety days to comment on the draft permit prior to issuance by the department unless an alternative time period is mutually agreed on by the director and the regional administrator.

(2) Immediately following issuance, the department shall transmit a copy of every fact sheet, application form, and general permit along with any and all terms, conditions, requirements, or documents which are a part of the general permit or which affect the authorization by the general permit, of the discharge of pollutants, to the regional administrator.

(3) At the time of issuance of the public notices pursuant to WAC 173-226-130 (1)(a), (3)(a), and (4)(a) the department shall transmit the public notices to any other states whose waters may be affected by the issuance of the general permit. Each affected state shall be afforded an opportunity to submit written comments pursuant to WAC 173-226-130 (1)(b) and (3)(d), to the department and to the regional administrator, which the department may incorporate into the permit if issued. Should the department fail to incorporate any written recommendations thus received, it shall provide to the affected state or states (and to the regional administrator) a written explanation of its reasons for failing to accept any of the written recommendations or comments.

(4) Unless waived by the respective agency, the public notices issued pursuant to WAC 173-226-130 (1)(a), (2), (3)(a), and (4)(a) shall be sent to the appropriate district engineer of the Army Corps of Engineers, the United States Fish and Wildlife Service, the National Marine Fisheries Service, the state departments of fisheries, health, natural resources, wildlife, and social and health services, the office of archaeology and historic preservation, the agency responsible for the preparation of an approved plan pursuant to section 208(b) of the FWPCA, applicable Indian tribes, and any other applicable government agencies.

(5) A copy of any written agreement between the department and an agency identified in subsection (4) of this section which waives the receipt of public notices shall be forwarded to the regional administrator and shall be made available upon request to the public for inspection and copying.

(6) Copies of public notices issued pursuant to WAC 173-226-130 (1)(a), (2), (3)(a), and (4)(a) shall be mailed to any other federal, state, or local agency, Indian tribe, or any affected country, upon request. Such agencies shall have an opportunity to respond or comment on the draft general permit pursuant to WAC 173-226-130 (1)(b) and (3)(d).

NEW SECTION

WAC 173-226-150 Public hearings. (1) The department shall hold one or more public hearing(s) on all draft general permits. The public hearing shall be held during the public comment period provided pursuant to WAC 173-226-130 (3)(d).

(2) The date, time, and place will be at the discretion of the department provided:

(a) At least thirty days is provided between the time the public notice is published pursuant to WAC 173-226-130 (3)(a) and (c), and the time the hearing is held; and

(b) The hearing location is within the geographical area covered by the general permit.

(3) For new operations or for operations previously under permit for which an increase in volume or change in the character of the effluent has occurred only, any interested person may request a public hearing within thirty days of the last date of publication of the public notice required pursuant to WAC 173-226-130(5).

(a) All requests for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing.

(b) The department shall only consider issues regarding the general permits applicability or nonapplicability to the discharger when considering the need to hold a public hearing.

NEW SECTION

WAC 173-226-160 Public access to information. (1) In accordance with chapter 42.17 RCW and its published policy describing disclosure of public records, the department shall make identifiable public records relating to all general permits available to the public for inspection and copying.

(2) The department shall provide, upon request, the names and any other information submitted as part of an application for coverage under a general permit.

(3) The department shall add the name of any person, upon request, to a mailing list to receive copies of applications for coverage under a general permit.

(4) The department shall provide facilities for the inspection of information relating to general permits and shall insure that employees honor requests for such inspection promptly without undue requirements or restrictions. The department shall either:

(a) Insure that a machine or device for the copying of papers and documents is available for a reasonable fee; or

(b) Otherwise provide for, or coordinate with copying facilities or services such that requests for copies of nonconfidential, identifiable public records be honored promptly.

(5) Pursuant to chapters 42.17, 43.21A, 70.105, and 90.52 RCW, the department shall protect any information (other than information on the effluent) contained in applications as confidential upon a showing by any person that such information, if made public, would divulge methods or

processes entitled to protection as trade secrets of such person.

(6) Any information accorded confidential status, whether or not contained in an application form, shall be disclosed, upon request, to the regional administrator.

NEW SECTION

WAC 173-226-170 Issuance of general permits. (1) At the close of the public comment period required pursuant to WAC 173-226-130 (3)(d) the department shall prepare a response to all relevant comments received and shall briefly describe any changes, other than editing changes, and the principal reasons for making the changes to the draft general permit.

(2) General permits shall be deemed issued upon signing by the director or by a person delegated the authority to issue general permits pursuant to chapter 173-06 WAC.

(3) The department shall provide public notice of the issuance of all final general permits pursuant to WAC 173-226-130 (4)(a).

(4) General permits become effective thirty days after the date of publication in the State Register of the public notice required pursuant to WAC 173-226-130 (4)(a) unless a later date is specified by the department.

NEW SECTION

WAC 173-226-180 Compliance schedules. (1) The department may establish schedules and permit conditions as necessary to achieve compliance with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements contained in a general permit in any or all of the following ways:

- (a) As a condition or schedule in a general permit;
- (b) In an administrative order issued pursuant to chapter 90.48 RCW; and
- (c) By any other method deemed appropriate by the department.

(2) Schedules of compliance shall reflect the shortest reasonable period of time necessary to achieve compliance consistent with the guidelines and requirements of the FWPCA.

(3) In any case where the period of time for compliance specified in subsection (1)(a) of this section exceeds one year, a schedule of compliance shall be specified that will set forth interim requirements and the dates for their achievement; however, in no event shall more than one year elapse between interim dates. If the time necessary for completion of the interim requirement (such as construction of a treatment facility) is more than one year and is not readily divided into stages of completion, interim dates shall be specified for the submission of reports of progress toward completion of the interim requirement.

(4) Either before or up to fourteen days following each interim date and the final date of compliance, the permittee shall provide the department with written notice of the permittee's compliance or noncompliance with each interim or final requirement.

(5) If a permittee fails or refuses to comply with an interim or final requirement contained in a general permit, or as submitted as part of an application for coverage under a general permit, such noncompliance shall constitute a

violation of the general permit for which the department may revoke coverage under the general permit or take direct enforcement action pursuant to chapter 90.48 RCW.

NEW SECTION

WAC 173-226-190 Appeals. (1) The terms and conditions of a general permit as they apply to the appropriate class of dischargers are subject to appeal within thirty days of issuance of a general permit in accordance with chapter 43.21B RCW.

(2) The terms and conditions of a general permit, as they apply to an individual discharger, are appealable, within thirty days of the effective date of coverage of that discharger, in accordance with chapter 43.21B RCW. This appeal is limited to the general permit's applicability or nonapplicability to that individual discharger.

(3) The appeal of general permit coverage of an individual discharger does not affect any other dischargers covered under the general permit. If the terms and conditions of a general permit are found to be inapplicable to any individual discharger(s), the matter shall be remanded to the department for consideration of issuance of an individual permit or permits.

NEW SECTION

WAC 173-226-200 Applications for coverage under a general permit. (1) Following the public notice by the department of the issuance of a general permit, or at an alternate date as designated by the department, all dischargers who desire to be covered under the general permit shall notify the department of that fact on a form prescribed by the department no later than the following, unless a shorter application period is allowed in the general permit under which coverage is requested:

(a) For existing operations, applications for coverage shall be submitted no later than ninety days after the issuance date of the general permit under which coverage is requested;

(b) For new operations, applications for coverage shall be submitted no later than one hundred eighty days prior to the commencement of the activity that may result in the discharge to waters of the state.

(2) Unless specified otherwise in the general permit under which coverage is requested or the department responds in writing, coverage of a discharger under a general permit will automatically commence on the later of the following:

- (a) The effective date of the general permit;
- (b) The thirty-first day following the end of the thirty-day comment period required by WAC 173-226-130(4);
- (c) The thirty-first day following receipt by the department of a completed application for coverage under a general permit; or
- (d) A date specified by the department in the general permit.

(3) All applications for coverage under a general permit shall:

- (a) Contain information necessary for adequate program implementation;

(b) Contain the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving streams;

(c) Bear a certification of correctness;

(d) Be signed;

(i) In the case of corporations, by a responsible corporate officer.

(ii) In the case of a partnership, by a general partner.

(iii) In the case of sole proprietorship, by the proprietor.

(iv) In the case of a municipal, state, or other public facility, by either a principal executive officer or ranking elected official; and

(e) Include any other information deemed relevant by the department.

(f) For new operations, or for operations for which an increase in volume of wastes or change in character of effluent is requested over that previously authorized, applications for coverage shall also contain:

(i) A certification by the applicant that the public notice requirements of WAC 173-226-130(5) have been met; and

(ii) A certification by the applicant that the applicable SEPA requirements under chapter 197-11 WAC have been met.

(4) The department shall develop an application form for each general permit and shall make the application form available during the draft general permit public notice period. The department shall provide the application form to the regional administrator along with the draft and final general permit as required in WAC 173-226-140.

(5) Any previously issued individual permit shall remain in effect until terminated in writing by the department, except that continuation of an expired individual permit, pursuant to WAC 173-220-180(5), shall terminate upon coverage by the general permit.

