

Washington State Register

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CITATION

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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 May 1994 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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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 OF 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].

1993 - 1994

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>
93-16	Jul 7	Jul 21	Aug 4	Aug 18	Sep 7
93-17	Jul 21	Aug 4	Aug 18	Sep 1	Sep 21
93-18	Aug 4	Aug 18	Sep 1	Sep 15	Oct 5
93-19	Aug 25	Sep 8	Sep 22	Oct 6	Oct 26
93-20	Sep 8	Sep 22	Oct 6	Oct 20	Nov 9
93-21	Sep 22	Oct 6	Oct 20	Nov 3	Nov 23
93-22	Oct 6	Oct 20	Nov 3	Nov 17	Dec 7
93-23	Oct 20	Nov 3	Nov 17	Dec 1	Dec 21
93-24	Nov 3	Nov 17	Dec 1	Dec 15	Jan 4, 1994
94-01	Nov 24	Dec 8	Dec 22, 1993	Jan 5, 1994	Jan 25
94-02	Dec 8	Dec 22, 1993	Jan 5, 1994	Jan 19	Feb 8
94-03	Dec 22, 1993	Jan 5, 1994	Jan 19	Feb 2	Feb 22
94-04	Jan 5	Jan 19	Feb 2	Feb 16	Mar 8
94-05	Jan 19	Feb 2	Feb 16	Mar 2	Mar 22
94-06	Feb 2	Feb 16	Mar 2	Mar 16	Apr 5
94-07	Feb 23	Mar 9	Mar 23	Apr 6	Apr 26
94-08	Mar 9	Mar 23	Apr 6	Apr 20	May 10
94-09	Mar 23	Apr 6	Apr 20	May 4	May 24
94-10	Apr 6	Apr 20	May 4	May 18	Jun 7
94-11	Apr 20	May 4	May 18	Jun 1	Jun 21
94-12	May 4	May 18	Jun 1	Jun 15	Jul 5
94-13	May 25	Jun 8	Jun 22	Jul 6	Jul 26
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94-22	Oct 5	Oct 19	Nov 2	Nov 16	Dec 6
94-23	Oct 26	Nov 9	Nov 23	Dec 7	Dec 27
94-24	Nov 9	Nov 23	Dec 7	Dec 21	Jan 10, 1995

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.

WSR 94-07-109
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Public Assistance)

[Filed March 21, 1994, 9:48 a.m.]

Original Notice.

Title of Rule: Chapter 388-96 WAC, Nursing home accounting and reimbursement system.

Purpose: WAC 388-96-010(14), to be in agreement with definition in chapter 248-14 WAC; WAC 388-96-010(43), removed a substantive provision and placed it in WAC 388-96-754; WAC 388-96-113(3), revised to grant an exception to 120 day rule to reverse accruals; WAC 388-96-134(1), add a clarifying comma; WAC 388-96-217, clarify what constitutes a violation, who may receive a fine, and when a fine may be waived; WAC 388-96-221(4), to clarify the effect of ESSB 5724 (1993 session) on settlements; WAC 388-96-226 and 388-96-228, to clarify the effect of ESSB 5724 (1993 session) on settlements; WAC 388-96-525(4), clarify what education and training expenses are allowable; WAC 388-96-533, to allow funding for administrator-in-training; WAC 388-96-534, to clarify that approved JCAD does not mean costs are allowable; WAC 388-96-559 (1)(C), clarify salvage values and their use in determining depreciation; WAC 388-96-565(1), update section to current practice; WAC 388-96-585 (2)(b), remove outdated language; WAC 388-96-585 (2)(w), clarify what employee benefits are not reimbursable; WAC 388-96-585 (2)(aa), clarify what fees for professional licenses are not reimbursable; WAC 388-96-585 (2)(vv), new subsection clarifying promotional advertising is unallowable; WAC 388-96-704, remove terms no longer used; WAC 388-96-707, repeal unnecessary because covered under WAC 388-96-585 (2)(b); WAC 388-96-709, to change administration and operation to administrative and operational and delineate difference between first and second rate years of a state fiscal biennium in the new contractor's rate; WAC 388-96-710, to clarify sample selection and the effect of the first and second rate years of a state fiscal biennium on the new contractor's rate; WAC 388-96-719(10), clarify ESSB 5724 effect on occupancy level determination in the first and second rate years of the state fiscal biennium; WAC 388-96-721, repeal because procedure not policy and no longer applicable; WAC 388-96-722, 388-96-727, 388-96-735 and 388-96-737, revised to reflect effect of current funding on the nursing, food, administrative and operational prospective rate for the first and second rate years of the state fiscal biennium; WAC 388-96-745, to clarify change in bed capacity as the result of capitalized addition or replacement on occupancy level determinations; WAC 388-96-753, new section on the effect of current funding under WAC 388-96-774, 388-96-776 and 388-96-777 on ROI; WAC 388-96-754, to remove references to current funding and to add substantive provisions on the determination of ROI in the first and second rate years of a state biennium; WAC 388-96-763, to clarify which cost reports and patient days will be used to set the rates for exceptionally heavy care under the new rate system established by ESSB 5724 of 1993; WAC 388-96-774, to clarify that current funding (CF) for staffing is only available for nursing and operational cost centers and must be requested

after the date of hire. Limits the number of requests for CF to two for any state fiscal year. Adds bankruptcy, correction of survey citations and complaint resolution as prohibitions for granting and using CF. Remove CF for capitalized additions or replacements to new section WAC 388-96-776. Adds regulatory limits on completion of application and beginning date of CF; WAC 388-96-776, new section to delineate the rules for requesting CF for capitalized additions and replacements; WAC 388-96-777, new section giving the department the ability to grant CF on its own initiative. Contractors may not request current funding under this section; and WAC 388-96-904, eliminates the Office of Contracts Management as the reviewing authority for 904(1) audit challenges. Authority will rest with the Office of Rates Management. Clarifies the contractor's duties when a facsimile is used to establish a request date. Permits 904(1) conference earlier than fourteen days if both parties mutually agree. Requires contractor to submit documentation fourteen days in advance of conference. Clarifies when the administrative review determination will be issued.

Statutory Authority for Adoption: RCW 74.46.800.

Statute Being Implemented: RCW 74.46.800.

Summary: Clarify 1993 implementation of ESSB 5724 and provide additional regulatory support for settlement, reduction in beds, new contractor rate, ROI and property under the new rate system established by the implementation of ESSB 5724.

Reasons Supporting Proposal: See Purpose above.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Pat Hague and Paul Montgomery, Aging and Adult Services, 493-2587.

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 May 24, 1994, at 10:00 a.m.

If you need sign language assistance, please contact the Office of Vendor Services by May 10, 1994. TDD 753-4595 or SCAN 234-4595.

Submit Written Comments to: Identify WAC number, Dewey Brock, Chief, Office of Vendor Services, Mailstop 45811, Department of Social and Health Services, Olympia, 98504, TELEFAX 586-8487 or SCAN 321-8487, by May 17, 1994.

Date of Intended Adoption: May 26, 1994.

March 21, 1994
 Dewey Brock, Chief
 Office of Vendor Services
 Administrative Services Division

AMENDATORY SECTION (Amending Order 3634, filed 9/14/93, effective 10/15/93)

WAC 388-96-010 Terms. Unless the context clearly requires otherwise, the following terms shall have the meaning set forth in this section when used in this chapter.

(1) "Accounting" means activities providing information, usually quantitative and often expressed in monetary units, for:

- (a) Decision-making;
- (b) Planning;
- (c) Evaluating performance;
- (d) Controlling resources and operations; and
- (e) External financial reporting to investors, creditors, regulatory authorities, and the public.

(2) "Accrual method of accounting" means a method of accounting in which revenues are reported in the period when earned, regardless of when collected, and expenses are reported in the period in which incurred, regardless of when paid.

(3) "Administration and management" means activities employed to maintain, control, and evaluate the efforts and resources of an organization for the accomplishment of the objectives and policies of that organization.

(4) "Allowable costs" - See WAC 388-96-501.

(5) "Ancillary care" means services required by the individual, comprehensive plan of care provided by qualified therapists or by support personnel under their supervision.

(6) "Arm's-length transaction" means a transaction resulting from good-faith bargaining between a buyer and seller who have adverse bargaining positions in the marketplace.

(a) Sales or exchanges of nursing home facilities among two or more parties in which all parties subsequently continue to own one or more of the facilities involved in the transactions shall not be considered as arm's-length transactions for purposes of this chapter.

(b) Sale of a nursing home facility which is subsequently leased back to the seller within five years of the date of sale shall not be considered as an arm's-length transaction for purposes of this chapter.

(7) "Assets" means economic resources of the contractor, recognized and measured in conformity with generally accepted accounting principles. "Assets" also include certain deferred charges that are not resources but are recognized and measured in accordance with generally accepted accounting principles.

(8) "Bad debts" means amounts considered to be uncollectible from accounts and notes receivable.

(9) "Beds" means, unless otherwise specified, the number of set-up beds in the nursing home, not to exceed the number of licensed beds.

(10) "Beneficial owner" means any person who:

(a) Directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(i) Voting power which includes the power to vote, or to direct the voting of such ownership interest; and/or

(ii) Investment power which includes the power to dispose, or to direct the disposition of such ownership interest.

(b) Directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other

contract, arrangement, or device with the purpose or effect of divesting himself or herself of beneficial ownership of an ownership interest, or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of this chapter.

(c) Subject to subsection (4) of this section, has the right to acquire beneficial ownership of such ownership interest within sixty days, including but not limited to any right to acquire:

(i) Through the exercise of any option, warrant, or right;

(ii) Through the conversion of an ownership interest;

(iii) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or

(iv) Pursuant to the automatic termination of a trust, discretionary account, or similar arrangement;

Except that, any person who acquires an ownership interest or power specified in subsection (10)(c)(i), (ii), or (iii) of this section with the purpose or effect of changing or influencing the control of the contractor, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the ownership interest which may be acquired through the exercise or conversion of such ownership interest or power.

(d) In the ordinary course of business, is a pledgee of ownership interest under a written pledge agreement and shall not be deemed the beneficial owner of such pledged ownership interest until the pledgee takes:

(i) Formal steps necessary required to declare a default; and

(ii) Determines the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged ownership interest will be exercised provided the pledge agreement:

(A) Is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the contractor, nor in connection with any transaction having such purpose or effect, including persons meeting the conditions set forth in subsection (10)(b) of this section; and

(B) Prior to default, does not grant the pledgee the power to:

(I) Vote or direct the vote of the pledged ownership interest; or

(II) Dispose or direct the disposition of the pledged ownership interest, other than the grant of such power or powers pursuant to a pledge agreement under which credit is extended and in which the pledgee is a broker or dealer.

(11) "Capitalization" means the recording of an expenditure as an asset.

(12) "Capitalized lease" means a lease required to be recorded as an asset and associated liability in accordance with generally accepted accounting principles.

(13) "Cash method of accounting" means a method of accounting in which revenues are recognized only when cash is received, and expenditures for expense and asset items are not recorded until cash is disbursed for those expenditures and assets.

(14) "Change of ownership" means a ~~((change in))~~ substitution of the individual operator or ((legal organization)) operating entity ultimately responsible for the daily

operation of a nursing (~~home~~) facility; or a substitution of control of the operating entity.

(a) Events which constitute a change of ownership include but are not limited to the following:

(i) The form of legal organization of the (~~contractor~~) operator is changed (e.g., a sole proprietor forms a partnership or corporation);

(ii) (~~Title to~~) Ownership of the nursing home business enterprise is transferred by the (~~contractor~~) operator or operating entity to another party regardless of whether ownership of some or all of the real property and/or personal property assets of the facility is also transferred;

(iii) (~~Where~~) If the (~~contractor~~) operator is a partnership, any event occurs which dissolves the partnership;

(iv) (~~Where~~) If the (~~contractor~~) operator is a corporation, and the corporation is dissolved(~~;~~); merges with another corporation which is the survivor(~~;~~); or consolidates with one or more other corporations to form a new corporation; or

(v) If the operator is a corporation and, whether by a single transaction or multiple transactions within any continuous twenty-four-month period, fifty percent or more of the stock is transferred to one or more:

(A) New or former stockholders; or

(B) Present stockholders each having held less than five percent of the stock before the initial transaction.

(vi) Any other event (~~occurs~~) or combination of events which results in a (~~change~~) substitution of individual operator or operating entity or control of the operating entity.

(b) Ownership does not change when the following, without more, occur:

(i) A party contracts with the (~~contractor~~) operator or operating entity to manage the nursing facility enterprise as the (~~contractor's~~) operator's agent, i.e., subject to the (~~contractor's~~) operator's general approval of daily operating and management decisions;

(ii) If the (~~contractor~~) operator is a corporation, some (~~or all~~) of its stock is transferred, but less than fifty percent within any continuous twenty-four-month period; or

(iii) The real property or personal property assets (~~associated with~~) of the nursing (~~home~~) facility change ownership or are leased, or a lease of them is terminated, without a change of individual operator or operating entity and without a change of control of the operating entity.

(15) "Charity allowances" means reductions in charges made by the contractor because of the indigence or medical indigence of a patient.

(16) "Contract" means a contract between the department and a contractor for the delivery of SNF or ICF services to medical care recipients.

(17) "Contractor" means an entity which contracts with the department to deliver care services to medical care recipients in a facility. The entity is responsible for operational decisions.

(18) "Courtesy allowances" means reductions in charges in the form of an allowance to physicians, clergy, and others, for services received from the contractor. Employee fringe benefits are not considered courtesy allowances.

(19) "CSO" means the local community services office of the department.

(20) "Department" means the department of social and health services (DSHS) and employees.

(21) "Depreciation" means the systematic distribution of the cost or other base of tangible assets, less salvage, over the estimated useful life of the assets.

(22) "Donated asset" means an asset the contractor acquired without making any payment for the asset in the form of cash, property, or services.

(a) An asset is not a donated asset if the contractor made even a nominal payment in acquiring the asset.

(b) An asset purchased using donated funds is not a donated asset.

(23) "Entity" means an individual, partnership, corporation, or any other association of individuals capable of entering enforceable contracts.

(24) "Equity capital" means total tangible and other assets which are necessary, ordinary, and related to patient care from the most recent provider cost report minus related total long-term debt from the most recent provider cost report plus working capital as defined in this section.

(25) "Exceptional care recipient" means a medical care recipient determined by the department to require exceptionally heavy care.

(26) "Facility" means a nursing home licensed in accordance with chapter 18.51 RCW, or that portion of a hospital licensed in accordance with chapter 70.41 RCW which operates as a nursing home.

(27) "Fair market value" means:

(a) Prior to January 1, 1985, the price for which an asset would have been purchased on the date of acquisition in an arm's-length transaction between a well-informed buyer and seller, neither being under any compulsion to buy or sell; or

(b) Beginning January 1, 1985, the replacement cost of an asset, less observed physical depreciation, on the date the fair market value is determined.

(28) "Financial statements" means statements prepared and presented in conformity with generally accepted accounting principles and the provisions of chapter 74.46 RCW and this chapter including, but not limited to:

(a) Balance sheet;

(b) Statement of operations;

(c) Statement of changes in financial position; and

(d) Related notes.

(29) "Fiscal year" means the operating or business year of a contractor. All contractors report on the basis of a twelve-month fiscal year, but provision is made in this chapter for reports covering abbreviated fiscal periods. As determined by context or otherwise, "fiscal year" may also refer to a state fiscal year extending from July 1 through June 30 of the following year and comprising the first or second half of a state fiscal biennium.

(30) "Gain on sale" means the actual total sales price of all tangible and intangible nursing home assets including, but not limited to, land, building, equipment, supplies, goodwill, and beds authorized by certificate of need, minus the net book value of such assets immediately prior to the time of sale.

(31) "Generally accepted accounting principles (GAAP)" means accounting principles approved by the financial accounting standards Board (FASB).

(32) "Generally accepted auditing standards (GAAS)" means auditing standards approved by the American Institute of Certified Public Accountants (AICPA).

(33) "Goodwill" means the excess of the price paid for:

(a) A business over the fair market value of all other identifiable, tangible, and intangible assets acquired; and

(b) An asset over the fair market value of the asset.

(34) "Historical cost" means the actual cost incurred in acquiring and preparing an asset for use, including feasibility studies, architects' fees, and engineering studies.

(35) "Imprest fund" means a fund which is regularly replenished in exactly the amount expended from it.

(36) "Interest" means the cost incurred for the use of borrowed funds, generally paid at fixed intervals by the user.

(37) "Joint facility costs" means any costs representing expenses incurred which benefit more than one facility, or one facility and any other entity.

(38) "Lease agreement" means a contract between two parties for the possession and use of real or personal property or assets for a specified period of time in exchange for specified periodic payments. Elimination or addition of any party to the contract, expiration, or modification of any lease term in effect on January 1, 1980, or termination of the lease by either party by any means shall constitute a termination of the lease agreement. An extension or renewal of a lease agreement, whether or not pursuant to a renewal provision in the lease agreement, shall be considered a new lease agreement. A strictly formal change in the lease agreement which modifies the method, frequency, or manner in which the lease payments are made, but does not increase the total lease payment obligation of the lessee shall not be considered modification of a lease term.

(39) "Medical care program" means medical assistance provided under RCW 74.09.500 or authorized state medical care services.

(40) "Medical care recipient" means an individual determined eligible by the department for the services provided in chapter 74.09 RCW.

(41) "Multiservice facility" means a facility at which two or more types of health or related care are delivered, e.g., a hospital and nursing facility, or a boarding home and nursing facility.

(42) "Net book value" means the historical cost of an asset less accumulated depreciation.

(43) "Net invested funds" means the net book value of tangible fixed assets, excluding assets associated with central or home offices or otherwise not on the nursing facility premises, employed by a contractor to provide services under the medical care program, including land, buildings, and equipment as recognized and measured in conformity with generally accepted accounting principles and not in excess of any lids or reimbursement limits set forth in this chapter, plus an allowance for working capital (~~which shall be five percent of the product of the sum of the contractor's per patient day component rates in nursing services, food, administrative, operational, and property, multiplied by the contractor's prior calendar year reported patient days as adjusted for the following July 1 rate setting for the contractor. Assets associated with central or home offices or otherwise not on the nursing home premises are not included in net invested funds~~) as provided in this chapter.

(44) "Nonadministrative wages and benefits" means wages, benefits, and corresponding payroll taxes paid for nonadministrative personnel, not to include administrator, assistant administrator, or administrator-in-training.

(45) "Nonallowable costs" means the same as "unallowable costs."

(46) "Nonrestricted funds" means funds which are not restricted to a specific use by the donor, e.g., general operating funds.

(47) "Nursing facility" means a home, place, or institution, licensed under chapter 18.51 RCW, where skilled nursing and/or intermediate care services are delivered.

(48) "Operating lease" means a lease under which rental or lease expenses are included in current expenses in accordance with generally accepted accounting principles.

(49) "Owner" means a sole proprietor, general or limited partner, or beneficial interest holder of five percent or more of a corporation's outstanding stock.

(50) "Ownership interest" means all interests beneficially owned by a person, calculated in the aggregate, regardless of the form the beneficial ownership takes.

(51) "Patient day" means a calendar day of patient care. In computing calendar days of care, the day of admission is always counted. The day of discharge is counted only when the patient was admitted on the same day. A patient is admitted for purposes of this definition when the patient is assigned a bed and a patient medical record is opened.

(52) "Per diem (per patient day) costs" means total allowable costs for a fiscal period divided by total patient days for the same period.

(53) "Professionally designated real estate appraiser" means an individual:

(a) Regularly engaged in the business of providing real estate valuation services for a fee;

(b) Qualified by a nationally recognized real estate appraisal educational organization on the basis of extensive practical appraisal experience, including the:

(i) Writing of real estate valuation reports;

(ii) Passing of written examination on valuation practice and theory; and

(iii) Requirement to subscribe and adhere to certain standards of professional practice as the organization prescribes.

(54) "Prospective daily payment rate" means the rate assigned by the department to a contractor for providing service to medical care recipients. The rate is used to compute the maximum participation of the department in the contractor's costs.

(55) "Qualified therapist":

(a) An activities specialist having specialized education, training, or at least one year's experience in organizing and conducting structured or group activities;

(b) An audiologist eligible for a certificate of clinical competence in audiology or having the equivalent education and clinical experience;

(c) A mental health professional as defined by chapter 71.05 RCW;

(d) A mental retardation professional, either a qualified therapist or a therapist, approved by the department having specialized training or one year's experience in treating or working with the mentally retarded or developmentally disabled;

(e) A social worker graduated from a school of social work;

(f) A speech pathologist eligible for a certificate of clinical competence in speech pathology or having the equivalent education and clinical experience;

(g) A physical therapist as defined by chapter 18.74 RCW;

(h) An occupational therapist graduated from a program in occupational therapy, or having the equivalent of education or training, and meeting all requirements of state law; or

(i) A respiratory care practitioner certified under chapter 18.89 RCW.

(56) "Recipient" means a medical care recipient.

(57) "Records" means data supporting all financial statements and cost reports including, but not limited to:

(a) All general and subsidiary ledgers;

(b) Books of original entry;

(c) Invoices;

(d) Schedules;

(e) Summaries; and

(f) Transaction documentation, however maintained.

(58) "Regression analysis" means a statistical technique through which one can analyze the relationship between a dependent or criterion variable and a set of independent or predictor variables.

(59) "Related care" includes:

(a) The director of nursing services;

(b) Activities and social services programs;

(c) Medical and medical records specialists; and

(d) Consultation provided by:

(i) Medical directors;

(ii) Pharmacists;

(iii) Occupational therapists;

(iv) Physical therapists;

(v) Speech therapists; and

(vi) Other therapists; and

(vii) Mental health professionals as defined in law and regulation.

(60) "Related organization" means an entity under common ownership and/or control, or which has control of or is controlled by, the contractor. Common ownership exists if an entity has a five percent or greater beneficial ownership interest in the contractor and any other entity. Control exists if an entity has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution, whether or not the power is legally enforceable and however exercisable or exercised.

(61) "Relative" includes:

(a) Spouse;

(b) Natural parent, child, or sibling;

(c) Adopted child or adoptive parent;

(d) Stepparent, stepchild, stepbrother, stepsister;

(e) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law;

(f) Grandparent or grandchild; and

(g) Uncle, aunt, nephew, niece, or cousin.

(62) "Restricted fund" means a fund for which the use of the principal and/or income is restricted by agreement with or direction of the donor to a specific purpose, in contrast to a fund over which the contractor has complete control. Restricted funds generally fall into three categories:

(a) Funds restricted by the donor to specific operating purposes;

(b) Funds restricted by the donor for additions to property, plant, and equipment; and

(c) Endowment funds.

(63) "Secretary" means the secretary of the department of social and health services (DSHS).

(64) "Start-up costs" means the one-time preopening costs incurred from the time preparation begins on a newly constructed or purchased building until the first patient is admitted. Start-up costs include:

(a) Administrative and nursing salaries;

(b) Utility costs;

(c) Taxes;

(d) Insurance;

(e) Repairs and maintenance; and

(f) Training costs.

Start-up costs do not include expenditures for capital assets.

(65) "Title XIX" means the 1965 amendments to the Social Security Act, P.L. 89-07, as amended.

(66) "Unallowable costs" means costs which do not meet every test of an allowable cost.

(67) "Uniform chart of accounts" means a list of account titles identified by code numbers established by the department for contractors to use in reporting costs.

(68) "Vendor number" means a number assigned to each contractor delivering care services to medical care recipients.

(69) "Working capital" means total current assets necessary, ordinary, and related to patient care from the most recent cost report minus total current liabilities necessary, ordinary, and related to patient care from the most recent cost report.

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 3555, filed 5/26/93, effective 6/26/93)

WAC 388-96-113 Completing reports and maintaining records. (1) All report schedules shall be legible and reproducible. All entries must be typed, completed in black or dark blue ink, or provided in an acceptable, indelible copy.

(2) Reports shall be completed in accordance with the provisions of this chapter, the state of Washington nursing home accounting and reporting manual, and such instructions as may be issued by the department from time to time. If no specific regulation, manual provision, or instruction covers a situation, generally accepted accounting principles shall be followed.

(3) The accrual method of accounting shall be used. All revenue and expense accruals shall be reversed against the appropriate accounts if not received or paid within one hundred twenty days after the accrual is made; unless, the contractor has documentation of a good faith billing dispute with the supplier or vendors in which case this period may be extended, but only for those portions of the billings subject to the good faith dispute. Accruals for vacation, holiday, sick pay, and taxes may be carried for longer periods, provided the ~~((contractor's usual policy and))~~ contractor follows generally accepted accounting principles ((are followed)) and pays this type of accrual when due.

(4) Methods of allocating costs, including indirect or overhead costs, shall be consistently applied. Written approval must be obtained from the department if a contractor wishes to change an allocation method. Contractors operating multiservice facilities or facilities incurring joint facility costs shall allocate costs using the methods approved by the department under WAC 388-96-534.

(5) The contractor's records relating to a nursing home shall be maintained so reported data can be audited for compliance with generally accepted accounting principles and the department's reimbursement principles and reporting instructions. If a contractor maintains records utilizing a chart of accounts other than that established by the department, the contractor shall provide to the department a written schedule specifying the way in which the contractor's individual account numbers correspond to the department's chart of accounts. Records shall be available for review by authorized personnel of the department and of the United States Department of Health and Human Services during normal business hours at a location in the state of Washington specified by the contractor.

(6) If a contractor fails to maintain records adequate for audit purposes as provided in subsection (5) of this section or fails to allow inspection of such records by authorized personnel as provided in subsection (5) of this section, the department may suspend all or part of subsequent reimbursement payments due under the contract until compliance is forthcoming. Upon compliance, the department shall resume current contract payments and shall release payments suspended pursuant to subsection (6) of this section.

AMENDATORY SECTION (Amending Order 2270, filed 8/19/85)

WAC 388-96-134 Disclosure of nursing home reports. (1) Cost reports and final audit reports will be made available for public disclosure. Cost report schedules showing information on rental or lease of assets, the facility or corporate balance sheet, schedule of changes in financial position, statement of changes in equity-fund balance, notes to financial statements, schedules summarizing adjustments to cost reports, reports or reviews of internal control and accounting procedures, and letters containing comments or recommendations relating to suggested improvements in internal control or accounting procedures shall be exempt from public disclosure.

(2) Whether or not subject to public disclosure, all documents shall be provided by the secretary, upon written request, to the legislature and to state agencies or state and local law enforcement officials having an official interest in the requested documents. A contractor or an authorized agent or designee may have access to nondisclosable information from its own records.

AMENDATORY SECTION (Amending Order 2485, filed 4/20/87)

WAC 388-96-217 Civil fines. (1) When the department finds that a current or former contractor, or any partner, officer, director, owner of five percent or more of the stock of a current or former corporate contractor, or managing agent has failed or refused to comply with any requirement of chapters 74.46 RCW or 388-96 WAC, the

department may assess monetary penalties of a civil nature not to exceed one thousand dollars per violation. Every day of noncompliance with any requirement of chapters 74.46 RCW or 388-96 WAC is a separate violation.

(2) The department may fine a contractor or ~~((ex-contractor up to one thousand dollars))~~ former contractor or any partner, officer, director, owner of five percent or more of the stock of a current or former corporate contractor, or managing agent for the following but is not limited to the following in its fine assessments:

(a) Failure to file a mathematically accurate and complete cost report, including a final cost report, on or prior to the applicable due date established by this chapter or authorized by extension granted in writing by the department; or

(b) Failure to permit an audit authorized by this chapter or to grant access to all records and documents deemed necessary by the department to complete such an audit.

~~((2))~~ (3) The department shall send notice of a fine assessed ((pursuant to)) under subsection ((+)) (2) of this section ((shall be sent)) by certified mail return receipt requested to the current contractor, administrator, or ((ex-contractor and)) former contractor informing the addressee of the following:

(a) The fine shall become effective ((unless)) the date of receipt of the notice by the addressee; and

(b) If within two weeks of the date of receipt of the notice by the addressee, an acceptable cost report is received by the department ((or)); an audit is allowed; or access to documentation is allowed, as applicable, ((within two weeks after notification. Further, each day after the two-week period subsequent to notification has expired that compliance is not forthcoming shall constitute a separate violation subject to a maximum fine of one thousand dollars)) the department may waive the fine.

AMENDATORY SECTION (Amending Order 2799, filed 5/24/89)

WAC 388-96-221 Preliminary settlement. (1) In the proposed preliminary settlement submitted under WAC 388-96-220(2), a contractor shall compare the prospective rates at which the contractor was paid during the report period, weighted by the number of patient days reported for the period each rate was in effect, to the contractor's allowable costs for the reporting period. The contractor shall take into account all authorized shifting, cost savings, and upper limits to rates on a cost center basis.

(2) Within one hundred twenty days after a proposed preliminary settlement is received, the department shall:

(a) Review proposed preliminary settlement for accuracy, and

(b) Either accept or reject the proposal of the contractor. If accepted, the proposed preliminary settlement shall become the preliminary settlement report. If rejected, the department shall issue, by cost center, a preliminary settlement report fully substantiating disallowed costs, refunds, or underpayments due and adjustments to the proposed preliminary settlement.

(3) A contractor shall have thirty days after receipt of a preliminary settlement report to contest such report under WAC 388-96-901 and 388-96-904. Upon expiration of the

thirty-day period, the department shall not review or adjust a preliminary settlement report.

(4) If no audit is scheduled by the department or if a scheduled audit is not performed within two years of the scheduled date, the department shall perform the preliminary settlement review described in this section with the following exceptions:

(a) For cost centers, the department shall:

(i) Use desk-reviewed costs as the ~~((contractor))~~ contractor's allowable costs for the reporting period; and
(ii) Disallow all costs in excess of the nursing facility's peer group median cost limit as described under WAC 388-96-210;

(b) The department shall calculate the variable portion of return on investment as calculated in the prospective rate;

(c) The department shall base the financing allowance portion of return on investment on audited costs in compliance with provisions contained in this chapter. If audited costs are not available, the department shall use the financing allowance used for rate setting. If an audited financing allowance is later determined, the department shall revise the final settlement to reflect audited financing allowance if payment is changed by \$1,000 or more; and

(d) When a complete audit was not performed and audited information is needed for purposes of calculating return on investment, the department may do a partial audit of current or prior year cost report.

(5) Beginning with preliminary settlements for report year 1988, if the department intends to field audit a facility's reported costs, the department shall issue the facility's preliminary settlement report based upon reported costs. If the department does not intend to field audit a facility's reported costs, the department shall issue the facility's preliminary settlement report based upon desk-reviewed costs utilizing the procedure under subsection (4) of this section.

(6) If the facility prevents, hinders, or otherwise delays completion of a full field audit, that facility's preliminary settlement issued on reported costs may be reopened to substitute desk-reviewed costs.

AMENDATORY SECTION (Amending Order 3634, filed 9/14/93, effective 10/15/93)

WAC 388-96-226 Shifting provisions. In computing a preliminary or final settlement, a contractor may shift savings and/or overpayment in a cost center to cover a deficit and/or underpayment in another cost center up to the amount of the savings, provided:

(1) Contractors may not shift more than twenty percent of the rate in a cost center into that cost center;

(2) Contractors may not shift into the property cost center;

(3) Beginning January 1, 1988, contractors may not shift out of the nursing services cost center;

(4) Beginning January 1, 1988, contractors may shift savings and/or overpayments in the food cost center only to cover deficits and/or underpayments in the nursing services cost center; and

(5) Beginning January 1, 1988, contractors shall shift payments in the enhancement cost center shown to have been spent for legislatively authorized enhancements ~~((+))~~, funding for which terminated June 30, 1990, to nonadminis-

trative wages and benefits to the nursing services and administration and operations cost centers, as appropriate. Such funds shall be shifted for no other purpose;

(6) The following shall apply with regard to the operational and administrative cost centers:

(a) Beginning January 1, 1993, the operational cost center and the administrative cost center will be combined for the calculation of preliminary and final settlements;

(b) Beginning January 1, 1994, the operational cost center and the administrative cost center will be separate; and contractors shall not shift from the operational cost center to the administrative cost center ~~((;))~~.

(7) For calendar years 1992 and 1993 only, and for final settlement purposes only, a contractor may shift, as authorized in this section, rate payments into the appropriate cost center without regard to the peer group median cost plus percentage limit for that cost center used by the department to establish the facility's July 1 rate following the period being settled.

(8) Beginning with final settlements for calendar year 1994 and following, a contractor may not shift rate payments into any cost center, for settlement or any other purpose, if the total rate payment in that cost center, after shifting, would exceed the contractor's peer group median cost plus percentage limit for that cost center previously used by the department in establishing that facility's July 1 rate in that cost center following the period being settled.

AMENDATORY SECTION (Amending Order 3634, filed 9/14/93, effective 10/15/93)

WAC 388-96-228 Cost savings. (1) ~~((Beginning with settlements))~~ For calendar year 1993 ((and following)) settlements, contractors may not retain cost savings if the sum of the reported costs in the property, operational, and administrative cost centers exceeds audited allowable costs in those cost centers by a total of ten cents or more per patient day. Beginning with settlements for calendar year 1994 and following, if the sum of the reported costs in property and administrative cost centers exceeds audited allowable costs in those cost centers by a total of ten cents or more per patient day, contractors may not retain cost savings in the property and administrative cost centers. For facilities that qualify, cost savings will be determined according to the following procedures:

(a) Based upon the latest information available, the department shall ~~((, by December 31st of each year,))~~ notify contractors of the fiftieth percentile rates ~~((in the administrative and property cost areas))~~ for the period July 1st through December 31st in the following cost centers:

(i) For calendar 1993, in the operational, administrative, and property cost centers; and

(ii) For calendar year 1994 and all subsequent calendar years, in the administrative and property cost centers.

(b) A contractor shall be permitted to retain, after allowable shifting, seventy-five percent of cost savings in the ~~((administrative cost area or the property cost area))~~ following cost centers, multiplied by medical care recipient days of service, if the average rate for the cost report period, computed according to department instructions in such cost area, is at or below the fiftieth percentile rate;

(i) For calendar 1993, in the combined operational and administrative cost centers or the property cost center;

(ii) For calendar year 1994 and all subsequent calendar years, in the administrative cost center or the property cost center.

(c) A contractor shall be permitted to retain, after allowable shifting, fifty percent of cost savings in the ~~((administrative cost area or property cost area))~~ following cost centers, multiplied by medical care recipient days of service, if the average rate for the cost report period, computed according to department instructions in such cost area, is above the fiftieth percentile rate;

(i) For calendar year 1993, in the combined operational and administrative cost centers or the property cost center;

(ii) For calendar year 1994 and all subsequent calendar years, the administrative cost center or the property cost center.

~~((3))~~ (2) The department shall recover cost savings attributable to any industrial insurance dividend or premium discount under RCW 51.16.035 in proportion to the ratio of medical care recipients to other patients at the facility.

~~((4) For the 1983 cost reporting period, the department shall compute cost savings but shall prorate allowable savings by the proportion of Medicaid patient days reported for July 1st through December 31st to the total number of Medicaid patient days reported for the year.~~

~~(5))~~ (3) The department shall compute cost savings calculated for the final settlement on closing cost reports using property costs without consideration of any gain or loss on the sale of assets in the report year.

AMENDATORY SECTION (Amending Order 3634, filed 9/14/93, effective 10/15/93)

WAC 388-96-525 Education and training. (1) Necessary and ordinary expenses of on-the-job training and in-service training required for employee orientation and certification training directly related to the performance of duties assigned will be allowable costs.

(2) Ordinary expenses of nursing assistant training conducted pursuant to chapter 18.52A RCW will be allowable costs.

(3) Necessary and ordinary expenses of recreational and social activity training conducted by the contractor for volunteers will be allowable costs. Expenses of training programs for other nonemployees will not be allowable costs.

(4) Expenses for travel in the states of Idaho, Oregon, and Washington and the province of British Columbia associated with education and training will be allowable if the expenses meet the requirements of this chapter. Expenses incurred for education and training at sites outside of the states of Idaho, Oregon, and Washington and the province of British Columbia are unallowable costs.

(5) Costs designated by this section as allowable shall be subject to any applicable cost center limit established by this chapter.

AMENDATORY SECTION (Amending Order 3634, filed 9/14/93, effective 10/15/93)

WAC 388-96-533 Maximum allowable compensation of certain administrative personnel. (1) The department shall allow prudent and cost-conscious costs of compensation for administrative personnel, subject to any applicable cost center limit promulgated by this chapter.

(2) Compensation of the licensed administrator shall be allowable only if the department is given written notice of the administrator's employment within ten days after the employment begins.

(3) The contractor shall maintain time records which are adequate for audit for the licensed administrator, assistant administrator, and/or administrator-in-training. The contractor shall include in such records verification of the actual hours of service performed for the nursing home.