(6) Where the department has determined that a discharger should not be covered under a general permit, it shall respond in writing within sixty days of receipt of an application for coverage stating the reason(s) why coverage cannot become effective and any actions needed to be taken by the discharger in order for coverage under the general permit to become effective.

(7) When an individual permit is issued to a discharger otherwise subject to a general permit, the applicability of the general permit to that permittee is automatically terminated on the effective date of the individual permit.

(8) Coverage under a general permit for domestic wastewater facilities shall be issued only to a public entity, except in the following circumstances:

(a) Facilities existing or approved for construction with private operation on or before the effective date of this chapter, until such time as the facility is expanded; or

(b) Facilities that serve a single nonresidential, industrial, or commercial establishment. Commercial/industrial complexes serving multiple owners or tenants and multiple residential dwelling facilities, such as mobile home parks, apartments, and condominiums, are not considered single commercial establishments for the purpose of this subsection.

(9) Coverage under a general permit for domestic wastewater facilities that are owned by nonpublic entities and under contract to a public entity, shall be issued to the public entity.

NEW SECTION

WAC 173-226-210 Transfer of permit coverage. Coverage under a general permit is automatically transferred to a new discharger if:

(1) A written, signed agreement between the old and new discharger containing a specific date for transfer of permit responsibility, coverage, and liability is submitted to the director; and

(2) The director does not notify the old and new discharger of the director's intent to revoke coverage under the general permit. If this notice is not given, the transfer is effective on the date specified in the agreement mentioned in subsection (1) of this section.

NEW SECTION

WAC 173-226-220 Duration and replacement of permits. (1) General permits shall be issued for fixed terms not exceeding five years from the effective date.

(2) All permittees covered under a general permit shall submit a new application for coverage under a general permit or an application for an individual permit at least one hundred eighty days prior to the expiration date of the general permit under which the permittee is covered.

(3) When a permittee has made timely and sufficient application for the renewal of coverage under a general permit, an expiring general permit remains in effect and enforceable until:

(a) The application has been denied;

(b) A replacement permit has been issued by the department; or

(c) The expired general permit has been canceled by the department.

(4) Coverage under an expired general permit for permittees who fail to submit a timely and sufficient application shall expire on the expiration date of the general permit.

NEW SECTION

WAC 173-226-230 Modification and revocation of general permits. (1) A general permit may be modified, revoked and reissued, or terminated, during its term for cause including, but not limited to, the following:

(a) A change occurs in the technology or practices for control or abatement of pollutants applicable to the category of dischargers covered under the general permit;

(b) Effluent limitation guidelines or standards are promulgated pursuant to the FWPCA or chapter 90.48 RCW, for the category of dischargers covered under the general permit;

(c) A water quality management plan containing requirements applicable to the category of dischargers covered under the general permit is approved;

(d) Information is obtained which indicates that cumulative effects on the environment from dischargers covered under the general permit are unacceptable; or

(e) A toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of the FWPCA for a toxic pollutant which is more stringent than any limitation upon such pollutant in the permit.

(2) In the event that the director has determined to modify or revoke, in whole or in part, a general permit pursuant to subsection (1) of this section the director shall notify, in writing, all dischargers covered under the general permit. The notification shall include:

- (a) The reason(s) why the general permit is being revoked or modified;
- (b) The process for appealing the determination pursuant to RCW 43.21B.310;
- (c) An application form and a time limit for submitting the application; and
- (d) Any other information determined to be relevant by the department.

NEW SECTION

WAC 173-226-240 Revocation of coverage under a general permit. (1) The director may terminate coverage under a general permit for cause. Cases where coverage under a general permit may be terminated include, but are not limited to, the following:

- (a) Violation of any term or condition of the general permit;
- (b) Obtaining coverage under a general permit by misrepresentation or failure to disclose fully all relevant facts;
- (c) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;
- (d) A determination that the permitted activity endangers human health, safety, or the environment, or contributes to water or sediment quality standards violations;
- (e) Incorporation of an approved local pretreatment program into a municipality's permit;
- (f) Failure of the permittee to satisfy the public notice requirements of WAC 173-226-130(5);
- (g) Failure or refusal of the permittee to allow entry as required in RCW 90.48.090; or
- (h) Nonpayment of permit fees assessed pursuant to RCW 90.48.465.

(2) The director may require any discharger to apply for and obtain an individual permit, or to apply for and obtain coverage under another more specific general permit. In cases where the director requires any discharger to apply for an individual permit, or for another general permit, the discharger must be notified in writing that another permit is required. This notice shall include a statement of why another permit is being required, an application form, and a time limit for submitting the application.

(3) Any interested person may petition the director to require a discharger authorized by a general permit to apply for and obtain an individual permit.

(4) Any discharger authorized by a general permit may request to be excluded from coverage under a general permit by applying for an individual permit. The discharger shall submit to the director an application as described in WAC 173-220-040 with reasons supporting the request. The director shall either issue an individual permit or deny the request with a statement explaining the reason for denial.

(5) Where the department has determined that a discharger should no longer be covered under a general permit it shall notify the discharger in writing stating the reason(s)

why coverage is no longer appropriate, and any actions required of the discharger in order for coverage under the general permit to remain effective.

(6) The discharger shall have thirty days to respond to any notification provided pursuant to subsection (5) of this section before coverage under a general permit shall be automatically revoked.

NEW SECTION

WAC 173-226-250 Enforcement. (1) The department, with the assistance of the attorney general, may sue in courts of competent jurisdiction to enjoin any threatened or continuing violations of any general permits or conditions thereof without the necessity of a prior revocation of coverage under the general permit.

(2) The department may enter any premises in which an effluent source is located or in which records are required to be kept under terms or conditions of a general permit, and otherwise be able to investigate, inspect, or monitor any suspected violations of water quality standards, or effluent standards and limitations, or of general permit terms or conditions thereof.

(3) The department may assess or, with the assistance of the attorney general, sue to recover in court, such civil fines, penalties, and other civil relief as may be appropriate for the violation by any person of:

- (a) Any effluent standards and limitations or water quality standards;
- (b) Any general permit or term or condition thereof;
- (c) Any filing requirements;
- (d) Any duty to permit or carry out inspection, entry, or monitoring activities; or
- (e) Any rules, regulations, or orders issued by the department.

(4) The department may request the prosecuting attorney to seek criminal sanctions for the violation by such persons of:

- (a) Any effluent standards and limitations or water quality standards;
- (b) Any permit or term or condition thereof; or
- (c) Any filing requirements.

(5) The department, with the assistance of the prosecuting attorney, may seek criminal sanctions against any person who knowingly makes any false statement, representation, or certification in any form or any notice or report required by the terms and conditions of any issued permit or knowingly renders inaccurate any monitoring device or method required to be maintained by the department.

**WSR 93-03-081
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)**

[Order 3498—Filed January 19, 1993, 2:37 p.m., effective January 20, 1993, 12:01 a.m.]

Date of Adoption: January 19, 1993.

Purpose: Allows special needs adoptive children and their adoptive families to access necessary services from the

program of adoption support at an earlier date. The children would no longer be carried as foster children, but would be identified as children in adoptive placement. Foster care budget costs would be reduced with an overall savings in budget due to the low average costs per child on adoption support.

Citation of Existing Rules Affected by this Order:
Amending WAC 388-70-520 Adoption support for children—Definitions.

Statutory Authority for Adoption: RCW 43.20A.550.

Pursuant to RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Allows special needs adoptive children and their adoptive families to access necessary services from the program of adoption support at an earlier date. The children would no longer be carried as foster children, but would be identified as children in adoptive placement. Foster care budget costs would be reduced with an overall savings in budget due to the low average costs per child in adoption support.

Effective Date of Rule: January 20, 1993, 12:01 a.m.

January 19, 1993

Rosemary Carr

Acting Director

Administrative Services

AMENDATORY SECTION (Amending Order 3101, filed 11/20/90, effective 12/21/90)

WAC 388-70-520 Adoption support for children—Definitions. As used in these rules:

(1) "Adoption" means the granting of the adoption decree consistent with chapter 26.33 RCW.

(2) "Adoption support payment" means the financial remuneration resulting from an agreement whereby the department continues financial responsibility beyond the legal consummation of the adoption.

(3) "Agreement" means a contract between the prospective adoptive parent and the department providing adoption support payments following the ~~((granting of a decree))~~ completion of the adoption support agreement signed by all parties.

(4) "Corrective-rehabilitative services" shall include, but not be limited to:

- (a) Medical care;
- (b) Psychological services;
- (c) Physical therapy;
- (d) Prosthesis;
- (e) Speech and hearing therapy;
- (f) Cosmetic surgery; or
- (g) Orthodontia.

(5) "Department" means the department of social and health services.

(6) "Family" means any prospective parent having the character, judgment, sense of responsibility, and disposition making the prospective parent suitable as an adoptive parent

of a child, but lacking the necessary resources to care for a hard-to-place for adoption child.

(7) "Hard-to-place for adoption child" means a child registered for three months with the Washington Adoption Resource Exchange (WARE) or the Northwest Adoption Exchange (NWAE) without identifying a nonsubsidized adoptive family resource. The child's registration with the exchanges ~~((shall))~~ is not ~~((be))~~ necessary when:

(a) A foster parent desires to adopt a child having been in the foster parent's home for six months or more before a child is legally free for adoption;

(b) The child has close emotional ties to the current foster family which, if severed, may cause emotional damage to the child; and

(c) The foster family is identified as the adoptive family of choice by the agency staff having responsibility for the child.