(4) The department shall not consider costs of an administrator-in-training for the purpose of setting the administrative prospective rate. The department shall reimburse the costs of an approved administrator-in-training program by an ~~((adjustment))~~ add-on to the current prospective rate; unless, the administrative cost center is at or above the median cost limit for the facility's peer group reduced or increased under WAC 388-96-719. To obtain ~~((an adjustment))~~ a rate add-on, the contractor shall submit a request for an ~~((increase in))~~ add-on to its current prospective rate together with necessary documentation which shall include:

(a) A copy of the department of licensing approval of the administrator-in-training program, and

(b) A schedule indicating the commencement date, expected termination date, salary or wage, hours, and costs of benefits. The contractor shall notify the department, at least thirty days in advance, of the actual termination date of the administrator-in-training program. Upon termination of the program, the department shall reduce the current prospective rate by an amount corresponding to the ~~((cost of the program))~~ rate add-on; and

(c) If the contractor does not use the administrator-in-training funds for the purpose for which they were granted, the department shall immediately recoup the misspent or unused funds.

(5) As similarly provided in WAC 388-96-210 regarding field audits, the department shall commence to apply a facility's peer group median cost plus percentage limit in the administrative cost area, in place of administrative personnel compensation limits previously contained in this section, beginning with report year 1992.

AMENDATORY SECTION (Amending Order 2573, filed 12/23/87)

WAC 388-96-534 ~~((Disclosure and approval of))~~ Joint ~~((facility))~~ cost allocation disclosure (JCAD). (1) The contractor shall disclose to the department:

(a) The nature and purpose of all costs representing allocations of joint facility costs; and

(b) The methodology of the allocation utilized.

(2) The contractor shall demonstrate in such disclosure:
(a) The services involved are necessary and nonduplicative; and

(b) Costs are allocated in accordance with benefits received from the resources represented by those costs.

(3) The contractor shall make such disclosure not later than September 30th for each year; except, a new contractor shall submit the first year's disclosure together with the submissions required by WAC 388-96-026.

(4) The department shall ~~((approve such))~~ determine the acceptability of the JCAD methodology not later than December 31, ((1980, and not later than December 31st for)) of each year ((thereafter)). Costs disclosed, allocated, and reported in conformity with a department-approved JCAD methodology must undergo review and be determined allowable costs for the purposes of rate setting and audit.

(5) An amendment or revision to an approved methodology shall be submitted to the department for approval at least ninety days prior to the effective date of the amendment or revision.

(6) Where a contractor will begin to incur joint facility costs at some time other than the beginning of the calendar year, the contractor shall provide the information required in subsections (1) and (2) of this section at least ninety days prior to the date the cost will first be incurred.

(7) Joint facility costs not disclosed, allocated, and reported in conformity with this section are nonallowable costs.

AMENDATORY SECTION (Amending Order 3270, filed 10/29/91, effective 11/29/91)

WAC 388-96-559 Cost basis of land and depreciation base. (1) For all partial or whole rate periods after December 31, 1984, the total depreciation base of depreciable assets and the cost basis of land shall be the lowest of:

(a) The contractor's appraisal, if any;

(b) The department's appraisal obtained through the department of general administration of the state of Washington, if any; or

(c) The historical purchase cost of the contractor, or lessor if the assets are leased by the contractor, in acquiring ownership of the asset in an arm's-length transaction, and preparing the asset for use, less goodwill, and less accumulated depreciation, if applicable, incurred during periods the assets have been used in or as a facility by any and all contractors. Such accumulated depreciation is to be measured in accordance with subsection (5) of this section and WAC 388-96-561, 388-96-565, and 388-96-567. ~~((Estimated))~~ Where the straight-line or sum-of-the-years digits method of depreciation is used the contractor:

(i) May deduct salvage values from historical costs for each cloth based item, e.g., mattresses, linen, and draperies; and

(ii) Shall deduct salvage ~~((value shall be deducted))~~ values from historical ~~((cost where the straight-line or sum-of-the-years digits method of depreciation is used))~~ costs of at least:

(A) Five percent of the historical value for each noncloth item included in moveable equipment; and

(B) Twenty-five percent of the historical value for each vehicle.

(2) Unless otherwise provided or limited by this chapter or by chapter 74.46 RCW, the department shall, in determining the total depreciation base of a depreciable real or personal asset owned or leased by the contractor, deduct

depreciation relating to all periods subsequent to the more recent of:

(a) The date such asset was first used in the medical care program; or

(b) The most recent date such asset was acquired in an arm's-length purchase transaction which the department is required to recognize for Medicaid cost reimbursement purposes.

No depreciation shall be deducted for periods such asset was not used in the medical care program or was not used to provide nursing care.

(3) The department may have the fair market value of the asset at the time of purchase established by appraisal through the department of general administration of the state of Washington if:

(a) The department challenges the historical cost of an asset; or

(b) The contractor cannot or will not provide the historical cost of a leased asset and the department is unable to determine such historical cost from its own records or from any other source.

The contractor may allocate or reallocate values among land, building, improvements, and equipment in accordance with the department's appraisal.

If an appraisal is conducted, the depreciation base of the asset and cost basis of land will not exceed the fair market value of the asset. An appraisal conducted by or through the department of general administration shall be final unless the appraisal is shown to be arbitrary and capricious.

(4) For leased assets, the department may examine documentation in its files or otherwise obtainable from any source to determine:

(a) The lessor's purchase acquisition date; or

(b) The lessor's historical cost at the time of the last arm's-length purchase transaction.

If the department is unable to determine the lessor's acquisition date by review of its records or other records, the department, in determining fair market value as of such date, may use the construction date of the facility, as found in the state fire marshal's records or other records, as the lessor's purchase acquisition date of leased assets.

(5) For all rate periods past or future, where depreciable assets or land are acquired from a related organization, the contractor's depreciation base and land cost basis shall not exceed the base and basis the related organization had or would have had under a contract with the department.

(6) If a contractor cannot or will not provide the lessor's purchase acquisition cost of assets leased by the contractor and the department is unable to determine historical purchase cost from another source, the appraised asset value of land, building, or equipment, determined by or through the department of general administration shall be adjusted, if necessary, by the department using the *Marshall and Swift Valuation Guide* to reflect the value at the lessor's acquisition date. If an appraisal has been prepared for leased assets and the assets subsequently sell in the first arm's-length transaction since January 1, 1980, under subsection (8) of this section, the *Marshall and Swift Valuation Guide* will be used to adjust, if necessary, the asset value determined by the appraisal to the sale date. If the assets are located in a city for which the *Marshall and Swift Valuation Guide* publishes a specific index, or if the assets are located in a

county containing that city, the city-specific index shall be used to adjust the appraised value of the asset. If the assets are located in a city or county for which a specific index is not calculated, the *Western District Index* calculated by Marshall and Swift shall be used.

(7) For all rates effective on or after January 1, 1985, if depreciable assets or land are acquired by purchase which were used in the medical care program on or after January 1, 1980, the depreciation base or cost basis of such assets shall not exceed the net book value existing at the time of such acquisition or which would have existed had the assets continued in use under the previous Medicaid contract with the department; except that depreciation shall not be accumulated for periods during which such assets were not used in the medical care program or were not in use in or as a nursing care facility.

(8)(a) Subsection (7) of this section shall not apply to the most recent arm's-length purchase acquisition if it occurs ten years or more after the previous arm's-length transfer of ownership nor shall subsection (7) of this section apply to the first arm's-length purchase acquisition of assets occurring on or after January 1, 1980, for facilities participating in the Medicaid program before January 1, 1980. The depreciation base or cost basis for such acquisitions shall not exceed the lesser of the fair market value as of the date of purchase of the assets determined by an appraisal conducted by or through the department of general administration or the owner's acquisition cost of each asset, land, building, or equipment. An appraisal conducted by or through the department of general administration shall be final unless the appraisal is shown to be arbitrary and capricious. Should a contractor request a revaluation of an asset, the contractor must document ten years have passed since the most recent arm's-length transfer of ownership. As mandated by Section 2314 of the Deficit Reduction Act of 1984 (P.L. 98-369) and state statutory amendments, and under RCW 74.46.840, for all partial or whole rate periods after July 17, 1984, this subsection is inoperative for any transfer of ownership of any asset, including land and all depreciable or nondepreciable assets, occurring on or after July 18, 1984, leaving subsection (7) of this section to apply without exception to acquisitions occurring on or after July 18, 1984, except as provided in subsections (8)(b) and (9) of this section.

(b) For all rates after July 17, 1984, subsection (8)(a) shall apply, however, to transfers of ownership of assets:

(i) Occurring before January 1, 1985, if the costs of such assets have never been reimbursed under Medicaid cost reimbursement on an owner-operated basis or as a related party lease; or

(ii) Under written and enforceable purchase and sale agreements dated before July 18, 1984, which are documented and submitted to the department before January 1, 1988.

(c) For purposes of Medicaid cost reimbursement under this chapter, an otherwise enforceable agreement to purchase a nursing home dated before July 18, 1984, shall be considered enforceable even though the agreement contains:

(i) No legal description of the real property involved; or

(ii) An inaccurate legal description, notwithstanding the statute of frauds or any other provision of law.

(9)(a) In the case of land or depreciable assets leased by the same contractor since January 1, 1980, in an arm's-

length lease, and purchased by the lessee/contractor, the lessee/contractor shall have the option to have the:

(i) Provisions of subsection (8) of this section apply to the purchase; or

(ii) Reimbursement for property and return on investment continue to be calculated under the provisions contained in RCW 74.46.530 (1)(e) and (f) and WAC 388-96-754(5). Reimbursement shall be based upon provisions of the lease in existence on the date of the purchase.

(b) The lessee/contractor may select the option in subsection (9)(a)(ii) of this section only when the purchase date meets one of the following criteria. The purchase date is:

(i) After the lessor has declared bankruptcy or has defaulted in any loan or mortgage held against the leased property;

(ii) Within one year of the lease expiration or renewal date contained in the lease;

(iii) After a rate setting for the facility in which the reimbursement rate set, under this chapter and under chapter 74.46 RCW, no longer is equal to or greater than the actual cost of the lease; or

(iv) Within one year of any purchase option in existence on January 1, 1988.

(10) For purposes of establishing the property and return on investment component rates, the value of leased equipment, if unknown by the contractor, may be estimated by the department using previous department of general administration appraisals as a data base. The estimated value may be adjusted using the *Marshall and Swift Valuation Guide* to reflect the value of the asset at the lessor's purchase acquisition date.

AMENDATORY SECTION (Amending Order 2742, filed 12/21/88)

WAC 388-96-565 Lives. (1) The contractor shall use lives reflecting the estimated actual useful life of assets, for example, land improvements, buildings, equipment, leasehold improvements, and other assets. Lives shall not be ~~((no))~~ shorter than guideline lives ~~((contained in the Internal Revenue Service class life ADR system or))~~ published by the American Hospital Association in computing allowable depreciation. The shortest building life a contractor may use is thirty years~~((;))~~; provided that, in cases of newly constructed buildings containing newly licensed nursing home beds, the shortest lives shall be the ~~((following))~~ most recently published lives for construction ~~((class))~~ classes as defined and described in the *Marshall Valuation Service* published by the Marshall Swift Publication Company ~~((A or B class—forty five years; C class—thirty five years; and D class—thirty years)).~~

(2) The contractor shall measure lives from the date on which the assets were first used in the medical care program or from the date of the most recent arm's-length acquisition by purchase of the asset, whichever is more recent. The contractor shall extend lives to reflect periods, if any, during which assets were not used to provide nursing care or were not used in the medical care program.

(3) Contractors shall depreciate building improvements over the remaining useful life of the building, as modified by the improvement, but not less than fifteen years.

(4) Improvements to leased property which are the responsibility of the contractor under the terms of the lease shall be depreciated over the useful life of the improvement.

(5) A contractor may change the estimate of an asset's useful life to a longer life for purposes of depreciation.

AMENDATORY SECTION (Amending Order 3615, filed 8/11/93, effective 9/11/93)

WAC 388-96-585 Unallowable costs. (1) The department shall not allow costs if not documented, necessary, ordinary, and related to the provision of care services to authorized patients.

(2) The department shall include, but not limit unallowable costs to the following:

(a) Costs of items or services not covered by the medical care program. Costs of nonprogram items or services even if indirectly reimbursed by the department as the result of an authorized reduction in patient contribution;

(b) Costs of services and items (~~provided to SNF or ICF recipients~~) covered by the (~~department's medical care program~~) Medicaid program but not included in (~~SNF or ICF services respectively~~) the Medicaid nursing facility daily payment rate. Items and services covered by the (~~medical care program~~) Medicaid nursing facility daily payment rate are listed in chapters 388-86 and 388-88 WAC;

(c) Costs associated with a capital expenditure subject to Section 1122 approval (Part 100, Title 42 C.F.R.) if the department found the capital expenditure inconsistent with applicable standards, criteria, or plans. If the contractor did not give the department timely notice of a proposed capital expenditure, all associated costs shall be nonallowable as of the date the costs are determined not to be reimbursable under applicable federal regulations;

(d) Costs associated with a construction or acquisition project requiring certificate of need approval pursuant to chapter 70.38 RCW if such approval was not obtained;

(e) Costs of outside activities (e.g., costs allocable to the use of a vehicle for personal purposes or related to the part of a facility leased out for office space);

(f) Salaries or other compensation of owners, officers, directors, stockholders, and others associated with the contractor or home office, except compensation paid for service related to patient care;

(g) Costs in excess of limits or violating principles set forth in this chapter;

(h) Costs resulting from transactions or the application of accounting methods circumventing the principles of the prospective cost-related reimbursement system;

(i) Costs applicable to services, facilities, and supplies furnished by a related organization in excess of the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere;

(j) Bad debts. Beginning July 1, 1983, the department shall allow bad debts of Title XIX recipients only if:

(i) The debt is related to covered services;

(ii) It arises from the recipient's required contribution toward the cost of care;

(iii) The provider can establish reasonable collection efforts were made;

(iv) The debt was actually uncollectible when claimed as worthless; and

(v) Sound business judgment established there was no likelihood of recovery at any time in the future.

Reasonable collection efforts shall consist of three documented attempts by the contractor to obtain payment. Such documentation shall demonstrate the effort devoted to collect the bad debts of Title XIX recipients is at the same level as the effort normally devoted by the contractor to collect the bad debts of non-Title XIX patients. Should a contractor collect on a bad debt, in whole or in part, after filing a cost report, reimbursement for the debt by the department shall be refunded to the department to the extent of recovery. The department shall compensate a contractor for bad debts of Title XIX recipients at final settlement through the final settlement process only.

(k) Charity and courtesy allowances;

(l) Cash, assessments, or other contributions, excluding dues, to charitable organizations, professional organizations, trade associations, or political parties, and costs incurred to improve community or public relations. Any portion of trade association dues attributable to legal and consultant fees and costs in connection with lawsuits or other legal action against the department shall be unallowable;

(m) Vending machine expenses;

(n) Expenses for barber or beautician services not included in routine care;

(o) Funeral and burial expenses;

(p) Costs of gift shop operations and inventory;

(q) Personal items such as cosmetics, smoking materials, newspapers and magazines, and clothing, except items used in patient activity programs where clothing is a part of routine care;

(r) Fund-raising expenses, except expenses directly related to the patient activity program;

(s) Penalties and fines;

(t) Expenses related to telephones, televisions, radios, and similar appliances in patients' private accommodations;

(u) Federal, state, and other income taxes;

(v) Costs of special care services except where authorized by the department;

(w) Expenses of (~~key-man insurance and other insurance or retirement plans~~) any employee benefit not in fact made available to all employees on an equal or fair basis in terms of costs to employees and benefits commensurate to such costs, e.g., key-man insurance, other insurance, or retirement plans;

(x) Expenses of profit-sharing plans;

(y) Expenses related to the purchase and/or use of private or commercial airplanes which are in excess of what a prudent contractor would expend for the ordinary and economic provision of such a transportation need related to patient care;

(z) Personal expenses and allowances of owners or relatives;

(aa) All expenses for membership in professional organizations and all expenses of maintaining professional licenses (~~or membership in professional organizations~~), e.g., nursing home administrator's license;

(bb) Costs related to agreements not to compete;

(cc) Goodwill and amortization of goodwill;

(dd) Expense related to vehicles which are in excess of what a prudent contractor would expend for the ordinary and

economic provision of transportation needs related to patient care;

(ee) Legal and consultant fees in connection with a fair hearing against the department relating to those issues where:

(i) A final administrative decision is rendered in favor of the department or where otherwise the determination of the department stands at the termination of administrative review; or

(ii) In connection with a fair hearing, a final administrative decision has not been rendered; or

(iii) In connection with a fair hearing, related costs are not reported as unallowable and identified by fair hearing docket number in the period they are incurred if no final administrative decision has been rendered at the end of the report period; or

(iv) In connection with a fair hearing, related costs are not reported as allowable, identified by docket number, and prorated by the number of issues decided favorably to a contractor in the period a final administrative decision is rendered.

(ff) Legal and consultant fees in connection with a lawsuit against the department, including suits which are appeals of administrative decisions;

(gg) Lease acquisition costs and other intangibles not related to patient care;

(hh) Interest charges assessed by the state of Washington for failure to make timely refund of overpayments and interest expenses incurred for loans obtained to make such refunds;

(ii) Beginning January 1, 1985, lease costs, including operating and capital leases, except for office equipment operating lease costs;

(jj) Beginning January 1, 1985, interest costs;

(kk) Travel expenses outside the states of Idaho, Oregon, and Washington, and the Province of British Columbia. However, travel to or from the home or central office of a chain organization operating a nursing home will be allowed whether inside or outside these areas if such travel is necessary, ordinary, and related to patient care;

(ll) Board of director fees for services in excess of one hundred dollars per board member, per meeting, not to exceed twelve meetings per year;

(mm) Moving expenses of employees in the absence of a demonstrated, good-faith effort to recruit within the states of Idaho, Oregon, and Washington, and the Province of British Columbia;

(nn) For rates effective after June 30, 1993, depreciation expense in excess of four thousand dollars per year for each passenger car or other vehicles primarily used for the administrator, facility staff, or central office staff;

(oo) Any costs associated with the use of temporary health care personnel from any nursing pool not registered with the director of the department of health at the time of such pool personnel use;

(pp) Costs of payroll taxes associated with compensation in excess of allowable compensation for owners, relatives, and administrative personnel;

(qq) Department-imposed postsurvey charges incurred by the facility as a result of subsequent inspections which occur beyond the first postsurvey visit during the certification survey calendar year;

(rr) For all partial or whole rate periods after July 17, 1984, costs of assets, including all depreciable assets and land, which cannot be reimbursed under the provisions of the Deficit Reduction Act of 1984 (DEFRA) and state statutes and regulations implementing DEFRA;

(ss) Effective for July 1, 1991, and all following rates, compensation paid for any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement in excess of the amount of compensations which would have been paid for such hours of nursing care services had they been paid at the combined regular and overtime average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classification of registered nurse, licensed practical nurse, or nursing assistant at the same nursing facility, as reported on the facility's filed cost report for the most recent cost report period;

(tt) Outside consultation expenses required pursuant to WAC 388-88-135;

(uu) Fees associated with filing a bankruptcy petition under chapters VII, XI, and XIII, pursuant to the Bankruptcy Reform Act of 1978, Public Law 95-598;

(vv) All advertising or promotional costs of any kind, except reasonable costs of classified advertising in trade journals, local newspapers, or similar publications for employment of necessary staff.

AMENDATORY SECTION (Amending Order 1892, filed 10/13/82)

WAC 388-96-704 Prospective reimbursement rates.

(1) The department will determine prospective reimbursement rates for ((SNF and ICF)) services provided to recipients. Each rate represents the contractor's maximum compensation for one patient day of care of a recipient determined by the department to require ((SNF or ICF)) nursing facility care.

(2) A contractor may also be assigned an individual prospective rate for a specific recipient determined by the department to require exceptional care.

AMENDATORY SECTION (Amending Order 3615 [3555], filed 8/11/93 [5/26/93], effective 9/11/93 [6/26/93])

WAC 388-96-709 Prospective rate revisions—Reduction in licensed beds. (1) The department will revise a contractor's prospective rate when the contractor reduces the number of its licensed beds and:

(a) Notifies the department in writing thirty days before the licensed bed reduction; and

(b) Supplies a copy of the new bed license and documentation of the number of beds sold, exchanged or otherwise placed out of service, along with the name of the contractor that received the beds, if any; and

(c) Requests a rate revision.

(2) The revised prospective rate shall comply with all the provisions of rate setting contained in this chapter including all lids and maximums unless otherwise specified in this section and remain in effect until a prospective rate can be set according to WAC 388-96-713.

(3) The revised prospective rate shall be effective the first of a month determined by where in the month the effective date of the licensed bed reduction occurs or the

date the contractor complied with subsections 1(a), (b), and (c) of this section as follows:

(a) If the contractor complied with subsection (1)(a), (b), and (c) of this section and the effective date of the reduction falls:

(i) Between the first and the fifteenth of the month, then the revised prospective rate is effective the first of the month in which the reduction occurs; or

(ii) Between the sixteenth and the end of the month, then the revised prospective rate is effective the first of the month following the month in which the reduction occurs; or

(b) When the contractor fails to comply with subsection 1(a) of this section, then the date the department receives from the contractor the documentation that is required by subsection (1)(b) and (c) of this section shall become the effective date of the reduction for the purpose of applying subsection (3)(a)(i) and (ii) of this section.

(4) For the first fiscal year of a state biennium, if a contractor's prospective rate is based on either WAC 388-96-710(4) or WAC 388-96-719(2), the department shall revise the contractor's prospective rate as follows:

(a) For the nursing service and food cost centers, the rate will remain the same as before the reduction in licensed beds;

(b) For property, ~~((administration))~~ administrative, and ~~((operations))~~ operational cost centers; and return on investment rate, the department will use the reduced total of licensed beds to determine occupancy level under WAC ~~((388-96-719(4)))~~ 388-96-719(10). If the department computed the contractor's occupancy level of licensed beds ~~((computed))~~ on the ~~((most recent, complete, desk-reviewed annual))~~ Medicaid cost report ~~((before the licensed bed reduction))~~ for the calendar year immediately prior to the first fiscal year of the state biennium in which the bed reduction occurs and the occupancy level:

(i) Was above eighty-five percent and remains above eighty-five percent after the reduction, then the department will:

(A) Not change the ~~((administration))~~ administrative and ~~((operation))~~ operational rate;

(B) Recompute the property rate to reflect the new asset basis using actual patient days from the Medicaid cost report for the prior calendar year; and

(C) Recompute the return on investment rate to reflect the new asset basis and the change in the property cost center using actual patient days from the Medicaid cost report for the prior calendar year.

(ii) Was below eighty-five percent and changes to at or above eighty-five percent after the reduction, then the department will recompute rates for:

(A) ~~((Administration))~~ Administrative and ~~((operations))~~ operational cost centers using actual patient days from the Medicaid cost report for the calendar year immediately prior to the first fiscal year of the state biennium in which the bed reduction occurs; and

(B) Property and return on investment ~~((rates))~~ cost centers using actual patient days from the Medicaid cost report for the prior calendar year and the new asset basis.

(iii) Was below eighty-five percent and remains below eighty-five percent after the reduction, then the department will recompute rates for:

(A) ~~((Administration))~~ Administrative and ~~((operation))~~ operational cost centers using the change in patient days from the Medicaid cost report for the calendar year immediately prior to the first fiscal year of the state biennium in which the bed reduction occurs that results from the reduced number of licensed beds used in calculating the eighty-five percent occupancy level; and

(B) Property and return on investment cost centers using the change in patient days from the Medicaid cost report for the prior calendar year that results from the reduced number of licensed beds used in calculating the eighty-five percent occupancy level and to reflect the new asset basis.

(5) For the second fiscal year of a state biennium, the department shall revise the contractor's prospective rate, as identified under subsection (4) of this section, as follows:

(a) For the nursing service and food cost centers, the rate will remain the same as before the reduction in licensed beds;

(b) For property and return on investment rates and to determine a new occupancy level under WAC 388-96-719(10), the department will use the reduced total of licensed beds and the cost report from the prior calendar year;

(c) If the occupancy level prior to the bed reduction:
(i) Was above eighty-five percent and remains above eighty-five percent after the reduction, then the department will:

(A) Not revise the administrative or operational rates; and

(B) Recompute the property rate to reflect the new asset basis using actual patient days from the Medicaid cost report for the prior calendar year; and

(C) Recompute the return on investment rate to reflect the new asset basis and the change in the property cost center using actual patient days from the Medicaid cost report for the prior calendar year.

(ii) Was below eighty-five percent and changes to eighty-five percent or above after the reduction, then the department will:

(A) Not revise the administrative or operational rates; and

(B) Revise property and return on investment using actual patient days from the Medicaid cost report for the prior calendar year and the new asset basis.

(iii) Was below eighty-five percent and remains below eighty-five percent after the reduction, then the department will:

(A) Not revise administrative or operational rates; and

(B) Revise the property and return on investment rates using the change in patient days from the Medicaid cost report for the prior calendar year that results from the reduced number of licensed beds used in calculating the eighty-five percent occupancy level and to reflect the new asset basis.

(6) If a contractor's prospective rate is based on either a sample or budget per WAC 388-96-710, the department shall revise the contractor's prospective rate by applying subsection (4)(a) and (b) or (5)(a) and (b) of this section as applicable and:

(a) Using the days from the timely received budget per WAC 388-96-026(2) and using occupancy as "selected" by the department when the initial rate was set; or

(b) If the budget was not received timely in accordance with WAC 388-96-026(2), using the product of the statewide average occupancy as reported on all nursing facilities' prior calendar year Medicaid cost reports multiplied by the number of calendar days in the calendar year following the decrease licensed bed capacity multiplied by the number of licensed beds on the new license.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending Order 3615, filed 8/11/93, effective 9/11/93)

WAC 388-96-710 Prospective reimbursement rate for new contractors. (1) The department shall establish an initial prospective reimbursement rate for a new contractor as defined under WAC 388-96-026 (1)(a) or (b) within sixty days following receipt by the department of a properly completed projected budget (see WAC 388-96-026). The rate shall take effect as of the effective date of the contract and shall comply with all the provisions of rate setting contained in this chapter including all lids and maximums set forth in this chapter.

(2) To set the initial prospective reimbursement rate for a new contractor as defined in WAC 388-96-026 (1)(a) and (b), the department shall:

(a) Determine whether the new contractor belongs to the metropolitan statistical area (MSA) peer group or the non-MSA peer group using the latest information received from the office of management and budget or the appropriate federal agency;

(b) Select all nursing facilities from the department's records of all the current Medicaid nursing facilities in the new contractor's peer group with the same bed capacity plus or minus ten beds. If the selection does not result in at least seven facilities, then the department will increase the bed capacity by plus or minus five bed increments until a sample of at least seven nursing facilities is obtained; ~~(and)~~

(c) Based ~~(upon)~~ on the ((most recent)) information for the nursing facilities selected under subsection (2)(b) of this section and available to the department ((for the nursing facilities selected under subsection (2)(b) of this section)) on the day the new contractor began participating in the program, rank from the highest to the lowest ((to the highest)) the rates in nursing services, food, administrative, and operational cost centers and based on this ranking:

(i) Determine the rate in the middle of the ranking, above and below which lie an equal number of rates (median) and then identify the rate immediately above the median for each cost center identified in subsection (2)(c) of this section. The rate immediately above the median will be known as the "selected rate" for each cost center; and

(ii) Set the new contractor's rates for each cost center identified in subsection (2)(c) at the lower of the "selected rate" or the budget rate; and

(iii) Set the property rate in accordance with the provisions of this chapter; and

(iv) Set the return on investment rate in accordance with the provisions of this chapter. In computing the financing allowance, the department shall use for the nursing services,

food, administrative, and operational cost centers the rates set pursuant to subsection (2)(c)(i) and (ii) of this section.

(d) Any subsequent revisions to the rate components of the sample members will not impact a "selected rate" component of the initial prospective rate established for the new contractor under this subsection; unless, a "selected rate" identified in subsection (2)(c) is at the median cost limit established for July 1, then the median cost limit established after October 31 for that "selected rate" component becomes the component rate for the new contractor.

(3) If the department has not received a properly completed projected budget from the new contractor as defined under WAC 388-96-026 (1)(a) or (b) at least sixty days prior to the effective date of the new contract, the department shall establish rates for:

(a) Nursing services, food, administrative and operational cost centers based on the "selected rates" as determined under subsection (2)(c) of this section that are in effect on the date the new contractor began participating in the program; and

(b) Property in accordance with the provisions of this chapter using for the new contractor as defined under:

(i) ~~((As defined under))~~ WAC 388-96-026 (1)(a), information from the certificate of need; or

(ii) ~~((As defined under))~~ WAC 388-96-026 (1)(b), information provided by the new contractor within ten days of the date the department requests the information in writing. If the contractor as defined under WAC 388-96-026 (1)(b), has not provided the requested information within ten days of the date requested, then the property rate will be zero. The property rate will remain zero until the information is received.

(c) Return on investment rate in accordance with the provisions of this chapter using the "selected rates" established under subsection (2)(c) of this section that are in effect on the date the new contractor began participating in the program, to compute the working capital provision and variable return for the new contractor as defined under:

(i) ~~((As defined under))~~ WAC 388-96-026 (1)(a), information from the certificate of need; or

(ii) ~~((As defined under))~~ WAC 388-96-026 (1)(b), information provided by the new contractor within ten days of the date the department requests the information in writing. If the contractor as defined under WAC 388-96-026 (1)(b), has not provided the requested information within ten days of the date requested, then the net book value of allowable assets will be zero. The financing allowance rate component will remain zero until the information is received.

(4) The initial prospective reimbursement rate for a new contractor as defined under WAC 388-96-026 (1)(c), shall be the last prospective reimbursement rate paid by the department to the Medicaid contractor operating the nursing facility immediately prior to the effective date of the new contract.

(5) If the new contractor as defined under WAC 388-96-026 (1)(a), (b), or (c) began participating in the program beginning in the first year of a state fiscal biennium or had its first year of a state fiscal biennium rate set under WAC 388-96-710(6), its July 1 prospective reimbursement rate for the second year of that state fiscal biennium shall:

(a) Be the initial prospective rate set in accordance with WAC 388-96-710 inflated in accordance with WAC 388-96-719; and

(b) Remain in effect until a prospective rate can be set under WAC 388-96-713.

(6) If the new contractor began participating in the program beginning in the second year of a state fiscal biennium, its July 1 prospective reimbursement rate for the first year of the next state fiscal biennium will be set for the new contractor defined under:

(a) WAC 388-96-026 (1)(a) and (b), by applying WAC 388-96-710 (2) and (3) using the July 1 rate components established for the first year of the state's fiscal biennium following the second year of the state's fiscal biennium in which the new contractor began participating in the program; or

(b) WAC 388-96-026 (1)(c), by using twelve months of cost report data derived from the old contractor's data and the new contractor's data for the cost report year prior to the first year of the state fiscal biennium for which the rate is being set and applying WAC 388-96-719 through 388-96-754 to set the component rates.

(7) For July 1, 1993 rate setting only, if a new contractor as defined under WAC 388-96-026(1) is impacted by the peer group median cost plus twenty-five percent limit in its nursing services cost, such contractor shall not receive a per patient day prospective rate in nursing services for July 1, 1993 lower than the same contractor's prospective rate in nursing services as of June 30, 1993, as reflected in departmental records as of that date, inflated by any increase in the IPD Index authorized by WAC 388-96-719.

AMENDATORY SECTION (Amending Order 3634, filed 9/14/93, effective 10/15/93)

WAC 388-96-719 Method of rate determination. (1) The principles contained in this section are inherent in rate setting effective with July 1, 1993 and following nursing facility prospective rates.

(2) Reimbursement rates shall be established or adjusted prospectively, on a per patient day basis, once each calendar year, to be effective July 1, and shall follow a two-year cycle corresponding to each state fiscal biennium; provided that, a nursing facility's rate for the first fiscal year of any biennium, unless the operator qualifies as a "new contractor" under the provisions of this chapter, must be established upon its own prior calendar year cost report data covering at least six months.

(3) A contractor's rates in the nursing services, food, administrative, and operational cost centers for the first year of the state fiscal biennium (first fiscal year) shall be adjusted downward or upward for economic trends and conditions when set effective July 1 of the first fiscal year in accordance with subsections (4), (5) and (6) of this section, and adjusted again downward or upward for economic trends and conditions effective July 1 of the second year of the state fiscal biennium (second fiscal year) in accordance with subsections (7), (8) and (9) of this section.

(4) The July 1 cost center rates referenced in subsection (3) of this section shall, for the first fiscal year of each biennium, be adjusted by the change in the Implicit Price Deflator for Personal Consumption Expenditures Index

published by the United States Department of Commerce, Economics and Statistics Administration, Bureau of Economic Analysis ("IPD Index").

(5) The period used to measure the change in the IPD Index shall be the calendar year preceding the July 1 commencement of the state fiscal biennium (first calendar year). The change in the IPD Index shall be calculated by:

(a) Consulting the latest quarterly IPD Index available to the department no later than February 28 following the first calendar year to determine, as nearly as possible, the applicable expenditure levels as of December 31 of the first calendar year;

(b) Subtracting from the expenditure levels taken from the quarterly IPD Index described in subsection (5)(a) of this section the expenditure levels taken from the IPD Index for the quarter occurring one year prior to the quarterly IPD Index described in subsection (5)(a) of this section; and

(c) Dividing the difference by the level of expenditures from the quarterly IPD Index occurring one year prior to the quarterly IPD Index described in subsection (5)(a) of this section.

(6) In applying the change in the IPD Index to establish first fiscal year nursing services, food, administrative and operational cost center rates for a contractor having at least six months, but less than twelve months, of cost report data from the prior calendar year, the department shall prorate the downward or upward adjustment by a factor obtained by dividing the contractor's actual calendar days of report data by two, adding three hundred sixty-five, and dividing the resulting figure by five hundred forty-eight.

(7) For the second year of each state fiscal biennium, a contractor's July 1 cost center rates referenced in subsection (2) of this section shall be the July 1 component rates for the first year of the state fiscal biennium, adjusted downward by any decrease, or upward by one and one-half times any increase, in the Nursing Home Input Price Index without Capital Costs published by the Health Care Financing Administration of the United States Department of Health and Human Services ("HCFA Index").

(8) The period used to measure the change in the HCFA Index shall, subject to subsection (9) of this section, be the calendar year preceding the July 1 commencement of the state fiscal biennium (first fiscal year). The change in the HCFA Index shall be calculated by:

(a) Consulting the latest quarterly HCFA Index available to the department no later than February 28 following the first calendar year to determine, as nearly as possible, the applicable price levels as of December 31 of the first calendar year;

(b) Subtracting from the price levels taken from the quarterly HCFA Index described in subsection (8)(a) of this section the price levels taken from the HCFA Index for the quarter occurring one year prior to the quarterly HCFA Index described in subsection (8)(a) of this section; and

(c) Dividing the difference by the price levels from the quarterly HCFA Index occurring one year prior to the quarterly HCFA Index described in subsection (8)(a).

(9) In the event the change in the HCFA Index measured over the calendar year ending six months after the July 1 commencement of the state fiscal biennium (second calendar year), is twenty-five percent greater or less than the change in the HCFA Index measured over the first calendar

year, the department shall use any HCFA Index decrease, or one and one-half times any HCFA increase, from the second calendar year to adjust downward or upward, respectively, nursing facilities' nursing services, food, administrative, and operational component rates for July 1 of the second fiscal year of the biennium. The change in the HCFA Index shall be calculated by:

(a) Consulting the latest quarterly HCFA Index available to the department no later than February 28 following the second calendar year to determine, as nearly as possible, the applicable price levels as of December 31 of the second calendar year;

(b) Subtracting from the price levels taken from the quarterly HCFA Index described in subsection (9)(a) of this subsection the price levels taken from the HCFA Index for the quarter occurring one year prior to the quarterly HCFA Index described in subsection (9)(a) of this section; and

(c) Dividing the difference by the price levels from the quarterly HCFA Index occurring one year prior to the quarterly HCFA Index described in subsection (9)(a).