(8) "Secretary" means the secretary of department or the secretary's designee.

(9) "Special needs" is the department's designation given to a child ~~((by the department))~~ when the child presents a specific factor or condition the department reasonably concludes may prevent the child's placement with an adoptive parent without providing adoption support. The child's special need factors or conditions may include but are not limited to:

- (a) Ethnic background;
- (b) Age;
- (c) Inclusion in a sibling group;
- (d) Medical diagnosis; or
- (e) Physical, mental, or emotional handicap.

(10) "The act" means the statutes authorizing adoption support codified as RCW 74.13.100 through 74.13.145.

WSR 93-03-006
NOTICE OF PUBLIC MEETINGS
MARITIME COMMISSION
 [Memorandum—January 6, 1993]

Regular monthly meetings of the Washington State Maritime Commission during calendar year 1993 will continue to be held on the first Thursday of each month commencing at 9:00 a.m. Those meetings will be held at:

Conference Room
 Fifth Avenue Level
 Bank of California Building
 900 Fourth Avenue
 Seattle, WA 98164

If the first Thursday of any month is a legal holiday, the meeting will be held on the next week day of that month which is not a holiday, or at such later date as shall have been prescribed by the commission at its previous regular monthly meeting. The commission's annual meeting, for the purpose of electing officers and transacting other business will continue to be on the first Thursday in October.

WSR 93-03-009
NOTICE OF PUBLIC MEETINGS
GAMBLING COMMISSION
 [Memorandum—January 7, 1993]

The Gambling Commission will be holding regular meetings on the following dates at the following locations:

- January 15, 1993 SeaTac Red Lion Hotel
 18740 Pacific Highway South
 Seattle, WA 98188
- February 12, 1993 Governor House/Ramada Inn
 621 Capitol Way South
 Olympia, WA 98501
- March 12, 1993 Spokane Sheraton Hotel
 North 322 Spokane Falls Court
 Spokane, WA 98201 [99201]
- April 16, 1993 Everett Pacific Hotel
 3105 Pine Street
 Everett, WA 98201
- May 14, 1993 Yakima Red Lion Hotel
 1501 North 1st Street
 Yakima, WA 98901
- June 11, 1993 Seattle Sheraton Hotel
 1400 6th Avenue
 Seattle, WA 98101
- July 9, 1993 Silverdale on the Bay
 3037 Bucklin Hill Road
 Silverdale, WA 98310
- August 13, 1993 Pasco Red Lion Hotel
 2525 North 20th
 Pasco, WA 99301
- September 10, 1993 Heritage Inn/Best Western
 151 East McLeod Road
 Bellingham, WA 98982

- October 15, 1993 Cavanaugh's River Inn
 North 700 Division
 Spokane, WA 99202
- November 19, 1993 SeaTac Red Lion Hotel
 18740 Pacific Highway South
 Seattle, WA 98188
- December 1993 No meeting

WSR 93-03-010
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON
 [Memorandum—January 4, 1993]

Following is a revised meeting schedule for regular meetings to be held by the University of Washington's Geography Faculty.

Geography Faculty		
Meeting Dates	Location	Time
Thursdays (sometimes there is no meeting)	Smith Hall 409	2:30

WSR 93-03-011
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON
 [Memorandum—January 7, 1993]

Following is a revised meeting schedule for regular meetings to be held by the University of Washington's Mechanical Engineering Department.

Mechanical Engineering Faculty		
Meeting Dates	Location	Time
First Thursday of each month including July, August, September	MEB 134	12:30 p.m.

WSR 93-03-012
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON
 [Memorandum—January 7, 1993]

Following is a revised meeting schedule for regular meetings to be held by the University of Washington's Pediatric Dentistry Faculty.

Pediatric Dentistry Faculty		
Meeting Dates	Location	Time
2nd and 4th Thursday of each month	HSB B242F	10 a.m.

MISCELLANEOUS

WSR 93-03-013
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON
 [Memorandum—January 7, 1993]

Following is a revised meeting schedule for regular meetings to be held by the University of Washington's Immunology Faculty.

Immunology Departmental Faculty

Meeting Dates	Location	Time
January 15	I-264 HSC	1:00
February 12	I-264 HSC	1:00
March 12	I-264 HSC	1:00
April 9	I-264 HSC	1:00
May 21	I-264 HSC	1:00
June 11	I-264 HSC	1:00
September 10	I-264 HSC	1:00
October 15	I-264 HSC	1:00
November 19	I-264 HSC	1:00
December 17	I-264 HSC	1:00

WSR 93-03-014
NOTICE OF PUBLIC MEETINGS
PIERCE COLLEGE
 [Memorandum—January 8, 1993]

The board of trustees of Community College District Number Eleven (Pierce College) would like to make the following change to the February 1993 regular board meeting:

Meeting Date	Time	Change
February 10, 1993 Puyallup Campus	12:30 p.m.	February 17, 1993 (Same time and location)

WSR 93-03-016
NOTICE OF PUBLIC MEETINGS
TRANSPORTATION IMPROVEMENT BOARD
 [Memorandum—January 8, 1993]

MEETING NOTICE FOR JANUARY 1993
TRANSPORTATION IMPROVEMENT BOARD
 OLYMPIA, WASHINGTON 98504-0901

Work session, 7:00 p.m., Thursday, January 21, 1993, in Olympia at the Best Western Aladdin Motor Inn, Cascade Room.

Board meeting, 9:00 a.m., Friday, January 22, 1993, in Olympia at the Transportation Building, Commission Board Room.

No TIB meeting in February. The next scheduled meeting is March 26, 1993, in Bellevue, Washington.

WSR 93-03-017
NOTICE OF PUBLIC MEETINGS
CENTRAL PUGET SOUND
GROWTH PLANNING HEARINGS BOARD
 [Memorandum—January 8, 1993]

The Central Puget Sound Growth Planning Hearings Board will hold its regular meetings during 1993 at 10:00 a.m. on the second Thursday of each month at the board's Seattle office:

2329 One Union Square
 600 University Street
 Seattle, WA 98101-1129

WSR 93-03-018
NOTICE OF PUBLIC MEETINGS
YAKIMA VALLEY
COMMUNITY COLLEGE
 [Memorandum—January 8, 1993]

The Yakima Valley Community College board of trustees will continue to meet on the first Thursday of each month at 4:30 p.m. in the college boardroom.

WSR 93-03-021
RULES COORDINATOR
BOARD OF
PILOTAGE COMMISSIONERS
 [Filed January 12, 1993, 11:01 a.m.]

The designated rules coordinator for the Washington State Board of Pilotage Commissioners is Peggy Larson, Confidential Secretary, Board of Pilotage Commissioners, 801 Alaskan Way, Pier 52, Seattle, WA 98104-1487.

Peggy Larson
 Confidential Secretary

WSR 93-03-022
RULES COORDINATOR
OFFICE OF MARINE SAFETY
 [Filed January 12, 1993, 11:03 a.m.]

The designated rules coordinator for the Washington State Office of Marine Safety is Barbara Felver, Special Assistant, Office of Marine Safety, P.O. Box 42407, Olympia, WA 98504-2407.

Barbara Felver
 Special Assistant

WSR 93-03-023
EXECUTIVE ORDER
OFFICE OF
THE GOVERNOR
 [EO 93-01]

DESIGNATING THE HIGHER EDUCATION COORDINATING BOARD AS THE STATE POSTSECONDARY

MISCELLANEOUS

REVIEW ENTITY FOR THE PROGRAM INTEGRITY TRIAD

WHEREAS, the Reauthorization Act for Higher Education, Part H (Program Integrity Triad), enacted in 1992, directs the Secretary of the United States Department of Education to enter into agreements with states in order to conduct or coordinate the review of postsecondary institutions' eligibility for Title IV financial aid funds. The Act directs each state to designate an entity responsible for complying with the Program Integrity requirements; and

WHEREAS, failure to comply with the requirements of the Program Integrity by a state, once federal funds are appropriated, may result in institutional ineligibility for Title IV financial aid funds; and

WHEREAS, it is the long-established policy of the State of Washington to uphold student consumer protection and quality postsecondary education, and to prevent financial aid fund abuse. The Higher Education Coordinating Board, by virtue of its statutory authority and advocacy for postsecondary education, has the responsibility for and commitment to this long-established state policy.

NOW, THEREFORE, I, Booth Gardner, Governor of the State of Washington, by virtue of the power vested in me, do hereby:

1. Designate the Higher Education Coordinating Board as the state postsecondary review entity for Program Integrity; and
2. Direct the Higher Education Coordinating Board to carry out the functions of Program Integrity as mandated by federal law by:
 - A. Reaching an agreement with the Secretary of the United States Department of Education once federal funds are available;
 - B. Consulting with accredited postsecondary institutions in Washington to develop review standards; and
 - C. Coordinating the review functions mandated by Program Integrity with other oversight agencies for postsecondary education.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the State of Washington to be affixed at Olympia this 8th day of January, A.D., nineteen hundred and ninety-three.