(10) The department shall compute the occupancy level for each facility in accordance with the following:

(a) For the first fiscal year of a state biennium, by dividing the actual number of patient days from the Medicaid cost report for the calendar year immediately prior to the first fiscal year of that state biennium by the product of the numbers of licensed beds ~~((and)) multiplied by~~ calendar days in the cost report period. ~~((If a facility's occupancy is below eighty five percent, the department shall compute, per patient day, return on investment, property, administrative, and operational prospective rates and limits utilizing patient days at the eighty five percent occupancy level. The department shall use actual occupancy level for facilities at or above eighty five percent occupancy))~~ If a facility's occupancy level is:

(i) At or above eighty-five percent, the department shall compute per patient day prospective rates and limits for nursing, food, administrative, operational, property and return on investment components using actual patient days;

(ii) Below eighty-five percent, the department shall compute per patient day prospective rates and limits for:

(A) Nursing and food components using actual patient days; and

(B) Administrative, operational, property and return on investment components using patient days at the eighty-five percent occupancy level.

(b) For the second fiscal year of a biennium, the department shall compute the occupancy level by dividing the actual number of patient days from the Medicaid cost report for the calendar year immediately prior to the second fiscal year of that biennium by the product of the number of licensed beds multiplied by calendar days in that report period. The department shall:

(i) Compute the per patient day return on investment rate and prospective property rate when a facility's occupancy level is:

(A) At or above eight-five percent occupancy level, using actual patient days; or

(B) Below eighty-five percent using patient days at the eighty-five percent occupancy level.

(ii) Not adjust nursing, food, administrative and occupational rates for any change to actual patient days, calendar

days, and/or occupancy as reported on the Medicaid cost report for the calendar year immediately prior to the second fiscal year of that state biennium. For bed increases or decreases the department shall use WAC 388-96-709 and other applicable WACs to determine occupancy level.

(c) For new contractors as defined under WAC 388-96-026(a) or (b), occupancy shall be based on a minimum of eighty-five percent for administrative, operations, property and return on investment.

(11) If a nursing home provides residential care to individuals other than those receiving nursing facility care:

(a) The facility may request in writing, and

(b) The department may grant in writing an exception to the requirements of subsection (10) of this section by including such other residents in computing occupancy. Exceptions granted shall be revocable effective ninety days after written notice of revocation is received from the department. ~~((No)) The department shall not grant an exception ~~((shall be granted))~~ unless the contractor submits with the annual cost report a certified statement of occupancy including all residents of the facility and their status or level of care.~~

AMENDATORY SECTION (Amending Order 3634, filed 9/14/93, effective 10/15/93)

WAC 388-96-722 Nursing services cost area rate.

(1) The nursing services cost center shall include for reporting and auditing purposes all costs relating to the direct provision of nursing and related care, including fringe benefits and payroll taxes for nursing and related care personnel and for the cost of nursing supplies. The cost of one-to-one care shall include care provided by qualified therapists and their employees only to the extent the costs are not covered by Medicare, part B, or any other coverage.

(2) In addition to other limits contained in this chapter, the department shall subject nursing service costs to a test for nursing staff hours according to the procedures set forth in subsection (3) of this section.

(3) The test for nursing staff hours referenced in subsection (2) of this section shall use a regression of hours reported by facilities for registered nurses, licensed practical nurses, and nurses' assistants, including:

(a) Purchased and allocated nursing and assistant staff time; and

(b) The average patient debility score for the corresponding facilities as computed by the department. The department shall compute the regression every two years which shall be effective for the entire biennium, beginning July 1, 1993, and shall take data for the regression from:

(i) Correctly completed cost reports; and

(ii) Patient assessments completed by nursing facilities and transmitted to the department in accordance with the minimum data set (MDS) format and instructions, as may be corrected after departmental audit or other investigation, for the corresponding calendar report year and available at the time the regression equation is computed. Effective January 1, 1988, the department shall not include the hours associated with off-site or class room training of nursing assistants and the supervision of such training for nursing assistants in the test for nursing staff hours. The department shall calculate and set for each facility a limit on nursing and

nursing assistant staffing hours at predicted staffing hours plus 1.75 standard errors, utilizing the regression equation calculated by the department. The department shall reduce costs for facilities with reported hours exceeding the limit by an amount equivalent to:

(A) The hours exceeding the limit;

(B) Times the average wage rate for nurses and assistants indicated on cost reports for the year in question, including benefits and payroll taxes allocated to such staff. The department shall provide contractors' reporting hours exceeding the limit the higher of their January 1983 patient care rate or the nursing services rate computed for them according to the provisions of this subsection, plus applicable inflation adjustments.

(4) For all rates effective after June 30, 1991, nursing services costs, as reimbursed within this chapter, shall not include costs of any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement (commonly referred to as "nursing pool" services), in excess of the amount of compensation which would have been paid for such hours of nursing care service had they been paid at the average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classification at the same nursing facility, as reported in the most recent cost report period.

(5) Staff of like classification shall mean only the nursing classifications of registered nurse, licensed practical nurse or nurse assistant. The department shall not recognize particular individuals, positions or subclassifications within each classification for whom pool staff may be substituting or augmenting. The department shall derive the facility average hourly wage for each classification by dividing the total allowable regular and overtime salaries and wages, including related taxes and benefits, paid to facility staff in each classification divided by the total allowable hours worked for each classification. All data used to calculate the average hourly wage for each classification shall be taken from the cost report on file with the department's rates management office for the most recent cost report period.

(6) Once every two years, when the rates are set at the beginning of each new biennium, starting with July 1, 1993 prospective rate setting, the department shall determine peer group median cost plus limits for the nursing services cost center in accordance with this section.

(a) The department shall divide into two peer groups nursing facilities located in the state of Washington providing services to Medicaid residents. These two peer groups shall be those nursing facilities:

(i) ~~((Those nursing facilities))~~ Located within a Metropolitan Statistical Area (MSA) as defined and determined by the United States Office of Management and Budget or other applicable federal office (MSA facilities); and

(ii) ~~((Those))~~ Not located within such an area (non-MSA facilities).

(b) Prior to any adjustment for economic trends and conditions under WAC 388-96-719, the facilities in each peer group shall be arrayed from lowest to highest by magnitude of per patient day adjusted nursing services cost from the prior cost report year, which shall include all costs of nursing supplies and purchased and allocated medical records, regardless of whether any such adjustments are

contested by the nursing facility. All available cost reports from the prior cost report year having at least six months of cost report data shall be used, including all closing cost reports covering at least six months. Costs current-funded by means of rate ~~((adjustments))~~ add-ons, granted under the authority of WAC 388-96-774 and WAC 388-96-776 and commencing in the prior cost report year, shall be included in costs arrayed ~~((+ however,))~~. Costs current-funded by rate ~~((adjustments))~~ add-ons commencing January 1 through June 30 following the prior cost report year shall be excluded from costs arrayed.

(c) The median or fiftieth percentile nursing facility cost in nursing services for each peer group shall then be determined. In the event there are an even number of facilities within a peer group, the adjusted nursing services cost of the lowest cost facility in the upper half shall be used as the median cost for that peer group. Facilities at the fiftieth percentile in each peer group and those immediately above and below it shall be subject to field audit in the nursing services cost area prior to issuing new July 1 rates.

(7) Except as may be otherwise specifically provided in this section, beginning with July 1, 1993 prospective rates, nursing services component rates for facilities within each peer group shall be set for the first fiscal year of each state biennium at the lower of:

(a) The facility's adjusted per patient day nursing services cost from the most recent prior report period, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719; or

(b) The median nursing services cost for the facility's peer group plus twenty-five percent of that cost, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719.

(8) ~~((Adjustments previously))~~ Rate add-ons made to current fund nursing services costs, pursuant to WAC 388-96-774 and WAC 388-96-776 and commencing in the prior cost report year, shall be reflected in first fiscal year prospective rates only by their inclusion in the costs arrayed ~~((and no))~~. A facility shall not receive, based ~~((upon))~~ on any calculation or consideration of any such prior report year ~~((adjustment))~~ rate add-ons, a July 1 nursing services rate higher than that provided in subsection (7) of this section.

(9) For July 1, 1993 rate setting only, if a nursing facility is impacted by the peer group median cost plus twenty-five percent limit in its nursing services cost, such facility shall not receive a per patient day prospective rate in nursing services for July 1, 1993 lower than the same facility's prospective rate in nursing services as of June 30, 1993, as reflected in departmental records as of that date, inflated by any increase in the IPD Index authorized by WAC 388-96-719.

(10) For July 1, 1993 rate setting only, nursing services rate adjustments, granted under authority of WAC 388-96-774 and commencing from January 1, 1993 through June 30, 1993, shall be added to a facility's nursing services rate established under subsection (7) of this section. For all rate setting beginning July 1, 1995 and following, ~~((such rate increases to reflect))~~ the department shall add nursing services rate ~~((adjustments))~~ add-ons, granted under authority of WAC 388-96-774 and WAC 388-96-776 and commencing from January 1 through June 30 preceding the start of ~~((the))~~

a state biennium, (~~shall be added~~) to a nursing facility's rate in nursing services, but only up to the facility's peer group median cost plus twenty-five percent limit.

(11) Subsequent to issuing the first fiscal year July 1 rates, the department shall recalculate the median costs of each peer group based upon the most recent adjusted nursing services cost report information in departmental records as of October 31 of the first fiscal year of each biennium. For any facility which would have received a higher or lower July 1 rate for the first fiscal year in nursing services based upon the recalculation of that facility's peer group median costs, the department shall reissue that facility's nursing services rate reflecting the recalculation, retroactive to July 1 of the first fiscal year.

(12) For both the initial calculation of peer group median costs and the recalculation based on adjusted nursing services cost information as of October 31 of the first fiscal year of the biennium, the department shall use adjusted information regardless of whether the adjustments may be contested or the subject of pending administrative or judicial review. Median costs shall not be adjusted to reflect subsequent administrative or judicial rulings, whether final or not.

(13) Neither the per patient day peer group median plus twenty-five percent limit for nursing services cost nor the test for nursing staff hours authorized in this section shall apply to the pilot facility designated to meet the needs of persons living with AIDS as defined by RCW 70.24.017 and specifically authorized for this purpose under the 1989 amendment to the Washington state health plan. The AIDS pilot facility shall be the only facility exempt from these limits.

(14) Beginning with July 1, 1994 prospective rates, a nursing facility's rate in nursing services for the second fiscal year of each biennium shall be that facility's nursing services rate as of July 1 of the first year of the same biennium reduced or increased utilizing the HCFA Index as authorized by WAC 388-96-719.

(15) The alternating procedures prescribed in this section and in WAC 388-96-719 for a nursing facility's two July 1 nursing services rates occurring within each biennium shall be followed in the same order for each succeeding biennium.

AMENDATORY SECTION (Amending Order 3634, filed 9/14/93, effective 10/15/93)

WAC 388-96-727 Food cost area rate. (1) The food cost center shall include for cost reporting purposes all costs of bulk and raw food and beverages purchased for the dietary needs of the nursing facility residents.

(2) Once every two years, when the rates are set at the beginning of each new biennium, starting with July 1, 1993 prospective rate setting, the department shall determine peer group median cost plus limits for the food cost center in accordance with this section.

(a) The department shall divide into two peer groups nursing facilities located in the state of Washington providing services to Medicaid residents. These two peer groups shall be:

(i) Those nursing facilities located within a Metropolitan Statistical Area (MSA) as defined and determined by the

United States Office of Management and Budget or other applicable federal office (MSA facilities); and

(ii) Those not located within such an area (Non-MSA facilities).

(b) Prior to any adjustment for economic trends and conditions under WAC 388-96-719, the facilities in each peer group shall be arrayed from lowest to highest by magnitude of per patient day adjusted food cost from the prior cost report year, regardless of whether any such adjustments are contested by the nursing facility. All available cost reports from the prior cost report year having at least six months of cost report data shall be used, including all closing cost reports covering at least six months. The department shall include costs current-funded by means of rate (~~adjustments~~) add-ons, granted under the authority of (~~WAC 388-96-774~~) WAC 388-96-776 and commencing in the prior cost report year, (~~shall be included~~) in costs arrayed(~~(- however,)~~). The department shall exclude costs current-funded by rate (~~adjustments~~) add-ons granted under the authority of WAC 388-96-776 and commencing January 1 through June 30 following the prior cost report year (~~shall be excluded~~) from costs arrayed.

(c) The median or fiftieth percentile nursing facility food cost for each peer group shall then be determined. In the event there are an even number of facilities within a peer group, the adjusted food cost of the lowest cost facility in the upper half shall be used as the median cost for that peer group. Facilities at the fiftieth percentile in each peer group and those immediately above and below it shall be subject to field audit in the food cost area prior to issuing new July 1 rates.

(3) Except as may be otherwise specifically provided in this section, beginning with July 1, 1993 prospective rates, food component rates for facilities within each peer group shall be set for the first fiscal year of each state biennium at the lower of:

(a) The facility's adjusted per patient day food cost from the most recent prior report period, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719; or

(b) The median nursing facility food cost for the facility's peer group plus twenty-five percent of that cost, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719.

(4) (~~(Adjustments previously)~~) Rate add-ons made to current fund food costs, pursuant to (~~WAC 388-96-774~~) WAC 388-96-776 and commencing in the prior cost report year, shall be reflected in first fiscal year of a state biennium prospective rates only by their inclusion in the costs arrayed (~~and no~~). A facility shall not receive, based (~~upon~~) on any calculation or consideration of any such prior report year (~~adjustment~~) rate add-ons, a July 1 food rate higher than that provided in subsection (3) of this section.

(5) For July 1, 1993 rate setting only, food rate adjustments, granted under authority of WAC 388-96-774 and commencing from January 1, 1993 through June 30, 1993, shall be added to a facility's food rate established under subsection (3) of this section. For all rate setting beginning July 1, 1995 and following, (~~such rate increases to reflect~~) the department shall add food rate (~~adjustments~~) add-ons, granted under authority of (~~WAC 388-96-774~~) WAC 388-96-776 and commencing from January 1 through June 30

preceding the start of ~~((the))~~ a state biennium, ~~((shall be added))~~ to a nursing facility's rate in food, but only up to the facility's peer group median cost plus twenty-five percent limit.

(6) Subsequent to issuing the first fiscal year July 1 rates, the department shall recalculate the median costs of each peer group based upon the most recent adjusted food cost report information in departmental records as of October 31 of the first fiscal year of each biennium. For any facility which would have received a higher or lower July 1 rate for the first fiscal year in food based upon the recalculation of that facility's peer group median costs, the department shall reissue that facility's food rate reflecting the recalculation, retroactive to July 1 of the first fiscal year.

(7) For both the initial calculation of peer group median costs and the recalculation based on adjusted nursing services cost information as of October 31 of the first fiscal year of the biennium, the department shall use adjusted information regardless of whether the adjustments may be contested or the subject of pending administrative or judicial review. Median costs shall not be adjusted to reflect subsequent administrative or judicial rulings, whether final or not.

(8) Beginning with July 1, 1994 prospective rates, a nursing facility's rate in food for the second fiscal year of each biennium shall be that facility's food rate as of July 1 of the first year of the same biennium reduced or increased utilizing the HCFA Index as authorized by WAC 388-96-719.

(9) The alternating procedures prescribed in this section and in WAC 388-96-719 for a nursing facility's two July 1 food rates occurring within each biennium shall be followed in the same order for each succeeding biennium.

AMENDATORY SECTION (Amending Order 3634, filed 9/14/93, effective 10/15/93)

WAC 388-96-735 Administrative cost area rate. (1) The administrative cost center shall include for cost reporting purposes all administrative, oversight, and management costs, whether incurred at the facility or allocated in accordance with a department-approved joint cost allocation methodology. Such costs shall be identical to the cost report line items categorized on the 1992 calendar year report under "general and administrative" within the administration and operations (A&O) combined cost center existing for reporting purposes prior to January 1, 1993, with the exception of nursing supplies and purchased and allocated medical records. The department shall issue cost reporting instructions identifying administrative costs for 1993 and following cost report years.

(2) Once every two years, when the rates are set at the beginning of each new biennium, starting with July 1, 1993 prospective rate setting, the department shall determine peer group median cost plus limits for the administrative cost center in accordance with this section.

(a) The department shall divide into two peer groups nursing facilities located in the state of Washington providing services to Medicaid residents. These two peer groups shall be:

(i) Those nursing facilities located within a Metropolitan Statistical Area (MSA) as defined and determined by the

United States Office of Management and Budget or other applicable federal office (MSA facilities); and

(ii) Those not located within such an area (Non-MSA facilities).

(b) Prior to any adjustment for economic trends and conditions under WAC 388-96-719, the facilities in each peer group shall be arrayed from lowest to highest by magnitude of per patient day adjusted administrative cost from the prior cost report year, excluding the costs of nursing supplies and purchased and allocated medical records, regardless of whether any such adjustments are contested by the nursing facility. All available cost reports from the prior cost report year having at least six months of cost report data shall be used, including all closing cost reports covering at least six months. The department shall include costs current-funded by means of rate ~~((adjustments))~~ add-ons, granted under the authority of ~~((WAC 388-96-774))~~ WAC 388-96-776 and commencing in the prior cost report year, ~~((shall be included))~~ in costs arrayed ~~((, however,))~~. The department shall exclude costs current-funded by rate ~~((adjustments))~~ add-ons granted under the authority of WAC 388-96-776 and commencing January 1 through June 30 following the prior cost report year ~~((shall be excluded))~~ from costs arrayed.

(c) The median or fiftieth percentile nursing facility administrative cost for each peer group shall then be determined. In the event there are an even number of facilities within a peer group, the adjusted administrative cost of the lowest cost facility in the upper half shall be used as the median cost for that peer group. Facilities at the fiftieth percentile in each peer group and those immediately above and below it shall be subject to field audit in the administrative cost area prior to issuing new July 1 rates.

(3) Except as may be otherwise specifically provided in this section, beginning with July 1, 1993 prospective rates, administrative component rates for facilities within each peer group shall be set for the first fiscal year of each state biennium at the lower of:

(a) The facility's adjusted per patient day administrative cost from the most recent prior report period, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719; or

(b) The median nursing facility administrative cost for the facility's peer group plus ten percent of that cost, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719.

(4) ~~((Adjustments previously))~~ Rate add-ons made to current fund administrative costs, pursuant to ~~((WAC 388-96-774))~~ WAC 388-96-776 and commencing in the prior cost report year, shall be reflected in first fiscal year of a state biennium prospective rates only by their inclusion in the costs arrayed ~~((and no))~~. A facility shall not receive, based ~~((upon))~~ on the calculation or consideration of any such prior report year adjustment, a July 1 administrative rate higher than that provided in subsection (3) of this section.