Booth Gardner
Governor of Washington

BY THE GOVERNOR:

Ralph Munro
Secretary of State

WSR 93-03-035
NOTICE OF PUBLIC MEETINGS
CONSERVATION COMMISSION
[Memorandum—January 8, 1993]

The Conservation Commission holds regular bimonthly meetings on the third Thursday of the month at various locations in the state of Washington (WAC 135-04-020).

The Conservation Commission's first meeting for 1993 will be February 4, 1993, at St. Placid Priory, Lacey, Washington. Please contact Shirley Casebier, Conservation Commission, Olympia, Washington 98504-7721, phone 459-6226, for further information.

WSR 93-03-036
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON
[Memorandum—January 11, 1993]

Following is a revised meeting schedule for regular meetings to be held in May 1993 by the University of Washington's Use of University Facilities Committee.

Use of University Facilities

Meeting Dates	Location	Time
January 20	Room 26 Admin Bldg	3:30-5
February 10	Room 26 Admin Bldg	3:30-5
March 3	Room 26 Admin Bldg	3:30-5
March 24	Room 26 Admin Bldg	3:30-5
April 14	Room 26 Admin Bldg	3:30-5
May 5	Room 26 Admin Bldg	3:30-5
May 26	Room 26 Admin Bldg	3:30-5
June 16	Room 26 Admin Bldg	3:30-5
July 7	Room 26 Admin Bldg	3:30-5
July 28	Room 26 Admin Bldg	3:30-5
August 18	Room 26 Admin Bldg	3:30-5
September 8	Room 26 Admin Bldg	3:30-5
September 29	Room 26 Admin Bldg	3:30-5
October 20	Room 26 Admin Bldg	3:30-5
November 10	Room 26 Admin Bldg	3:30-5
December 1	Room 26 Admin Bldg	3:30-5
December 22	Room 26 Admin Bldg	3:30-5

MISCELLANEOUS

WSR 93-03-037
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON
 [Memorandum—January 11, 1993]

Following is a revised meeting schedule for regular meetings to be held by the University of Washington's Biochemistry department.

Biochemistry Faculty Meeting

Meeting Dates	Location	Time
January 12, 1993	J-412 HSB	1 p.m.
February 9, 1993	J-412 HSB	1 p.m.
March 9, 1993	J-412 HSB	1 p.m.
April 13, 1993	J-412 HSB	1 p.m.
May 11, 1993	J-412 HSB	1 p.m.
June 8, 1993	J-412 HSB	1 p.m.
September 21, 1993	J-412 HSB	1 p.m.
October 19, 1993	J-412 HSB	1 p.m.
November 16, 1993	J-412 HSB	1 p.m.
December 21, 1993	J-412 HSB	1 p.m.

WSR 93-03-038
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON
 [Memorandum—January 11, 1993]

Following is a revised meeting schedule for regular meetings to be held by the University of Washington's Department of Ophthalmology.

Regular Faculty Meeting

Meeting Dates	Location	Time
1st Thursday following 1st Friday (after MSEC)	BB-824 HSC Ophthalmology Conference Room	12:00 1:00

Faculty Clinicians

Meeting Dates	Location	Time
2nd Thursday following 2nd Thursday.	BB-824 HSC Ophthalmology Conference Room	12:00 1:00

WSR 93-03-040
NOTICE OF PUBLIC MEETINGS
MARINE OVERSIGHT BOARD
 [Memorandum—January 12, 1993]

The Marine Oversight Board has scheduled the following public meetings on the third Friday of each quarter:

- October 15, 1993
- January 21, 1994
- April 15, 1994
- July 15, 1994

All of the above meetings begin at 1 p.m.

All of the above meetings are held at Seattle-Tacoma Airport, Theater, Door No. 5132, Ticketing Level (behind Thai Airways ticketing area).

WSR 93-03-041
NOTICE OF PUBLIC MEETINGS
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
 [Memorandum—January 13, 1993]

1993 MEETING AND EVENT CALENDAR
(ALTERNATE)

DATE	EVENT	LOCATION
January 7-8	Committee and Board	SeaTac
February 11-12	Committee and Board	SeaTac
March 18-19	Committee and Board	SeaTac
April 16-17	Examinations	Seattle, B.C. Spokane
April 29 - May 1	NCEES Western Zone	Albuquerque, NM
June 3-4	Committee and Board	SeaTac
July 22-23	Committee and Board	Oak Harbor
August 11-14	NCEES Annual Meeting	Nashville, TN
August 26-27	Committee and Board	SeaTac
Sept 30 - Oct 1	Committee and Board	SeaTac
October 29-30	Examinations	Seattle. Richland
November 4-5	Board and Committee	Spokane
December 9-10	Board and Committee	SeaTac

WSR 93-03-042
RULES COORDINATOR
RENTON TECHNICAL COLLEGE
 [Filed January 14, 1993, 9:44 a.m.]

The Renton Technical College public records officer as designated by the president is Charles DeMoss, Vice-President for Finance and Administration.

Karen DeBruyn
 Executive Assistant

WSR 93-03-043
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON
 [Memorandum—January 12, 1993]

Following is a revised meeting schedule for regular meetings to be held by the University of Washington's College of Engineering Executive Committee.

EXECUTIVE COMMITTEE MEETINGS
FOR THE COLLEGE OF ENGINEERING

Meeting Dates	Location	Time
Jan. 13, 20, 27	355 Conference Room	3:30
Feb. 3, 10, 17, 24	Loew Hall	-5:00
Mar. 3, 10, 17, 24, 31	(all meetings)	
Apr. 7, 14, 21, 28		
May 5, 12, 19, 26		
June 2, 9, 16, 23, 30		
July 7, 14, 21, 28		

MISCELLANEOUS

August 4, 11, 18, 25
 Sept. 1, 8, 15, 22, 29
 Oct. 6, 13, 20, 27
 Nov. 3, 10, 17, 24, 31
 Dec. 1, 8, 15, 22, 29

November 18, 1993 261 Bagley Hall 3:30 p.m.
 December 2, 1993 261 Bagley Hall 3:30 p.m.
 December 16, 1993 261 Bagley Hall 3:30 p.m.

To request disability accommodations, contact the Office of ADA Coordinator at least ten days in advance of the event. 543-6450 (voice); 543-6452 (TDD); 685-3885 (FAX); access@uwashington.e (E-Mail).

WSR 93-03-044
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON
 [Memorandum—January 12, 1993]

Following is a revised meeting schedule for regular meetings to be held by the University of Washington's Biological Structure Faculty.

Biological Structure Faculty Meeting

Meeting Dates	Location	Time
January 29	G-522	12:00
February 26	G-522	12:00
April 2	G-522	12:00
April 30	G-522	12:00
May 28	G-522	12:00
June 25	G-522	12:00
July 30	G-522	12:00
August 27	G-522	12:00
September 24	G-522	12:00
October 29	G-522	12:00
November 19	G-522	12:00
December 17	G-522	12:00

WSR 93-03-045
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON
 [Memorandum—January 12, 1993]

Following is a revised meeting schedule for regular meetings to be held by the University of Washington's Chemistry Faculty.

Chemistry Faculty Meeting

Meeting Dates	Location	Time
January 14, 1993	261 Bagley Hall	3:30 p.m.
January 28, 1993	261 Bagley Hall	3:30 p.m.
February 4, 1993	261 Bagley Hall	3:30 p.m.
February 18, 1993	261 Bagley Hall	3:30 p.m.
March 4, 1993	261 Bagley Hall	3:30 p.m.
March 18, 1993	261 Bagley Hall	3:30 p.m.
April 1, 1993	261 Bagley Hall	3:30 p.m.
April 22, 1993	261 Bagley Hall	3:30 p.m.
May 6, 1993	261 Bagley Hall	3:30 p.m.
May 20, 1993	261 Bagley Hall	3:30 p.m.
June 3, 1993	261 Bagley Hall	3:30 p.m.
June 17, 1993	261 Bagley Hall	3:30 p.m.
September 2, 1993	261 Bagley Hall	3:30 p.m.
September 16, 1993	261 Bagley Hall	3:30 p.m.
October 7, 1993	261 Bagley Hall	3:30 p.m.
October 21, 1993	261 Bagley Hall	3:30 p.m.
November 4, 1993	261 Bagley Hall	3:30 p.m.

WSR 93-03-049
EXECUTIVE ORDER
OFFICE OF THE GOVERNOR
 [EO 93-02]

STANDARDS OF ETHICAL CONDUCT
FOR EXECUTIVE BRANCH EMPLOYEES

I, Mike Lowry, Governor of the State of Washington, by virtue of the power vested in me, declare my commitment to fostering the highest standards of government ethics and integrity. To further this commitment within the framework of current laws, I direct that the following policies, standards, and guidelines be followed as a base of professional conduct for all state agencies and their employees.

This executive order supersedes Executive Order 92-04, which is hereby rescinded. However, many of the standards and guidelines in Executive Order 92-04 reflect the utmost regard for the letter and spirit of existing ethics statutes and, thus, are retained in this order.

POLICY

State government derives its authority from the citizens and exercises that authority solely for their benefit. The citizens have entrusted employees of executive branch agencies with the operation of state government and the stewardship of its human and environmental resources. To protect the public interest it is necessary that both public policy and the process for making public policy decisions be of the highest ethical standards. Employees are, therefore, obligated to treat their offices as a public trust, using their official powers and duties and the resources of the state only to advance the public interest. This obligation requires that all employees:

1. Be independent and impartial in the exercise of their duties, avoiding actions that create even the appearance of using their positions for personal gain or private benefit;
2. Strengthen public confidence in the integrity of state government by demonstrating the highest standards of personal integrity, fairness, honesty, and compliance with both the spirit and the letter of the law;
3. Create a work environment that is free from all forms of unlawful discrimination and harassment;
4. Manage human and environmental resources for the benefit and enjoyment of both current and future generations;
5. Conduct the public's business openly and to the maximum extent consistent with existing law, resolve doubtful cases in favor of free public access;

MISCELLANEOUS

6. Serve the public with respect, concern, courtesy, and responsiveness, recognizing that service to the public is the primary mission of state government;
7. Promote an environment of public trust free from fraud, abuse of authority, and misuse of public property;
8. Protect the integrity of the decision making process by recognizing and avoiding conflicts between their public duties and private interests and activities; and
9. Respect and protect privileged information to which employees have access in the course of their official duties.

PURPOSE

The purpose of this executive order is to:

1. Establish standards and guidelines for ethical conduct and principles of public service for employees that protect the public trust and promote the public interest;
2. Provide employees with information and guidance regarding ethical conduct;
3. Ensure that agency heads establish standards of ethical conduct for their employees that are applicable to their agencies' activities;
4. Ensure that agency heads establish ongoing education and guidance for their employees regarding standards of ethical conduct;
5. Improve the application of the laws relating to ethics and conflict of interest; and
6. Improve ethical decision making as it applies to public policy issues.

AUTHORITY AND DEFINITIONS

This executive order is adopted pursuant to authority granted to the Governor by Chapter 42.18 RCW, the "Executive Conflict of Interest Act." Employees should not rely solely on this executive order for detailed guidance regarding ethical conduct and conflict of interest. Employees should always review the appropriate state or federal law and any agency standards, rules, and regulations that may relate to a specific activity or question regarding ethical conduct. Nothing in this executive order, including the language paraphrasing statutory provisions, is intended to alter the provisions of Chapter 42.18 RCW or other applicable statutes.

Terms used in this executive order that are defined in Chapter 42.18 RCW shall have the same meanings in this executive order as in Chapter 42.18 RCW. "Executive branch employee" or "employee" means "agency head" as defined in RCW 42.18.040 and "state employee" as defined in RCW 42.18.130.

REQUIREMENTS, STANDARDS, AND GUIDELINES FOR ETHICAL CONDUCT

1. Gifts, gratuities, and favors. RCW 42.18.200 prohibits the employee from receiving or soliciting, directly or indirectly, anything of economic value as a gift, gratuity, or favor if the employee has reason to believe that the donor would not give it except for the employee's

position with the state, or if the employee has reason to believe that the donor:

- a. Has or is seeking a contractual or business relationship with the employee's agency;
- b. Conducts activities that are regulated by the employee's agency; or
- c. Has interests that may be substantially affected by the employee's performance or nonperformance of official duties.

RCW 42.18.230(2) prohibits anyone from giving, directly or indirectly, anything of economic value as a gift, gratuity, or favor to an employee if any of the above circumstances exist.

RCW 42.17.2415 requires elected officials and executive state officers who are required to file statements of financial affairs with the Public Disclosure Commission, to also file a statement identifying each gift valued above specified dollar amounts that was received by the officials or officers or their immediate families.

Guidelines. The employee should reject gifts to himself or herself or to his or her family members that may cast doubt on the integrity, independence, and impartiality of the employee or state office. Gifts or benefits, no matter how insignificant, should be rejected if they could be reasonably construed to affect the official judgment or actions of the employee, create any sense of obligation to the giver, or if the purpose or motive for the gift could appear to be improper. Even monetarily insignificant gifts or favors may become significant if they are given with some frequency or come to be expected by the recipient.

In evaluating the propriety of gifts, the employee should, therefore, be sensitive to the source and value of the gift, the frequency of gifts from one source, the possible motives of the giver, and the perception of others regarding the gift. Since no offsetting public good is achieved by accepting gifts, unclear or questionable situations should always be decided by rejecting gifts, gratuities, or favors that may raise questions regarding the employee's integrity, independence, and impartiality.

The following types of gifts, gratuities, and favors are exceptions to the prohibitions contained in RCW 42.18.200. They may be accepted by the employee in situations where the circumstances do not lead to the inference that the official judgment or action of the employee was intended to be influenced.

- a. Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, or other items of nominal value may be accepted.
- b. Gifts, gratuities, and favors may be accepted when they stem from family relationships (such as those between parents, children, or spouse of the employee and the employee) or personal relationships that are unrelated to the employee's official duties when the circumstances make it clear that those

relationships, rather than the business of the giver, are the motivating factors.

- c. Food and refreshment of nominal value may be accepted on infrequent occasions in the ordinary course of a breakfast, lunch, or dinner meeting or reception where the attendance of the employee is a part of the employee's official duties.
- d. With the approval of the agency head, bona fide reimbursement for travel expenses and other necessary subsistence may be accepted when the travel is related to the official duties of the employee and for which no state payment or reimbursement is made. Examples include, but are not limited to, reimbursement by other governmental entities or professional associations. Reimbursement should not exceed the amount the employee would be eligible to receive if the state were reimbursing the employee. The employee should reject payment for personal living expenses, entertainment, and travel costs in any case where acceptance may raise questions regarding the employee's integrity. The employee should, therefore, avoid situations where such expenses are paid for by any person or organization that has a substantial interest in the official duties of the employee and where acceptance might create a reasonable perception that the object of the payment is to provide a personal vacation or other benefit for the employee.
- e. Loans from banks and other financial institutions may be accepted on customary terms to finance the proper and usual activities of the employee, such as the purchase of housing or motor vehicles. Business discounts that are made available to employees as a group may be accepted. Loans and other transactions on terms and conditions not generally available to the public or other employees are prohibited gifts and should be rejected.
- f. The employee may accept unsolicited gifts of nominal value from foreign or domestic dignitaries or commemorating official occasions, where custom or etiquette so requires. Any gifts of more than nominal value received under such circumstances shall be reported to the employee's agency head, who shall direct the appropriate disposition of them.

2. Outside employment and compensation. RCW 42.18.190 prohibits the employee from engaging in outside employment and receiving compensation for his or her services from sources other than the state of Washington if: (a) the services are not actually performed by the employee; (b) the services are within the course of the employee's official duties; (c) the services involve transactions with the state that the employee may not assist in because they relate to the employee's official state duties (see RCW 42.18.170); or (d) the employee has reason to believe that the outside employment involves a person who:

- (1) Has or is seeking to obtain a contractual or other business relationship with the employee's agency;

- (2) Conducts operations or activities that are regulated by the employee's agency; or
- (3) Has interests that may be substantially affected by the employee's performance or nonperformance of official duty.

RCW 42.18.213 prohibits the employee from asking for or receiving, directly or indirectly, any compensation, gratuity, or reward, or promise of such benefit, other than the employee's normal compensation, for performing or not performing an official duty.

RCW 42.18.215 prohibits an employee from having a direct or indirect interest in any contract, sale, lease, or purchase over which the employee has any supervision. The employee is also prohibited from accepting, directly or indirectly, any compensation, gratuity, or reward from another person who has an interest in such a contract, sale, lease, or purchase.

Guidelines. Whether a given type of outside employment is allowable depends upon the specific duties of the employee and the actual or potential relationship between the outside employer and the employee's agency. Under no circumstances may an employee use his or her agency's personnel, time, material, facilities, equipment, telephones, information, or other resources in connection with outside employment. Nor may the employee use his or her official position to influence any client of his or her agency to secure compensated services from the employee or the employee's outside employer. The employee may not engage in outside employment if the demands of such employment would detract from his or her ability to perform state duties in a satisfactory manner. The employee should not accept honoraria for services when the services are ordinarily performed in the course of his or her official duties.

Agency heads shall provide specific policies, standards, and procedures to ensure that outside employment does not conflict with the proper performance of assigned duties nor is inconsistent with Chapter 42.18 RCW and this executive order. Agency policies, standards, and procedures may be more restrictive than provisions of this executive order. Such policies, standards, and procedures may require the employee to notify his or her agency and receive prior approval from the agency head before engaging in outside employment. Agency heads shall examine positions within their agencies to determine if such notification and prior approval of outside employment should be required. The employee should be aware that approval of outside employment is required under the circumstances set forth in RCW 42.18.190 (1)(d).

The following types of outside compensation are exceptions to the prohibitions contained in RCW 42.18.190:

- a. The employee may receive compensation from another governmental entity pursuant to RCW 42.18.190(2).
- b. The employee may continue in a bona fide pension, retirement, group life, health or accident, or other employee benefit plan maintained by a former employer if the former employer makes no contributions on behalf of the employee during the

employee's state employment. However, the employee may continue in such plans and receive contributions on his or her behalf from former employers under the following conditions: (1) If the plan qualifies under the Internal Revenue Code; (2) If contributions by the former employer to a plan are not made for periods longer than five consecutive years of state employment or an aggregate of five years out of the preceding ten; or (3) If the plan is provided by a former employer who is a governmental entity.