(5) For July 1, 1993 rate setting only, administrative rate adjustments, granted under authority of WAC 388-96-774 and commencing from January 1, 1993 through June 30, 1993, shall be added to a facility's administrative rate established under subsection (3) of this section. For all rate setting beginning July 1, 1995 and following, ~~((such rate~~

~~increases to reflect~~) the department shall add administrative rate ~~((adjustments))~~ add-ons, granted under authority of ~~((WAC 388-96-774))~~ WAC 388-96-776 and commencing from January 1 through June 30 preceding the start of ~~((the))~~ a state biennium, ~~((shall be added))~~ to a facility's administrative rate, but only up to the facility's peer group median cost plus ten percent limit.

(6) Subsequent to issuing the first fiscal year July 1 rates, the department shall recalculate the median costs of each peer group based ~~((upon))~~ on the most recent adjusted administrative cost report information in departmental records as of October 31 of the first fiscal year of each biennium. For any facility which would have received a higher or lower July 1 administrative rate for the first fiscal year based upon the recalculation of that facility's peer group median costs, the department shall reissue that facility's administrative rate reflecting the recalculation, retroactive to July 1 of the first fiscal year.

(7) For both the initial calculation of peer group median costs and the recalculation based on adjusted administrative cost information as of October 31 of the first fiscal year of the biennium, the department shall use adjusted information regardless of whether the adjustments may be contested or the subject of pending administrative or judicial review. Median costs shall not be adjusted to reflect subsequent administrative or judicial rulings, whether final or not.

(8) Beginning with July 1, 1994 prospective rates, a nursing facility's administrative rate for the second fiscal year of each biennium shall be that facility's administrative rate as of July 1 of the first year of the same biennium reduced or increased utilizing the HCFA Index as authorized by WAC 388-96-719.

(9) The alternating procedures prescribed in this section and in WAC 388-96-719 for a nursing facility's two July 1 administrative rates occurring within each biennium shall be followed in the same order for each succeeding biennium.

AMENDATORY SECTION (Amending Order 3634, filed 9/14/93, effective 10/15/93)

WAC 388-96-737 Operational cost area rate. (1)

The operational cost center shall include for cost reporting purposes all allowable costs having a direct relationship to the daily operation of the nursing facility (but not including nursing services and related care, food, administrative, or property costs), whether such operating costs are incurred at the facility or are allocated in accordance with a department-approved joint cost allocation methodology.

(2) Once every two years, when the rates are set at the beginning of each new biennium, starting with July 1, 1993 prospective rate setting, the department shall determine peer group median cost plus limits for the operational cost center in accordance with this section.

(a) The department shall divide into two peer groups nursing facilities located in the state of Washington providing services to Medicaid residents. These two peer groups shall be:

(i) Those nursing facilities located within a metropolitan statistical area (MSA) as defined and determined by the United States Office of Management and Budget or other applicable federal office (MSA facilities); and

(ii) Those not located within such an area (Non-MSA facilities).

(b) Prior to any adjustment for economic trends and conditions under WAC 388-96-719, the facilities in each peer group shall be arrayed from lowest to highest by magnitude of per patient day adjusted operational cost from the prior cost report year, regardless of whether any such adjustments are contested by the nursing facility. All available cost reports from the prior cost report year having at least six months of cost report data shall be used, including all closing cost reports covering at least six months. Costs current-funded by means of rate ~~((adjustments))~~ add-ons, granted under the authority of WAC 388-96-774 and WAC 388-96-776 and commencing in the prior cost report year, shall be included in costs arrayed ~~((however,))~~. The department shall exclude costs current-funded by rate ~~((adjustments))~~ add-ons commencing January 1 through June 30 following the prior cost report year ~~((shall be excluded))~~ from costs arrayed.

(c) The median or fiftieth percentile nursing facility operational cost for each peer group shall then be determined. In the event there are an even number of facilities within a peer group, the adjusted operational cost of the lowest cost facility in the upper half shall be used as the median cost for that peer group. Facilities at the fiftieth percentile in each peer group and those immediately above and below it shall be subject to field audit in the operational cost area prior to issuing new July 1 rates.

(3) Except as may be otherwise specifically provided in this section, beginning with July 1, 1993 prospective rates, operational component rates for facilities within each peer group shall be set for the first fiscal year of each state biennium at the lower of:

(a) The facility's adjusted per patient day operational cost from the most recent prior report period, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719; or

(b) The median nursing facility operational cost for the facility's peer group plus twenty-five percent of that cost, reduced or increased by the change in the IPD Index as authorized by WAC 388-96-719.

(4) ~~((Adjustments previously))~~ Rate add-ons made to current fund operational costs, pursuant to WAC 388-96-774 and WAC 388-96-776 and commencing in the prior cost report year, shall be reflected in first fiscal year prospective rates only by their inclusion in the costs arrayed ~~((and no))~~. A facility shall not receive, based ~~((upon))~~ on the calculation or consideration of any such prior report year ~~((adjustment))~~ rate add-ons, a July 1 operational rate higher than that provided in subsection (3) of this section.

(5) For July 1, 1993 rate setting only, operational rate adjustments, granted under authority of WAC 388-96-774 and commencing January 1, 1993 through June 30, 1993, shall be added to a facility's operational rate established under subsection (3) of this section. For all rate setting beginning July 1, 1995 and following, ~~((such rate increases to reflect))~~ the department shall add operational rate ~~((adjustments))~~ add-ons, granted under authority of WAC 388-96-774 and WAC 388-96-776 and commencing from January 1 through June 30 preceding the start of ~~((the))~~ a state biennium ~~((shall be added))~~ to a facility's operational rate, but

only up to the facility's peer group median cost plus twenty-five percent limit.

(6) Subsequent to issuing the first fiscal year July 1 rates, the department shall recalculate the median costs of each peer group based upon the most recent adjusted operational cost report information in departmental records as of October 31 of the first fiscal year of each biennium. For any facility which would have received a higher or lower July 1 operational rate for the first fiscal year based upon the recalculation of that facility's peer group median costs, the department shall reissue that facility's operational rate reflecting the recalculation, retroactive to July 1 of the first fiscal year.

(7) For both the initial calculation of peer group median costs and the recalculation based on adjusted administrative cost information as of October 31 of the first fiscal year of the biennium, the department shall use adjusted information regardless of whether the adjustments may be contested or the subject of pending administrative or judicial review. Median costs shall not be adjusted to reflect subsequent administrative or judicial rulings, whether final or not.

(8) Beginning with July 1, 1994 prospective rates, a nursing facility's operational rate for the second fiscal year of each biennium shall be that facility's operational rate as of July 1 of the first year of the same biennium reduced or increased utilizing the HCFA Index as authorized by WAC 388-96-719.

(9) The alternating procedures prescribed in this section and in WAC 388-96-719 for a nursing facility's two July 1 operational rates occurring within each biennium shall be followed in the same order for each succeeding biennium.

AMENDATORY SECTION (Amending Order 3634, filed 9/14/93, effective 10/15/93)

WAC 388-96-745 Property cost area reimbursement rate. (1) The department shall determine the property cost area rate for each facility annually, to be effective July 1, regardless of whether the July 1 rate is for the first or second year of the biennium, in accordance with this section and any other applicable provisions of this chapter.

(2) The department shall divide the allowable prior period depreciation costs subject to the provisions of this chapter, adjusted for any capitalized addition or replacements approved by the department, plus

(a) The retained savings from the property cost center as provided in WAC 388-96-228, by

(b) Total patient days for the facility in the prior period.

(3) Allowable depreciation costs are defined as the costs of depreciation of tangible assets meeting the criteria specified in WAC 388-96-557, regardless of whether owned or leased by the contractor. The department shall not reimburse depreciation of leased office equipment.

(4) If a capitalized addition or retirement of an asset will result in a different licensed bed capacity during the ~~((ensuing period, the department shall adjust the prior period total patient days used in computing the property cost center rate to anticipated))~~ calendar year following the capitalized addition or replacement, patient ((day-level)) days from the cost report for the calendar year immediately prior to the capitalized addition or replacement that were used in computing the property component rate will be adjusted to

the product of the occupancy level derived from the cost report used to compute the property component rate at the time of the increased licensed bed capacity multiplied by the number of calendar days in the calendar year following the increased licensed bed capacity multiplied by the number of licensed beds on the new license. If a capitalized addition, replacement, or retirement results in a decreased licensed bed capacity, WAC 388-96-709 will apply.

(5) When a facility is constructed, remodeled, or expanded after obtaining a certificate of need, the department shall determine actual and allocated allowable land cost and building construction cost. Reimbursement for such allowable costs, determined pursuant to the provisions of this chapter, shall not exceed the maximums set forth in this subsection and in subsections (4), (5), and (6) of this section. The department shall determine construction class and types through examination of building plans submitted to the department and/or on-site inspections. The department shall use definitions and criteria contained in the *Marshall and Swift Valuation Service* published by the Marshall and Swift Publication Company. Buildings of excellent quality construction shall be considered to be of good quality, without adjustment, for the purpose of applying these maximums.

(6) Construction costs shall be final labor, material, and service costs to the owner or owners and shall include:

(a) Architect's fees;

(b) Engineers' fees (including plans, plan check and building permit, and survey to establish building lines and grades);

(c) Interest on building funds during period of construction and processing fee or service charge;

(d) Sales tax on labor and materials;

(e) Site preparation (including excavation for foundation and backfill);

(f) Utilities from structure to lot line;

(g) Contractors' overhead and profit (including job supervision, workmen's compensation, fire and liability insurance, unemployment insurance, etc.);

(h) Allocations of costs which increase the net book value of the project for purposes of Medicaid reimbursement;

(i) Other items included by the *Marshall and Swift Valuation Service* when deriving the calculator method costs.

(7) The department shall allow such construction costs, at the lower of actual costs or the maximums derived from one of the three tables which follow. The department shall derive the limit from the accompanying table which corresponds to the number of total nursing home beds for the proposed new construction, remodel or expansion. The limit will be the sum of the basic construction cost limit plus the common use area limit which corresponds to the type and class of the new construction, remodel or expansion. The limits calculated using the tables shall be adjusted forward from September 1990 to the average date of construction, to reflect the change in average construction costs. The department shall base the adjustment on the change shown by relevant cost indexes published by Marshall and Swift Publication Company. The average date of construction shall be the midpoint date between award of the construction contract and completion of construction.

BASE CONSTRUCTION COST LIMITS

74 BEDS & UNDER

Building Class	Base per Bed Limit	Base Limit
A-Good	\$50,433	\$278,847
A-Avg	\$41,141	\$227,469
B-Good	\$48,421	\$267,718
B-Avg	\$40,042	\$221,392
C-Good	\$35,887	\$198,421
C-Avg	\$27,698	\$153,143
C-Low	\$21,750	\$120,258
D-Good	\$33,237	\$183,765
D-Avg	\$25,716	\$142,182
D-Low	\$20,298	\$112,227

COMMON-USE AREA COST LIMITS

(b) The average per square foot land value of the ten nearest urban or rural nursing facilities at the time of purchase of the land in question. The average land value sample shall reflect either all urban or all rural facilities depending upon the classification of urban or rural for the facility in question. The values used to derive the average shall be the assessed land values which have been calculated for the purpose of county tax assessments.

(10) If allowable costs for construction or land are determined to be less than actual costs pursuant to subsection (3), (4), and (5) of this section, the department may increase the amount if the owner or contractor is able to show unusual or unique circumstances having substantially impacted the costs of construction or land. Actual costs shall be allowed to the extent they resulted from such circumstances up to a maximum of ten percent above levels determined under subsections (3), (4), and (5) of this section for construction or land. An adjustment under this subsection shall be granted only if requested by the contractor. The contractor shall submit documentation of the unusual circumstances and an analysis of their financial impact with the request.

BASE CONSTRUCTION COST LIMITS

75 TO 120 BEDS

Building Class	Base Limit	Add per Bed Over 74	Base Limit	Add per Bed Over 74
A-Good	\$3,732,076	\$48,210	\$278,847	\$2,808
A-Avg	\$3,044,442	\$39,327	\$227,469	\$2,291
B-Good	\$3,583,131	\$46,286	\$267,718	\$2,696
B-Avg	\$2,963,112	\$38,277	\$221,392	\$2,230
C-Good	\$2,655,654	\$34,305	\$198,421	\$1,998
C-Avg	\$2,049,668	\$26,477	\$153,143	\$1,542
C-Low	\$1,609,531	\$20,792	\$120,258	\$1,211
D-Good	\$2,459,506	\$31,771	\$183,765	\$1,851
D-Avg	\$1,902,956	\$24,582	\$142,182	\$1,442
D-Low	\$1,502,048	\$19,403	\$112,227	\$1,130

COMMON-USE AREA COST LIMITS

NEW SECTION

WAC 388-96-753 Return on investment—Effect of funding granted under WAC 388-96-774, 388-96-775, and 388-96-776. (1) In establishing a nursing facility's return on investment prospective rate for July 1 or any subsequent revision to the prospective rate, in either the financing allowance or the variable return allowance, rate add-ons granted under the authority of WAC 388-96-774, 388-96-775, or 388-96-776 for any cost center shall be accounted for in accordance with this section. WAC 388-96-774, 388-96-775, and 388-96-776 rate add-ons accounted for in the prospective rate under this section shall remain subject to all the provisions of those sections including recoupment.

(2) For the July 1 prospective rate for the first fiscal year of a state biennium:

(a) Funding granted under the authority of WAC 388-96-774 and 388-96-776 during the preceding cost report year will be annualized and subsumed in the July 1 prospective rate and subject to adjustments for economic trends and conditions as authorized under WAC 388-96-719;

(b) WAC 388-96-774 and 388-96-776 funding granted during the six months prior to the beginning of the first fiscal year will continue as a rate add-on to the July 1 prospective rate and will not be subject to adjustments for economic trends and conditions as authorized under WAC 388-96-719.

(3) For the July 1 prospective rate for the second fiscal year of a state biennium, WAC 388-96-774 and 388-96-776 funding granted during the eighteen months preceding the second fiscal year will be rate add-ons to the July 1 prospective rate and not subject to adjustments for economic trends and conditions as authorized under WAC 388-96-719.

(4) For the July 1 rate for either the first fiscal year or the second fiscal year, funding granted under the authority of WAC 388-96-775 shall be annualized and subsumed in the July 1 prospective rate.

BASE CONSTRUCTION COST LIMITS

121 BEDS AND OVER

Building Class	Base Limit Over 120	Add per Bed	Base Limit	Add per Bed Over 120
A-Good	\$5,949,745	\$42,359	\$408,015	\$2,106
A-Avg	\$4,853,505	\$34,555	\$332,855	\$1,718
B-Good	\$5,712,287	\$40,669	\$391,734	\$2,022
B-Avg	\$4,723,848	\$30,142	\$323,972	\$1,672
C-Good	\$4,233,692	\$23,264	\$290,329	\$1,499
C-Avg	\$3,267,618	\$18,268	\$224,092	\$1,157
C-Low	\$2,565,943	\$27,916	\$175,971	\$ 908
D-Good	\$3,920,989	\$21,599	\$268,911	\$1,388
D-Avg	\$3,033,727	\$17,048	\$208,493	\$1,081
D-Low	\$2,394,592	\$19,403	\$164,220	\$ 848

COMMON-USE AREA COST LIMITS

(8) When some or all of a nursing home's common-use areas are situated in a basement, the department shall exclude some or all of the per-bed allowance shown in the attached tables for common-use areas to derive the construction cost lid for the facility. The amount excluded will be equal to the ratio of basement common-use areas to all common-use areas in the facility times the common-use area limit in the table. In lieu of the excluded amount, the department shall add an amount calculated using the calculator method guidelines for basements in nursing homes from the Marshall and Swift Publication.

(9) Subject to provisions regarding allowable land contained in this chapter, allowable costs for land shall be the lesser of:

- (a) Actual cost per square foot, including allocations; or

AMENDATORY SECTION (Amending Order 3634, filed 9/14/93, effective 10/15/93)

WAC 388-96-754 A contractor's return on investment. (1) The department shall establish for each Medicaid nursing facility a return on investment (ROI) rate composed of a financing allowance and a variable return allowance. ~~The department shall determine a facility's ((return on investment -))ROI(()) rate ((shall be determined)) annually in accordance with this section, to be effective July 1, regardless of whether the rate is for the first or second fiscal year of ((the)) a state biennium. ((No nursing facility's ROI rate, in either the financing allowance or the variable return allowance, shall be established July 1 or revised subsequently to reflect rate adjustments granted in any cost center to current fund costs under the authority of WAC 388-96-774 and commencing after the prior cost report period, except for adjustments to fund capitalized additions or replacements.))~~

(2) The department shall determine the financing allowance by:

(a) ~~Multiplying the net invested funds of each facility by ten percent and dividing by the contractor's total patient days ((effective for July 1, 1991, and all following rate settings. In computing the allowance for the working capital portion of net invested funds, the department shall include in a contractor's costs from the prior report year used to establish the contractor's component rates in nursing services, food, administrative, operational, and property, all adjustments for economic trends and conditions granted under authority of WAC 388-96-719 and all costs current funded under authority of WAC 388-96-774 and commencing during such prior report year. Annual patient days taken from the contractor's cost report for the most recent twelve month cost report period will be used. If the cost report covers less than twelve months, the department will estimate annual patient days and working capital costs for a full year based upon data in the cost report.)), to which the provisions of WAC 388-96-719 shall apply, and corresponding to the following:~~

(i) If the cost report covers twelve months, annual patient days from the contractor's most recent twelve month cost report period; or

(ii) If the cost report covers less than twelve months, annualized patient days and working capital costs based upon data in the cost report; or

(iii) If a capitalized addition or replacement results in an increased licensed bed capacity during the calendar year following the capitalized addition or replacement, the total patient days from the cost report immediately prior to the capitalized addition or replacement that were used in computing the financing and variable return allowances will be adjusted to the product of the occupancy level derived from the cost report used to compute the financing and variable return allowances at the time of the increased licensed bed capacity multiplied by the number of calendar days in the calendar year following the increased licensed bed capacity multiplied by the number of licensed beds on the new license; or

(iv) If a capitalized addition or retirement of an asset results in a different licensed bed capacity ((during the ensuing period, the department shall adjust the prior period total patient days used in computing the financing and

~~variable return allowances to anticipated patient day level)) WAC 388-96-709 will apply; ((and))~~

(b) For the first fiscal year of a state biennium, the working capital portion of net invested funds shall be five percent of the sum of a contractor's costs from the cost report year used to establish the contractor's prospective component rates in nursing services, food, administrative, and operational that have been adjusted for economic trends and conditions under authority of WAC 388-96-719 and property. For the second fiscal year of a state biennium, the working capital portion of net invested funds shall be five percent of the sum of the July 1 prospective component rates for the first fiscal year in nursing services, food, administrative, and operational multiplied by the patient days as defined in subsection (2)(a)(i), (ii), (iii), or (iv) of this section from the calendar year immediately prior to the second fiscal year of a state biennium adjusted for economic trends and conditions granted under authority of WAC 388-96-719 plus the desk reviewed property costs from the cost report of the prior calendar year;

(c) For either the first or second year of a state biennium, in computing the portion of net invested funds representing the net book value of tangible fixed assets, the same assets, depreciation bases, lives, and methods referred to in this chapter, including owned and leased assets, shall be used, except the capitalized cost of land upon which a facility is located and other such contiguous land which is reasonable and necessary for use in the regular course of providing patient care shall also be included. As such, subject to provisions contained in this chapter, capitalized cost of leased land, regardless of the type of lease, shall be the lessor's historical capitalized cost. Subject to provisions contained in this chapter, for land purchases before July 18, 1984 (the enactment date of the Deficit Reduction Act of 1984 (DEFRA)), capitalized cost of land shall be the buyer's capitalized cost. For all partial or whole rate periods after July 17, 1984, if the land is purchased on or after July 18, 1984, capitalized cost of land shall be that of the owner of record on July 17, 1984, or buyer's capitalized cost, whichever is lower. In the case of leased facilities where the net invested funds are unknown or the contractor is unable or unwilling to provide necessary information to determine net invested funds, the department may determine an amount to be used for net invested funds based upon an appraisal conducted by the department of general administration per this chapter((--e)); and

(d) A contractor shall retain that portion of ROI rate payments at settlement representing the contractor's financing allowance only to the extent reported net invested funds, upon which the financing allowance is based, are substantiated by the department.

(3) The department shall determine the variable return allowance according to the following procedure:

(a) Once every two years at the start of each biennium, beginning with July 1, 1993 rate setting, the department shall, without utilizing the MSA and Non-MSA peer groups used to calculate other Medicaid component rates, rank all facilities in numerical order from highest to lowest based upon the combined average per diem allowable costs for the nursing services, food, administrative, and operational cost centers taken from the prior cost report period. The department shall use adjusted costs taken from cost reports having

at least six months of data, shall not include adjustments for economic trends and conditions granted under authority of WAC 388-96-719, and shall include costs current-funded under authority of WAC 388-96-774 and WAC 388-96-776 and commencing in the prior cost report year. In the case of a new contractor, nursing services, food, administrative, and operational cost levels actually used to set the initial rate shall be used for the purpose of ranking the new contractor.

(b) The department shall compute the variable return allowance by multiplying the sum of the nursing services, food, administrative and operational rate components for each nursing facility by the appropriate percentage which shall not be less than one percent nor greater than four percent. The department shall divide the facilities ranked according to subsection (3)(a) of this section into four groups, from highest to lowest, with an equal number of facilities in each group or nearly equal as is possible. The department shall assign facilities in the highest quarter a percentage of one, in the second highest quarter a percentage of two, in the third highest quarter a percentage of three, and in the lowest quarter a percentage of four. The per patient day variable return allowance in the initial rate of a new contractor shall be the same as that in the rate of the preceding contractor, if any.

(c) The percentages so determined and assigned to each facility for July 1 rate setting for the first fiscal year of each state biennium, shall continue to be assigned without modification for July 1 rate setting for the second fiscal year of each biennium. Neither the break points separating the four groups nor facility ranking shall be adjusted to reflect future rate ~~((adjustments))~~ add-ons granted to contractors for any purpose under WAC 388-96-774 ~~((or granted for any other reason in the course of the biennium))~~ and WAC 388-96-776.

(4) The sum of the financing allowance and the variable return allowance shall be the return on investment ~~((rate))~~ rate for each facility and shall be ~~((added to))~~ a component of the prospective rate for each facility.

(5) If a facility is leased by a contractor as of January 1, 1980, in an arm's-length agreement, which continues to be leased under the same lease agreement as defined in this chapter, and for which the annualized lease payment, plus any interest and depreciation expenses of contractor-owned assets, for the period covered by the prospective rates, divided by the contractor's total patient days, minus the property cost center determined according to this chapter, is more than the return on investment allowance determined according to this section, the following shall apply:

(a) The financing allowance shall be recomputed substituting the fair market value of the assets, as of January 1, 1982, determined by department of general administration appraisal less accumulated depreciation on the lessor's assets since January 1, 1982, for the net book value of the assets in determining net invested funds for the facility. Said appraisal shall be final unless shown to be arbitrary and capricious.

(b) The sum of the financing allowance computed under this subsection and the variable return allowance shall be compared to the annualized lease payment, plus any interest and depreciation expenses of contractor-owned assets, for the period covered by the prospective rates, divided by the contractor's total patient days, minus the property cost center rate determined according to this chapter. The lesser of the

two amounts shall be called the alternate return on investment allowances.

(c) The return on investment allowance determined in accordance with subsections (1), (2), (3), and (4) of this section or the alternate return on investment allowance, whichever is greater, shall be the return on investment allowance for the facility and shall be ~~((added to))~~ a component of the prospective rate of the facility.

(d) In the case of a facility leased by the contractor as of January 1, 1980, in an arm's-length agreement, if the lease is renewed or extended pursuant to a provision of the lease agreement existing on January 1, 1980, the treatment provided in subsection (5)(a) of this section shall be applied except that in the case of renewals or extensions made on or subsequent to April 1, 1985, per a provision of the lease agreement existing on January 1, 1980, reimbursement for the annualized lease payment shall be no greater than the reimbursement for the annualized lease payment for the last year prior to the renewal or extension of the lease.

(6) The information from the two prior reporting periods used to set the two prospective return on investment rates in effect during the settlement year is subject to field audit. If the financing allowances which can be documented and calculated at audit of the prior periods are different than the prospective financing allowances previously determined by desk-reviewed, reported information, and other relevant information, the prospective financing allowances shall be adjusted to the audited level at final settlement of the year the rates were in effect, except the adjustments shall reflect a minimum bed occupancy level of eighty-five percent. Any adjustments to the financing allowances pursuant to this subsection shall be for settlement purposes only. However, the variable return allowances shall be the prospective allowances determined by desk-reviewed, reported information, and other relevant information and shall not be adjusted to reflect prior-period audit findings.

AMENDATORY SECTION (Amending Order 3424, filed 7/23/92, effective 8/23/92)

WAC 388-96-763 Rates for recipients requiring exceptionally heavy care. (1) A nursing facility contractor certified to provide nursing services, a discharging hospital, a recipient of Medicaid benefits or her/his authorized representative may apply for an individual prospective reimbursement rate for a Medicaid recipient whose special nursing and direct care-related service needs are such that the hours of nursing services needed are at least twice the per patient day average of nursing services hours provided in the nursing facility to which the recipient is admitted as determined by the facility's ~~((most recent reviewed))~~ Medicaid cost report for the calendar year immediately prior to the first fiscal year of the current state biennium.

(2) When application for an exceptional care rate is made before determining where the recipient will be placed, pre-admission qualification may be granted when the recipient's special nursing and direct care needs require hours of nursing services at least twice the statewide per patient day average ~~((determined by the most recent reviewed))~~ derived from Medicaid cost reports for the calendar year immediately prior to the first fiscal year of the current state biennium. For reviews to determine continued qualifi-

ation only for such recipients, conducted during the ~~((first year after placement))~~ specified period of time determined under subsection (4) of this section, the department will continue to utilize the statewide average available to the department, assuming the care plan is unchanged. For subsequent reviews to determine continued qualification, the contractor's average, set forth under subsection (1) of this section, shall be substituted for the statewide average.

(3) The contractor or other applicant shall apply for exceptional care rate qualification for an exceptionally heavy care recipient in accordance with department instructions. The facility shall bill the department at the authorized exceptional care rate within three hundred sixty-five days from the exceptional care rate's effective date. Bills for services submitted after three hundred sixty-five days shall be denied as untimely.

(4) When the department grants an individual rate for an exceptionally heavy care recipient, it shall be for a specified period of time, which the department shall determine, subject to extension, revision, or termination depending on the recipient's care requirements at the end of such period. If within thirty days after a resident's admission to a nursing facility the application for such resident for an exceptional care rate is submitted to the department and includes the facility plan of care documenting the need for and delivery of the resident's nursing and direct care hours, the rate, if approved, shall be effective as of the date of admission. Applications submitted more than thirty days after admission to the facility, if approved, shall be effective as of the date of application.

(5) Extensions of exceptional care rates will not be approved without an updated care plan and resident medical status information submitted in accordance with departmental instruction prior to the scheduled date of the rate's termination. Failure to comply will result in automatic termination as of the scheduled date and reinstatement of an exceptional care rate, if desired, will require re-application and approval. Discharge or transfer of the recipient, permanently or temporarily, shall terminate an exceptional care rate which shall be nontransferable to a different facility. Qualification upon re-admission shall require re-application. A contractor may not transfer or discharge a ~~((Medicaid))~~ Medicaid recipient based upon the status of an exceptional care rate or application for such a rate.

(6) Regardless of whether statewide average nursing hours derived from the Medicaid cost reports for the calendar year immediately prior to the first fiscal year of the current state biennium or facility average nursing hours reported ~~((for))~~ on the ((prior period)) Medicaid cost reports for the calendar year immediately prior to the first fiscal year of the current state biennium are used for qualification, the exceptional care rate for a recipient shall be calculated by:

(a) Deriving a ratio equivalent to actual or projected nursing hours per patient day needed by the recipient in excess of the facility-specific reimbursed average nursing hours per patient day divided by the facility-specific ~~((prior period))~~ reported average nursing hours per patient day derived from the Medicaid cost reports for the calendar year immediately prior to the first fiscal year of the current state biennium;

(b) Multiplying the ratio by the facility-specific nursing services rate in effect at the time of the initial request or in

the case of continuation or revision, the facility's nursing services rate in effect at the time of the approval of the continuation or revision; and

(c) Adding the result of subsection (6)(b) of this section to the total facility-specific reimbursement rate ~~((PROVIDED THAT:))~~; provided, that in no circumstance shall an exceptional care rate exceed one hundred sixty percent of the facility's Medicare reimbursement rate in place at the time the exceptional care rate takes effect.

~~((7))~~ ((Factors used in the calculation process set forth under subsection (6) of this section shall be the most current reviewed and available factors from department records at the time the department performs the calculation.

~~((8))~~ A pre-admission exceptional care rate shall be effective for thirty days. The contractor shall notify the department, in writing, as soon as the recipient is admitted to the contractor's facility. If resident placement in a Medicaid nursing facility has not occurred within thirty days after the department receives the exceptional care application ~~((is received by the department))~~ the contractor shall submit, an updated plan of care ((must be submitted)) in order to reinstate exceptional care qualification.

~~((9))~~ (8) Unless the department establishes otherwise, extensions require an updated plan of care to be completed and submitted every ninety days for each exceptional care recipient, including documentation supporting the need for services identified in the plan of care. The department shall base a decision to continue, revise, or terminate an exceptional care rate ((shall be based)) on review of the updated plan of care and supporting documentation, a current care need assessment, and other information available to the department.

In order to extend an exceptional care rate, the review must verify continued need for and delivery of nursing, direct and ancillary care services funded by the rate.

~~((10))~~ (9) An exceptional care rate shall not be revised during the period the exceptional care rate is in effect because the facility-specific nursing services or total rate is revised or re-set; however, when an exceptional care rate is continued or revised as authorized in this section, the facility rate in place at the time of continuation or revision shall be used in the calculation process. An exceptional care rate shall be revised during the period the rate is in effect only when:

(a) An updated plan of care indicates a significant change in care needs; or

(b) Funded services are not fully delivered.

~~((11))~~ (10) No retroactive revision shall be made to an exceptional care rate, provided that:

(a) When application is made within thirty days after the recipient is admitted to the contractor's facility, an approved rate shall be effective the date of admission;

(b) When an exceptional care rate is revised due to a significant change, the revised rate will be effective on the date the department receives the updated plan of care and supporting documentation; and

(c) When care services funded by an exceptional care rate are not fully delivered, the exceptional care rate shall be reduced retroactively as of its effective date to the regular facility Medicaid rate and payment at the exceptional care rate shall cease immediately.

~~((12))~~ (11) Hours of nursing and direct care used to qualify a recipient and to calculate an exceptional rate must be verified by ~~((the department's clinical assessor))~~ a home and community services division, aging and adult services, regional community nurse consultant.

~~((13))~~ (12) The department shall notify the contractor, in writing, of the disposition of its application as soon as possible and in no case longer than thirty days following receipt of a properly completed application and supporting documentation.

AMENDATORY SECTION (Amending Order 3615, filed 8/11/93, effective 9/11/93)

WAC 388-96-774 Add-ons to the prospective rate ~~((revisions))-staffing.~~ (1) The department shall determine each contractor's reimbursement rates prospectively at least once each calendar year, to be effective July 1st. ~~((The department shall determine all prospective reimbursement rates for 1984 and thereafter using the prior year's desk-reviewed cost reports. Prospective rates shall be maximum payment rates for contractors for the periods to which they apply.))~~

(a) The department may grant ~~((revisions))~~ a rate add-on to a nursing service (NS) or operational (OP) prospective reimbursement rate for:

(i) ~~((Inflation only as authorized under WAC 388-96-719(3); and~~

~~((Other revisions for cost increases only as authorized in this section))~~ Variations in the distribution of patient classifications for the total resident population or changes in patient characteristics for the total resident population from:

(A) The Medicaid cost report for the calendar year immediately prior to the first fiscal year of a state biennium; or

(B) Those used to set the rate for a new contractor; or
(ii) Changes in staffing levels at a facility required by the department as evidenced by a written directive from the director of nursing home services, aging and adult services administration.

(b) The department shall not grant and the contractor shall not use rate ~~((adjustments))~~ add-ons for:

(i) ~~((Wage))~~ Compensation increases for existing, newly hired or promoted staff ~~((except as authorized in WAC 388-96-756)); ((and))~~

(ii) The use of temporary employment services providing direct patient care;

(iii) Any purpose if the nursing facility has a pending bankruptcy; unless, it is under chapter 11 and the nursing facility can provide a written evaluation from the trustee in bankruptcy stating the reorganization will be approved and implemented;

(iv) Correction of survey citations; or

(v) Staffing increases to resolve complaints.

(c) The department shall not grant a rate ~~((adjustment))~~ add-on to a cost center if that cost center is at or above the median cost limit for the facility's peer group ~~((plus the applicable percentage,))~~ reduced or increased under WAC 388-96-719.

(2) ~~((The department shall adjust rates for any capitalized additions or replacements made as a condition for licensure or certification.~~

~~(3) The department may adjust rates for any of the following:~~

~~(a) Variations in the distribution of patient classifications or changes in patient characteristics from:~~

~~(i) The prior reporting year; or~~

~~(ii) Those used to set the rate for a new contractor; or~~

~~(iii) Corresponding to the nursing staff funded for a new contractor.~~

~~(b) Program changes required by the department as evidenced by a written directive from the director of nursing home services, aging and adult services administration; and~~

~~(c) Changes in staffing levels at a facility required by the department as evidenced by a written directive from the director of nursing home services, aging and adult services administration.~~

~~(4))~~ Per state fiscal year, the contractor may submit no more than two requests under this section. If a request has been previously submitted and denied because it was not complete, then it will not count as a request for this subsection; provided, the resubmitted request is complete and exactly the same as the previous request, e.g., type of request, positions and full-time equivalencies.

(3) Contractors requesting ~~((an adjustment))~~ a rate add-on shall submit a written request to the ~~((department))~~ office of rates management, aging and adult services administration, separate from all other requests and ~~((inquires [inquiries]))~~ inquiries of the department, ~~((e.g. [e.g.] e.g.,~~ WAC 388-96-904 (1) and (5). The written request shall only be submitted after the hire date of the new staff and shall include the following:

(a) A financial analysis showing:

(i) The increased cost; and

(ii) An estimate of the rate increase, computed according to allowable methods, necessary to fund the cost.

(b) A written justification for granting the rate increase; ~~((and))~~

(c) A certification and supporting documentation showing the changes in staffing have commenced ~~((or other commenced or completed improvements));~~

(d) Three proofs of hire, e.g., payroll document, W-four, and appointment letter;

(e) A written narrative describing the contractor's efforts to provide alternative solutions prior to submitting a request under this section; and

(f) A written plan specifying:

(i) Additional staff to be added;

(ii) Changes in all patient characteristics requiring the additional staff; and

(iii) The predicted improvements in patient care services that will result.

~~((5))~~ (4) Contractors receiving ~~((prospective))~~ rate ~~((increases))~~ add-ons per this section shall submit quarterly reports. The quarterly reports shall cover the first day the rate ~~((increase))~~ add-on is effective and show how the additional rate funds and hours were utilized. If the ~~((funds and/or hours were not utilized for the changes and/or improvements approved by the department in granting the adjustment, they shall be subject to immediate recovery by the department.~~

(6) A contractor requesting an adjustment pursuant to subsection (3)(a) of this section shall submit a written plan specifying:

~~(a) Additional staff to be added;~~

~~(b) Changes in all patient characteristics requiring the additional staff; and~~

~~(c) The predicted improvements in patient care services which will result. The department shall respond to such requests within sixty days following the receipt of a properly completed request.~~

~~(7)) contractor does not use the funds for the purpose for which they were granted, the department shall immediately recoup the misspent or unused funds.~~

(5) In reviewing a request made under subsection (3) of this section, the department shall consider but is not limited to one or more of the following:

(a) Whether additional staff requested by a contractor is necessary to meet patient care needs;

(b) Comparisons of staffing patterns of nursing facilities from either the latest statewide metropolitan statistical area (MSA) peer group or non-MSA peer group to which the nursing facility belongs and calculated on a per patient day basis. The department shall use the latest MSA and non-MSA designations received from the office of management and budget or the appropriate federal agency;

(c) The physical layout of the facility;

(d) Nursing service planning and management for maximum efficiency;

(e) Historic trends in underspending of a facility's nursing services and operational component (~~rate~~) rates;

(f) Numbers, positions, and scheduling of existing staff;

(g) Increases in acuity (debility) levels of (~~contractors~~) all residents in the facility;

(h) Survey, (~~inspection of care, and department consultation results~~) complaint resolution reports, and quality assurance data; and

(i) The facility's ability to fund its staffing request through the facility's existing total Medicaid reimbursement rate.