- c. The employee may maintain his or her rights acquired under a bona fide profit-sharing or stock bonus plan maintained by a former employer and qualified under the Internal Revenue Code if no employer contributions are made on behalf of the employee based on profits attributable to any portions of the period of state employment.
3. Use of official authority for personal gain. RCW 42.18.210 prohibits an executive branch employee from using the power and authority of his or her office to induce or coerce another person to provide the employee with any thing of economic value, directly or indirectly.
4. Use of state resources for personal benefit. RCW 42.18.217 prohibits the employee from using state personnel, money, or property for private benefit of the employee or another.

Guidelines. State property, equipment, personnel, money, services, or time are for public purposes only and shall not be appropriated for personal or private use. This prohibition includes use of office space, typewriters, computers and related supplies and systems, paper, pens and pencils, telephones, postage, stationery, photocopying, vehicles, and other state resources.

Managers and supervisors should not require or suggest that an employee under their supervision perform personal tasks for them. Not only is such use of state personnel improper, but it also demeans the importance of the employee's official duties.

5. Assisting in transactions involving the state. RCW 42.18.170 prohibits an employee from assisting another person, whether or not for compensation, in any transaction in which the employee has participated or in any transaction which is, or has been, under the employee's supervision unless the assistance is provided in the course of the employee's official duties. Transactions include any proceeding, application, submission, request for a ruling, or other determination, contract, claim, case, or other matter in which the state has a substantial proprietary interest, which will be subject to state action, or in which the state is or will be a party.

Under RCW 42.18.180, certain transactions are exempted from this prohibition, including those transactions (a) when the employee is acting as a guardian, executor, administrator, trustee, or personal fiduciary (with certain specified limitations) for family members and others, (b) when the employee is assisting another

employee involved in disciplinary or other personnel proceedings, or (c) when the employee is giving testimony under oath.

6. Employment restrictions for former employees. RCW 42.18.221 prohibits a former executive branch employee from:
- a. Assisting another person in a transaction involving the state in which the employee participated during employment with the state. Exceptions to this prohibition are provided in RCW 42.18.221(6).
- b. Sharing compensation received by another person for assisting that person in rendering services that the employee is prohibited from providing.
- c. Within one year of the employee's termination date, accepting employment or receiving compensation from a private business if during the previous two years, on behalf of the state agency, the employee negotiated, administered, or had discretionary decision making influence over contracts with that business worth more than \$10,000; and the former employee's duties with the private business involve fulfilling or implementing the contracts.
- d. Accepting an employment offer or receiving compensation from a private business if the employee knows or believes the offer or compensation is intended as a reward for performance or nonperformance of a state duty.

These prohibitions do not apply if a former employee works for an employee organization.

Guidelines. These prohibitions are only a summary of RCW 42.18.221. To avoid conflicts of interest, the current employee who contemplates doing business with the state after he or she leaves state employment and former employees who wish to engage in such business activity should thoroughly review RCW 42.18.221 and related statutes and seek legal advice.

7. Use of public office for political purposes. RCW 42.17.130 prohibits an executive branch employee from using state agency property and personnel to support the election of any individual or for the promotion or opposition of any ballot proposition. Exceptions are allowed for elected legislative bodies to express a collective position on a ballot proposition, statements by elected officials in support or opposition to ballot propositions at an open press conference, and activities that are part of the "normal and regular conduct" of the office or agency.

RCW 42.17.190 prohibits an executive branch employee from using any state facilities, directly or indirectly, to support or oppose an initiative to the legislature.

RCW 41.06.250 protects an employee from being forced to make contributions for partisan, political purposes. Also, solicitation of contributions for partisan, political purposes on state property is forbidden.

Guidelines. State offices, equipment, personnel, and other resources are to be used only for official public

purposes. Use of such resources for political purposes or to influence the outcome of a ballot election is not only illegal, but also may create an unfair advantage in the election process and is a misuse of public funds. This prohibition applies to political party activities, campaigning, distribution and display of campaign material, and fund raising.

While state resources and personnel may not be used to influence an election, the employee, on his or her own time, has specific rights to engage in partisan political activities and election campaigns. Exceptions include: (a) the classified civil service employee, who may not hold part-time public office in a political subdivision of the state if such office is "incompatible with, or substantially interferes with," the discharge of official state duties; and (b) the employee whose position is financed totally or primarily by federal grant-in-aid funds is subject to federal regulations regarding political activity. (See RCW 41.06.250.)

PRINCIPLES OF PUBLIC SERVICE

1. Duty to actively support open government. To ensure public confidence in the integrity of state government, the employee must conduct the public's business in an open manner and through legally established processes that guarantee accountability and visibility. This entails an understanding of and a strict adherence to both the spirit and the letter of the following laws: the Administrative Procedure Act (Chapter 34.05 RCW); open public records (RCW 42.17.250 - 340), which requires agencies to adopt rules that provide for the fullest assistance to requesters of records and timely action on requests; the Open Public Meetings Act (Chapter 42.30 RCW); the reporting of public officials' financial affairs (RCW 42.17.240 - 243); employee whistleblower protections (Chapter 42.40 RCW); and merit system employment (Chapters 41.06 and 28B.16 RCW).
2. Avoidance and disclosure of conflicts and withdrawal in certain cases. The employee may at times face unavoidable conflicts of interest between public duties and private interests. In these situations, the employee is responsible for protecting the integrity of the decision making process. In some cases, that may mean disclosing the conflict and, if necessary, voluntarily withdrawing from the decision. In other cases, the situation may require the employee to eliminate the interest that creates the conflict.
At times, an employee's relationship with, or position within, a private organization may be perceived as affecting the employee's independence and impartiality on the job. The employee should, therefore, examine such relationships and avoid those that involve organizations whose interests relate directly to the employee's official duties.
3. Creating an environment of public trust. All employees, and particularly agency heads and managers, shall contribute to an ethical work place environment. This involves (a) eliminating all forms of illegal discrimination in employment practices, including discrimination based on age, sex, marital status, race, creed, color,

national origin, sexual orientation, or the presence of any sensory, mental or physical handicap (RCW 49.60.180 and E.O. 91-06); (b) creating a work environment free from sexual harassment (EO 89-01); and (c) informing employees of their rights under the state's whistleblower law; encouraging employees to disclose instances of waste, mismanagement, fraud, and abuse of public authority; and protecting whistleblowers from retaliation (Chapter 42.40 RCW).

4. Adherence to public agency lobbying restrictions. An executive branch employee may engage in publicly funded lobbying only when the lobbying is restricted to providing information, communicating on matters pertaining to official agency business, and advocating the official position or interests of the agency. The employee must report certain expenditures and time dedicated to lobbying the legislature to the Public Disclosure Commission. No public funds may be spent as a direct or indirect gift or campaign contribution to an elected official, officer, or employee. An executive branch employee who lobbies is treated differently than other lobbyists under the law. As such, he or she is held to higher standards of conduct in dealings with the legislature. It is, therefore, the duty of the employee who lobbies to know what is permissible. Certain behavior that may be acceptable for private sector lobbyists may be neither appropriate nor legal for an executive branch employee.

RESPONSIBILITY OF ALL EMPLOYEES

The responsibility for appropriate ethical conduct rests with the employee.

PARTICULAR RESPONSIBILITIES OF AGENCY HEADS

1. Each agency head shall:
 - a. Establish written standards for conflicts of interest that address any special responsibilities and conditions of employment that may apply to their agencies. Agency standards may provide for additional restrictions that are appropriate for the duties of the individual agency, including, but not limited to, disclosure of potential conflicts of interest. Copies of such standards and any revisions thereto shall be filed with the Office of the Governor. (See RCW 42.18.250.)
 - b. Establish internal procedures so that (1) an employee may obtain advice regarding potential conflict of interest issues, and (2) complaints relating to violations of the Executive Conflict of Interest Act are reviewed, investigated, and acted upon. The procedures shall specify to whom requests for advice and complaints shall be submitted.
 - c. Inform their employees of the contents of this executive order and related statutes, standards of ethical conduct for their agency, and appropriate internal procedures. Agency managers are encouraged to discuss these standards with their employees.

- 2. Each agency head shall be responsible for the administration and enforcement within their agency of the Executive Conflict of Interest Act and any standards of ethical conduct adopted pursuant to that act or this executive order.

PARTICULAR RESPONSIBILITIES OF THE GOVERNOR'S OFFICE

- 1. The Office of the Governor has the following responsibilities:
 - a. Establish appropriate standards to protect against actual or potential conflicts of interest on the part of state employees. In carrying out this responsibility, the Office of the Governor shall periodically review this executive order and the standards of ethical conduct adopted by state agencies and make recommendations for changes that would strengthen the integrity of state government.
 - b. Maintain and make available on request opinions and rulings relating to questions and issues regarding conflicts of interest, including Attorney General opinions, letter opinions, advisory opinions issued by agency directors and the Office of the Governor, and other formal, authoritative opinions and rulings on conflict of interest questions.
 - c. Maintain a file of agency standards for conflicts of interest submitted by agency heads.
- 2. In those instances where a potential conflict of interest question cannot be resolved by an agency head, the Governor may use his authority to designate a panel of experts to review questions of potential conflict of interest under Chapter 42.18 RCW submitted by agency heads. Such panels may include representation from the Office of the Attorney General and the Office of the State Auditor. Agency heads should, however, make every effort to respond to and resolve conflict of interest questions relating to their employees at the agency level. Opinions issued by such panels shall be advisory and deal only with hypothetical situations. Employees are responsible for their own ethical conduct.
- 3. As provided in RCW 42.18.240, the Governor has specific responsibility to enforce the Executive Conflict of Interest law as it applies to agency heads and employees of the Office of the Governor.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the State of Washington to be affixed at Olympia this 13th day of January, A.D., nineteen hundred and ninety three.

Mike Lowry
Governor of Washington

BY THE GOVERNOR:
Ralph Munro
Secretary of State

WSR 93-03-050
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON
[Memorandum—January 12, 1993]

Following is a revised meeting schedule for regular meetings to be held by the University of Washington's Restorative Dentistry Executive Committee.

Meeting Dates	Restorative Dentistry Executive Committee Location	Time
Jan. 6, 13, 20	HSB D-762	7:30 a.m.
Feb. 3, 10, 17	HSB D-762	7:30 a.m.
Mar. 3, 10, 17, 31	HSB D-762	7:30 a.m.
Apr. 7, 14, 21, 28	HSB D-762	7:30 a.m.
May 5, 12, 19, 26	HSB D-762	7:30 a.m.
June 2, 9, 16, 23, 30	HSB D-762	7:30 a.m.
July 7, 14, 21, 28	HSB D-762	7:30 a.m.
Aug. 4, 11, 18, 25	HSB D-762	7:30 a.m.
Sep. 1, 8, 15, 22, 29	HSB D-762	7:30 a.m.
Oct. 6, 13, 20, 27	HSB D-762	7:30 a.m.
Nov. 3, 10, 17, 24	HSB D-762	7:30 a.m.
Dec. 1, 8, 15, 22, 29	HSB D-762	7:30 a.m.

WSR 93-03-051
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON
[Memorandum—January 12, 1993]

Following is a revised meeting schedule for regular meetings to be held by the University of Washington's Anesthesiology Faculty.

ANESTHESIOLOGY FACULTY MEETING

Meeting Dates	Location	Time
January 25, 1993	BB-1444	4 p.m.
February 22, 1993	BB-1444	4 p.m.
March 15, 1993	BB-1444	4 p.m.
April 19, 1993	BB-1444	4 p.m.
May 17, 1993	BB-1444	4 p.m.
June 21, 1993	BB-1444	4 p.m.
July 19, 1993	BB-1444	4 p.m.
August 16, 1993	BB-1444	4 p.m.
September 20, 1993	BB-1444	4 p.m.
October 18, 1993	BB-1444	4 p.m.
November 15, 1993	BB-1444	4 p.m.
December 20, 1993	BB-1444	4 p.m.

WSR 93-03-052
NOTICE OF PUBLIC MEETINGS
BEEF COMMISSION
[Memorandum—January 13, 1993]

The 1993 meeting schedule for the Washington State Beef Commission is as follows:

MISCELLANEOUS

February 10-11	Board Meeting/ Planning Meeting	Yakima
April 8	Board Meeting	Seattle
June 17	Annual Meeting	Ellensburg
September 2	Board Meeting	Pullman
November 11-12	Board Meeting	Everett

October 7, 1993	141 AERB	12:30 p.m.
October 14, 1993	141 AERB	12:30 p.m.
October 21, 1993	141 AERB	12:30 p.m.
October 28, 1993	141 AERB	12:30 p.m.
November 4, 1993	141 AERB	12:30 p.m.
November 18, 1993	141 AERB	12:30 p.m.
December 2, 1993	141 AERB	12:30 p.m.
December 9, 1993	141 AERB	12:30 p.m.
December 16, 1993	141 AERB	12:30 p.m.

WSR 93-03-053
NOTICE OF PUBLIC MEETINGS
CONVENTION AND TRADE
CENTER

[Memorandum—January 13, 1993]

A regular meeting of the board of directors of the Washington State Convention and Trade Center will be held on Wednesday, January 20, 1993, at 1:30 p.m. in Room 303 of the Convention Center, 800 Convention Place, Seattle.

If you have any questions regarding this meeting, please call 447-5000.

WSR 93-03-054
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON

[Memorandum—January 12, 1993]

Following is a revised meeting schedule for regular meetings to be held by the University of Washington's Industrial Engineering Faculty.

Industrial Engineering Faculty Meeting

Meeting Dates	Location	Time
February 4, 1993	141 AERB	12:30 p.m.
February 11, 1993	141 AERB	12:30 p.m.
February 18, 1993	141 AERB	12:30 p.m.
February 25, 1993	141 AERB	12:30 p.m.
March 4, 1993	141 AERB	12:30 p.m.
March 11, 1993	141 AERB	12:30 p.m.
March 18, 1993	141 AERB	12:30 p.m.
March 25, 1993	141 AERB	12:30 p.m.
April 1, 1993	141 AERB	12:30 p.m.
April 8, 1993	141 AERB	12:30 p.m.
April 15, 1993	141 AERB	12:30 p.m.
April 22, 1993	141 AERB	12:30 p.m.
April 29, 1993	141 AERB	12:30 p.m.
May 6, 1993	141 AERB	12:30 p.m.
May 13, 1993	141 AERB	12:30 p.m.
May 20, 1993	141 AERB	12:30 p.m.
May 27, 1993	141 AERB	12:30 p.m.
June 3, 1993	141 AERB	12:30 p.m.
June 10, 1993	141 AERB	12:30 p.m.
June 17, 1993	141 AERB	12:30 p.m.
June 24, 1993	141 AERB	12:30 p.m.
August 19, 1993	141 AERB	12:30 p.m.
August 26, 1993	141 AERB	12:30 p.m.
September 2, 1993	141 AERB	12:30 p.m.
September 9, 1993	141 AERB	12:30 p.m.
September 16, 1993	141 AERB	12:30 p.m.
September 23, 1993	141 AERB	12:30 p.m.
September 30, 1993	141 AERB	12:30 p.m.

WSR 93-03-068
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON

[Memorandum—January 15, 1993]

Following is a revised meeting schedule for regular meetings to be held by the University of Washington's Neurological Surgery.

The following is advance notification of the four general faculty meeting dates for 1993.

Monday, March 1	5:00 p.m.	HMC Board Room 1C-30
Monday, June 7	5:00 p.m.	HMC Board Room 1C-30
Monday, September 13	5:00 p.m.	HMC Board Room 1C-30
Monday, December 6	5:00 p.m.	HMC Board Room 1C-30

WSR 93-03-069
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON

[Memorandum—January 13, 1993]

Following is a revised meeting schedule for regular meetings to be held by the University of Washington's School of Social Work.

FACULTY MEETING

Meeting Dates	Location	Time
January 19	Room 26/30, School of Social Work	1:30- 4 p.m.
February 16	Room 26/30, School of Social Work	1:30- 4 p.m.
March 2	Room 26/30, School of Social Work	1:30- 4 p.m.
April 13	Room 26/30, School of Social Work	1:30- 4 p.m.
May 11	Room 26/30, School of Social Work	1:30- 4 p.m.
June 8	Room 26/30, School of Social Work	1:30- 4 p.m.

EXECUTIVE COMMITTEE

Meeting Dates	Location	Time
January 12	Room 210-F, School of Social Work	1:30- 3 p.m.
January 26	Room 210-F, School of Social Work	1:30- 3 p.m.
February 9	Room 210-F, School of Social Work	1:30- 3 p.m.

MISCELLANEOUS

February 23	Room 210-F, School of Social Work	1:30- 3 p.m.
March 9	Room 210-F, School of Social Work	1:30- 3 p.m.
March 23	Room 210-F, School of Social Work	1:30- 3 p.m.
April 6	Room 210-F, School of Social Work	1:30- 3 p.m.
April 20	Room 210-F, School of Social Work	1:30- 3 p.m.
May 4	Room 210-F, School of Social Work	1:30- 3 p.m.
May 18	Room 210-F, School of Social Work	1:30- 3 p.m.
June 1	Room 210-F, School of Social Work	1:30- 3 p.m.
June 15	Room 210-F, School of Social Work	1:30- 3 p.m.

CURRICULUM COMMITTEE

Meeting Dates	Location	Time
Every Tuesday	Room 210-F, School of Social Work	11:30 a.m. - 1 p.m.

WSR 93-03-070
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON
 [Memorandum—January 14, 1993]

Following is a revised meeting schedule for regular meetings to be held by the University of Washington's Sociology.

Department Faculty

Meeting Dates	Location	Time
First Wednesday of every month during academic year	209 Savery	3:30 - 5:00

WSR 93-03-071
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON
 [Memorandum—January 14, 1993]

Following is a revised meeting schedule for regular meetings to be held by the University of Washington's Psychosocial Nursing.

PSN Faculty Meeting

Meeting Dates	Location	Time
1st & 3rd Monday of each month (except during school breaks)	T-431	12:30

WSR 93-03-072
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON
 [Memorandum—January 14, 1993]

Following is a revised meeting schedule for regular meetings to be held by the University of Washington's Physiological Nursing.

PN Department Business

Meeting Dates	Location	Time
February 1	T-612 Health Sci.	12:30
April 19	T-612 Health Sci.	12:30

PN Curriculum

Meeting Dates	Location	Time
March 15	T-612 Health Sci.	12:30
May 17	T-612 Health Sci.	12:30

WSR 93-03-073
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON
 [Memorandum—January 14, 1993]

Following is a revised meeting schedule for regular meetings to be held by the University of Washington's Speech Communication.

Speech Communication Faculty

Meeting Dates	Location	Time
Jan.-June 1993	221-223 Raitt	3:30 p.m.
Sept.-Dec. 1993	221-223 Raitt	3:30 p.m.
1st and 3rd Wednesday of each month.		

WSR 93-03-074
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF AGRICULTURE
 (Wine Commission)
 [Memorandum—January 5, 1993]

The Washington Wine Commission traditionally holds its regular meetings on the first Thursday of each month, except October. The location of the meeting rotates between Seattle-Tacoma Airport (at the Port of Seattle World Trade Center) and Pasco Airport (at the Pasco Red Lion), as noted. Further information about meetings and other detail can be obtained by contacting Simon Siegl, Executive Director, Washington Wine Commission, at P.O. Box 61217, Seattle, WA 98121, (206) 728-2252.

Regular Meetings—1993

Thursday, January 7	Sea-Tac
Thursday, February 4	Pasco

MISCELLANEOUS

Thursday, March 4	Sea-Tac
Thursday, April 1	Pasco
Thursday, May 6	Sea-Tac
Thursday, June 3	Pasco
Thursday, July 1	Sea-Tac
Thursday, August 5	Pasco
Thursday, September 2	Pasco
Thursday, November 4	Sea-Tac
Thursday, December 2	Sea-Tac

WSR 93-03-083
NOTICE OF PUBLIC MEETINGS
JOINT CENTER
FOR HIGHER EDUCATION
 [Memorandum—January 15, 1993]

During the JCHE board meeting this week it was noticed that the December date filed in WSR 93-01-082 is incorrect. Instead of December 15, which is the 3rd Wednesday, it should be December 8.

WSR 93-03-075
NOTICE OF PUBLIC MEETINGS
PENINSULA COLLEGE
 [Memorandum—January 12, 1993]

The board of trustees of Community College District #1, meeting in regular session on January 12, 1993, adopted the schedule of meeting dates as follows for the 1993 calendar year:

February 9, 1993
 March 9, 1993
 April 13, 1993
 May 11, 1993
 June 8, 1993
 July - no meeting
 August 10, 1993
 September 14, 1993
 October 12, 1993
 November 9, 1993
 December 14, 1993

WSR 93-03-088
NOTICE OF PUBLIC MEETINGS
FOREST PRACTICES BOARD
 [Memorandum—January 19, 1993]

This notice is given pursuant to provisions of RCW 42.30.075 and WAC 222-08-040.

The Washington Forest Practices Board will hold its regular quarterly meeting on Wednesday, February 10, 1993. The board anticipates holding a workshop from 10:00 a.m. to noon. The meeting will convene at noon in Conference Room 172, Natural Resources Building, 1111 Washington Street S.E., Olympia. The board will immediately adjourn to executive session and the meeting will reconvene at 1 p.m.

Additional information may be obtained from: Forest Practices Division, P.O. Box 47012, Olympia, WA 98504-7012, phone (206) 902-1413.

WSR 93-03-076
NOTICE OF PUBLIC MEETINGS
CONSERVATION AND RENEWABLE
ENERGY SYSTEM
 [Memorandum—January 12, 1993]

The regular meeting place and time for the Conservation and Renewable Energy System, a Washington State JOA, is the Thursday prior to the third Friday of each month at 10:00 a.m. at the Radisson Hotel, 17001 Pacific Highway South, Seattle, WA.

WSR 93-03-077
RULES COORDINATOR
INDETERMINATE SENTENCE
REVIEW BOARD
 [Filed January 19, 1993, 9:28 a.m.]

Pursuant to RCW 34.05.310, please be advised that the designated rules coordinator for this agency is Dennis Marsh, Executive Secretary, Indeterminate Sentence Review Board, P.O. Box 40907, Olympia, WA 98504-0907.

Kathryn S. Bail
 Chair

WSR 93-03-093
PROPOSED RULES
COLUMBIA RIVER
GORGE COMMISSION
 [Filed January 20, 1993, 10:38 a.m.]

Reviser's note: The Columbia River Gorge Commission has withdrawn this filing from publication.

MISCELLANEOUS

Table of WAC Sections Affected

KEY TO TABLE

This table covers the current calendar year through this issue of the Register and should be used to locate rules amended, adopted, or repealed subsequent to the publication date of the latest WAC or Supplement.

Symbols:

- AMD = Amendment of existing section
- A/R = Amending and recodifying a section
- DECOD = Decodification of an existing section
- NEW = New section not previously codified
- OBJEC = Notice of objection by Joint Administrative Rules Review Committee
- PREP = Preproposal comments
- RE-AD = Readoption of existing section
- RECOD = Recodification of previously codified section
- REP = Repeal of existing section
- RESCIND = Rescind previous emergency rule
- REVIEW = Review of previously adopted rule

Suffixes:

- P = Proposed action
- C = Continuance of previous proposal
- E = Emergency action
- S = Supplemental notice
- W = Withdrawal of proposed action
- No suffix means permanent action

WAC # shows the section number under which an agency rule is or will be codified in the Washington Administrative Code.

WSR # shows the issue of the Washington State Register where the document may be found; the last three digits identify the document within the issue.

WAC #		WSR #	WAC #		WSR #	WAC #		WSR #
16-674-002	REP	93-03-079	132G-116-175	NEW	93-02-063	173-216-130	AMD-E	93-03-067
16-674-010	AMD	93-03-079	132G-116-180	REP	93-02-063	173-216-140	AMD-P	93-03-066
16-674-020	REP	93-03-079	132G-116-185	NEW	93-02-063	173-216-140	AMD-E	93-03-067
16-674-060	NEW	93-03-079	132G-116-190	REP	93-02-063	173-220-010	AMD-P	93-03-066
16-674-070	NEW	93-03-079	132G-116-195	NEW	93-02-063	173-220-010	AMD-E	93-03-067
16-674-080	NEW	93-03-079	132G-116-200	REP	93-02-063	173-220-020	AMD-P	93-03-066
16-674-090	NEW	93-03-079	132G-116-205	NEW	93-02-063	173-220-020	AMD-E	93-03-067
16-674-100	NEW	93-03-079	132G-116-210	REP	93-02-063	173-220-030	AMD-P	93-03-066
51-13-101	AMD	93-02-056	132G-116-215	NEW	93-02-063	173-220-030	AMD-E	93-03-067
51-13-202	AMD	93-02-056	132G-116-220	REP	93-02-063	173-220-040	AMD-P	93-03-066
51-13-300	AMD	93-02-056	132G-116-225	NEW	93-02-063	173-220-040	AMD-E	93-03-067
51-13-302	AMD	93-02-056	132G-116-230	REP	93-02-063	173-220-045	REP-P	93-03-066
51-13-303	AMD	93-02-056	132G-116-235	NEW	93-02-063	173-220-045	REP-E	93-03-067
51-13-304	AMD	93-02-056	132G-116-240	REP	93-02-063	173-220-050	AMD-P	93-03-066
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51-13-502	AMD	93-02-056	132G-116-255	NEW	93-02-063	173-220-060	AMD-E	93-03-067
51-13-503	AMD	93-02-056	132G-116-260	REP	93-02-063	173-220-070	AMD-P	93-03-066
98-60-010	NEW-P	93-03-063	132G-116-265	NEW	93-02-063	173-220-070	AMD-E	93-03-067
98-60-020	NEW-P	93-03-063	132G-116-270	AMD	93-02-063	173-220-090	AMD-P	93-03-066
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98-60-040	NEW-P	93-03-063	132G-116-280	REP	93-02-063	173-220-100	AMD-P	93-03-066
98-60-050	NEW-P	93-03-063	132G-116-285	NEW	93-02-063	173-220-100	AMD-E	93-03-067
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132G-116-080	AMD	93-02-063	132V-300-020	NEW	93-03-078	173-226-040	NEW-E	93-03-067
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132G-116-120	REP	93-02-063	173-216-010	AMD-E	93-03-067	173-226-080	NEW-P	93-03-066
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173-226-240	NEW-E	93-03-067	246-358-075	AMD	93-03-032	296-62-07407	NEW-P	93-02-057
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173-226-250	NEW-E	93-03-067	246-358-095	AMD	93-03-032	296-62-07411	NEW-P	93-02-057
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173-430-010	AMD-P	93-03-090	246-924-060	AMD-P	93-02-065	315-11-940	NEW	93-03-008
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173-430-050	AMD-P	93-03-090	246-924-352	NEW-P	93-02-067	315-11-951	NEW-P	93-03-094
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