~~((8) If a request made under subsection (3) of this section is approved by the department, the cost of funding the additional staff may be reduced for rate revision purposes by amounts shifted out of nursing services in 1986 or 1987, as reflected in the preliminary or final settlement reports for 1986 and 1987.~~

(9)) (6) The department may also adjust rates to cover costs associated with placing a nursing home in receivership for costs not covered by the rate of the former contractor, including:

(a) Compensation of the receiver;

(b) Reasonable expenses of receivership and transition of control; and

(c) Costs incurred by the receiver in carrying out court instructions or rectifying deficiencies found.

~~((10)) (7) The department shall not grant a rate (~~adjustment~~) add-on effective earlier than sixty days prior to receipt of the initial written request (~~for such adjustment accompanied by all related documentation and information required by this section~~) by the office of rates management subject to the requirements of subsection (3) of this section, the department shall grant a rate add-on for an approved request as follows:~~

(a) If the request is received between the first day and fifteenth day of the month, then the rate will be effective on the first day of that month; or

(b) If the request is received between the sixteenth day and the last day of the month, the rate will be effective on the first day of the following month.

(8) If the initial written request is incomplete, the department will notify the contractor of the documentation and information required. The contractor must submit the requested information within fifteen days from the date the contractor receives the notice to provide the information. If the contractor fails to complete the rate add-on request by providing all the requested documentation and information within the fifteen days from the date of receipt of notification, the department will deny the request for failure to complete.

(9) If, after the denial for failure to complete the request, the contractor submits a written request for the same need, the date of receipt for the purposes of applying subsection (7) will depend upon whether the subsequent request for the same need is complete, i.e., the department does not have to request additional documentation and information in order to make a determination. If a subsequent request for funding of the same need is:

(a) Complete, then the date of the initial incomplete request may be used when applying subsection (7) of this section; or

(b) Incomplete, then the date of the subsequent request must be used when applying subsection (7) of this section.

(10) The department shall respond, in writing, not later than sixty days after receipt of a complete request.

NEW SECTION

WAC 388-96-776 Add-ons to the prospective rate—Capital improvements. (1) The department shall grant an add-on to a prospective rate for any capitalized additions or replacements made as a condition for licensure or certification; *provided*, the net rate effect is ten cents per patient day or greater.

(2) The department shall grant an add-on to a prospective rate for capitalized improvements done under RCW 74.46.465; *provided*, the legislature specifically appropriates funds for capital improvements for the biennium in which the request is made and the net rate effect is ten cents per patient day or greater. Physical plant capital improvements include, but are not limited to, capitalized additions, replacements or renovations made as a result of an approved certificate of need or capitalized additions or renovations for the removal of physical plant waivers.

(3) When physical plant improvements made under subsection (1) or (2) are completed in phases, the department shall not grant a rate add-on for any addition, replacement or improvement until each phase is completed and fully utilized for which it was intended. The department shall limit rate add-on to only the actual cost of the depreciable tangible assets meeting the criteria of WAC 388-96-557 and as applicable to that specific completed and fully utilized phase.

(4) When the construction class of any portion of a newly constructed building will improve as the result of any addition, replacement or improvement occurring in a later, but not yet completed and fully utilized phase of the project, the most appropriate construction class, as applicable to that completed and fully utilized phase, will be assigned for purposes of calculating the rate add-on. The department

shall not revise the rate add-on retroactively after completion of the portion of the project that provides the improved construction class. Rather, the department shall calculate a new rate add-on when the improved construction class phase is completed and fully utilized and the rate add-on will be effective in accordance with subsection (8) of this section using the date the class was improved.

(5) The department shall not add on construction fees as defined in WAC 388-96-745(6) and other capitalized allowable fees and costs as related to the completion of all phases of the project to the rate until all phases of the entire project are completed and fully utilized for the purpose it was made. At that time, the department shall add on these fees and costs to the rate, effective no earlier than the earliest date a rate add-on was established specifically for any phase of this project. If the fees and costs are incurred in a later phase of the project, the add-on to the rate will be effective on the same date as the rate add-on for the actual cost of the tangible assets for that phase.

(6) The contractor requesting an adjustment under subsection (1) or (2) shall submit a written request to the office of rates management separate from all other requests and inquiries of the department, e.g., WAC 388-96-904 (1) and (5). A complete written request shall include the following:

(a) A copy of documentation (i.e., survey level "A" deficiency) requiring completion of the addition or replacements to maintain licensure or certification for adjustments requested under subsection (1) of this section;

(b) A copy of the new bed license, whether the number of licensed beds increases or decreases, if applicable;

(c) All documentation, e.g., copies of paid invoices showing actual final cost of assets and/or service, e.g., labor purchased as part of the capitalized addition or replacements;

(d) Certification showing the completion date of the capitalized additions or replacements and the date the assets were placed in service per WAC 388-96-559(2);

(e) A properly completed depreciation schedule for the capitalized additions or replacement as provided in this chapter;

(f) A written justification for granting the rate increase; and

(g) For capitalized additions or replacements requiring certificate of need approval, a copy of the approval and description of the project.

(7) The department's criteria used to evaluate the request may include, but is not limited to:

(a) The remaining functional life of the facility and the length of time since the facility's last significant improvement;

(b) The amount and scope of the renovation or remodel to the facility and whether the facility will be better able to serve the needs of its residents;

(c) Whether the improvement improves the quality of living conditions of the residents;

(d) Whether the improvement might eliminate life safety, building code, or construction standard waivers;

(e) Prior survey results; and

(f) A review of the copy of the approval and description of the project.

(8) The department shall not grant a rate add-on effective earlier than sixty days prior to the receipt of the

initial written request by the office of rates management and not earlier than the date the physical plant improvements are completed and fully utilized. The department shall grant a rate add-on for an approved request as follows:

(a) If the physical plant improvements are completed and fully utilized during the period from the first day to the fifteenth day of the month, then the rate will be effective on the first day of that month; or

(b) If the physical plant improvements are completed and fully utilized during the period from the sixteenth day and the last day of the month, the rate will be effective on the first day of the following month.

(9) If the initial written request is incomplete, the department will notify the contractor of the documentation and information required. The contractor shall submit the requested information within fifteen days from the date the contractor receives the notice to provide the information. If the contractor fails to complete the add-on request by providing all the requested documentation and information within the fifteen days from the date of receipt of notification, the department shall deny the request for failure to complete.

(10) If, after the denial for failure to complete, the contractor submits a written request for the same project, the date of receipt for the purpose of applying subsection (8) will depend upon whether the subsequent request for the same project is complete, i.e., the department does not have to request additional documentation and information in order to make a determination. If a subsequent request for funding of the same project is:

(a) Complete, then the date of the first request may be used when applying subsection (8); or

(b) Incomplete, then the date of the subsequent request must be used when applying subsection (8) even though the physical plant improvements may be completed and fully utilized prior to that date.

(11) The department shall respond, in writing, not later than sixty days after receipt of a complete request.

(12) If the contractor does not use the funds for the purpose for which they were granted, the department shall immediately recoup the misspent or unused funds.

(13) When any physical plant improvements made under subsection (1) or (2) results in a change in licensed beds, any rate add-on granted will be subject to the provisions regarding the number of licensed beds, patient days, occupancy, etc., included in this chapter.

NEW SECTION

WAC 388-96-777 Add-ons to the prospective rate—Initiated by the department. (1) The department shall initiate all rate add-ons granted under this section. Contractors may not request and be approved a rate add-on under this section.

(2) Rate add-ons the department grants under the authority of this section shall be for costs to implement:

(a) Program changes that the director of nursing home services, aging and adult services administration determines a rate add-on is necessary to accomplish the purpose of the change and announces same in a written directive to the chief of the office of rates management; or

(b) Changes in either the state or federal statutes or regulations or directives that the director of management services, aging and adult services administration determines requires a rate add-on to implement and directs in writing the chief of the office of rates management to implement.

(3) Changes made under this section are subject to review under WAC 388-96-901 and 388-96-904; *provided*, the issue is not whether a rate add-on should have been granted.

(4) If the contractor does not use the funds for the purpose for which they were granted, the department shall immediately recoup the misspent or unused funds.

AMENDATORY SECTION (Amending Order 3185, filed 5/31/91, effective 7/1/91)

WAC 388-96-904 Administrative review—Adjudicative proceeding. (1) Within twenty-eight days after a contractor is notified of an action or determination it wishes to challenge, the contractor shall request, in writing, the appropriate director or the director's designee review such determination. The contractor shall send the request to the ~~((office of contracts management if the challenge pertains to audit findings (adjusting journal entries or AJEs) or other audit matters. For other matters (such as rates, desk reviews, and settlements), the contractor shall send the request to the manager, residential rates program))~~ office of rates management, aging and adult services administration. If the contractor uses a facsimile to establish the request for review, the facsimile must conform to subsection (1)(a), (b) and (c) and the original including the requirements of subsection (d) of this section must be received by the office of rates management within seven days after the transmission of the facsimile. The contractor or the licensed administrator of the facility shall:

(a) Sign the request;

(b) Identify the challenged determination and the date thereof;

(c) State as specifically as practicable the issues and regulations involved and the grounds for contending the determination is erroneous; and

(d) Attach to the request copies of any documentation the contractor intends to rely on to support the contractor's position.

(2) After receiving a timely request meeting the criteria of ~~((this section))~~ subsection (1) of this section, the department shall contact the contractor to schedule a conference for the earliest mutually convenient time. If the department and contractor cannot agree to a mutually convenient time, then department shall schedule the conference for no earlier than fourteen days after the contractor was ~~((notified of))~~ contacted by the department to schedule the conference and no later than ninety days after a properly completed request is received, unless both parties agree, in writing, to a specific later date. The department may conduct the conference by telephone unless either the department or the contractor requests, in writing, the conference be held in person.

(3) The contractor and appropriate representatives of the department shall participate in the conference. In addition, representatives selected by the contractor may participate. The contractor shall bring to the conference ~~((, or))~~ and

provide to the department fourteen days in advance of the conference:

(a) Any documentation requested by the department which the contractor is required to maintain for audit purposes under WAC 388-96-113; and

(b) Any documentation the contractor intends to rely on to support the contractor's contentions. The parties shall clarify and attempt to resolve the issues at the conference. If additional documentation is needed to resolve the issues, the parties shall schedule a second session of the conference for not later than thirty days after the initial session unless both parties agree, in writing, to a specific later date.

(4) Regardless of whether agreement has been reached at the conference, the director of ~~((residential rates and licensure services))~~ management services division, aging and adult services or designee ~~((or the director of the office of nursing home audit or designee))~~ shall furnish the contractor a written decision within sixty days after the conclusion of the last conference held or the receipt of all required documentation on the action or determination challenged by the contractor.

(5) A contractor has the right to an adjudicative proceeding to contest only issues raised in the administrative review conference and addressed in the director's administrative review decision.

(A) A contractor contesting the director's decision shall within twenty-eight days of receipt of the decision:

(i) File a written application for an adjudicative proceeding with the office of appeals;

(ii) Sign the application or have the licensed administrator of the facility sign it;

(iii) State as specifically as practicable the issues and law involved;

(iv) State the grounds for contesting the director's decision; and

(v) Attach to the application a copy of the director's decision being contested and copies of any documentation the contractor intends to rely on to support its position.

(b) The proceeding shall be governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 388-08 WAC. If any provision in this chapter conflicts with chapter 388-08 WAC, the provision in this chapter governs.

(6) Subject to subsection (7) of this section adjudicative proceedings timely requested under subsection (5) of this section shall be dismissed unless within one calendar year after the department receives the application:

(a) All issues have been resolved by a written, signed settlement agreement between the contractor and the department; or

(b) The evidentiary record, including all briefing, has been closed.

(7) If a written settlement agreement resolving all the issues has not been signed by both the contractor and the department and if the evidentiary record, including all briefing, has not been closed upon the expiration of one year after the application was received by the department, the office of administrative hearings shall, within fourteen days after the expiration date:

(a) Issue a written order dismissing the adjudicative proceeding with prejudice to the contractor; or

(b) Issue a written order for a continuance for good cause described in the order for a period not to exceed ninety days.

Good cause as stated in the order must show the hearing was prevented from being held because of circumstances that were beyond the control of the contractor. Upon expiration of any extension period and without either a signed settlement agreement resolving all issues or a closed evidentiary record including all briefing, the office of administrative hearings shall either dismiss with prejudice to the contractor or continue for good cause as provided in this subsection. Orders for dismissal or continuance shall be subject to a petition for review timely filed with the department's office of appeals if desired by either party.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-96-707 Program services not covered by the reimbursement rate.
- WAC 388-96-721 Priorities in establishing rates and responding to appeals of desk-review adjustments.

**WSR 94-08-066
PROPOSED RULES
WASHINGTON SCHOOL
FOR THE DEAF
[Filed April 4, 1994, 11:17 a.m.]**

Original Notice.

Title of Rule: Chapter 148-120 WAC, Student conduct code.

Purpose: To provide a comprehensive student conduct code and set forth the disciplinary process.

Statutory Authority for Adoption: RCW 72.40.022.

Statute Being Implemented: RCW 72.40.022.

Summary: These rules set forth student conduct which is prohibited and provides a framework for the disciplinary process which is consistent with state and federal law governing the education of students with disabilities.

Reasons Supporting Proposal: The need for a comprehensive student code and procedures and standards governing the imposition of corrective action.

Name of Agency Personnel Responsible for Drafting: Bonnie Y. Terada, Assistant Attorney General, 500 West 8th, #110, Vancouver, 696-6471; Implementation and Enforcement: Dr. Gary Holman, Superintendent, 611 Grand Boulevard, Vancouver, 696-6525.

Name of Proponent: Washington School for the Deaf, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule describes conduct regulations and prescribes the substantive and procedural due process rights of students served by the Washington State School for the Deaf in order to provide an environment conducive to the education and development of deaf and hearing impaired students.

Proposal does not change existing rules.

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

Hearing Location: Washington School for the Deaf, Vocational Lounge, 611 Grand Boulevard, Vancouver, WA 98661, on May 27, 1994, at 10:00 a.m.

Submit Written Comments to: Bonnie Y. Terada, Assistant Attorney General, 500 West 8th, #110, Vancouver, WA 98660, by May 24, 1994.

Date of Intended Adoption: May 27, 1994.

March 29, 1994

Bonnie Y. Terada

Assistant Attorney General

**Chapter 148-120 WAC
STUDENT CONDUCT CODE**

NEW SECTION

WAC 148-120-010 Student responsibilities and duties. Washington school for the deaf is dedicated to offering its students an opportunity for the best education for deaf and hearing impaired students in the state of Washington. Concomitant to the rights and privileges guaranteed by federal and state law to students are duties and responsibilities which guarantee the rights of all students, including respect for the rights of others, compliance with written rules adopted herein and set forth in student handbooks, and submission to reasonable disciplinary action for violation(s) for such rules. This chapter is intended to assure that disciplinary action is imposed for just cause and in a fair and reasonable manner.

NEW SECTION

WAC 148-120-015 Student rights. (1) Each student is guaranteed the following rights, within the limitations of statutory law and school policy which are deemed necessary to achieve the school's educational goals:

(a) Students possess the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and sexual harassment.

(b) Students possess the rights, guaranteed under the Constitution, to freedom of expression, free inquiry, and peaceful assembly upon and within school facilities that are generally open and available to the public.

(c) Students possess the rights, guaranteed under the Constitution, to the free exercise of religion and to have their school free from sectarian control or influence, subject to reasonable limitations upon the time, place, and manner of exercising such right.

(d) Students possess the constitutional right to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures, subject to limitations set forth in RCW 28A.600.210 through 28A.600.240 as now or hereafter amended.

(e) Students have the right to be free from unlawful interference in their pursuit of an education while enrolled at the Washington school for the deaf.

(f) Students shall not be deprived of the right to an equal educational opportunity in whole or in part by the

Washington school for the deaf without due process including:

(i) Notice to the accused student of the nature of the charges and the proposed disciplinary action; and
 (ii) The opportunity to request a hearing as set forth in this chapter.

(2) The foregoing enumeration of rights shall not be construed to deny or disparage other rights guaranteed in the Constitution and the laws of the state of Washington.

(3) The school shall publish and make available to all students and parents, on an annual basis, written rules which state with reasonable clarity the types of misconduct for which disciplinary action may be imposed.

CONDUCT RULES

NEW SECTION

WAC 148-120-100 Conduct violations. A student who, either as actor, aider, abettor, or accomplice as defined in RCW 9A.08.020, violates any provision of this chapter shall be subject to the disciplinary actions herein adopted.

The following offenses are prohibited:

(1) Physical abuse. Actual, attempted, or threatened physical abuse of any person or conduct which threatens or endangers the health and safety of any person or which intentionally causes a reasonable apprehension of harm to any person.

(2) Destroying or damaging property. Destroying, defacing, or damaging school property or the property of others on school premises or at school-sponsored activities.

(3) Sexual harassment. Engaging in unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature where such behavior offends the recipient, causes discomfort or humiliation, or interferes with job or school performance.

(4) Disruption. Disorderly, intimidating or abusive behavior which interferes with the rights of others, school, or school-sponsored activities; obstructing the free movement of people or vehicles; inciting others to engage in prohibited conduct; or threatening disruption.

(5) Insubordination. Refusal or failure to follow instructions and proper orders of school officials, while on school property, during transportation to and from school, or at school-sponsored activities, thereby infringing upon the rights and privileges of others, and/or refusal to desist from prohibited conduct.

(6) False alarms. Falsely setting off, improper use or disabling of any safety equipment, alarm, exit sign, or other device.

(7) False information. Filing a formal complaint which falsely accuses another with violation of this chapter, falsifying information to school officials, or forging or tendering any forged instrument to the school.

(8) Theft. Actual or attempted theft of property or services belonging to the school, any student, school employee, or school visitor, including knowing possession of stolen property.

(9) Academic dishonesty. All forms of cheating, plagiarism and fabrication, including submitting any work product that the student misrepresents as his or her work

product for the purpose of fulfilling any assignment or task required as part of the student's course of studies.

(10) Conversion. Unauthorized use or possession of school equipment or services.

(11) Unlawful entry and trespassing. Entering and/or remaining in any administrative or other employee office or any locked or otherwise closed school facility, in any manner, at any time, without permission.

(12) Smoking. Students are not allowed to smoke or use tobacco products on school property or during school-sponsored activities.

(13) Alcohol. Use, possession, distribution of, or visible intoxication from alcoholic beverages is prohibited on school property or at school-sponsored activities.

(14) Drugs and controlled substances. Use, possession, distribution, or being visibly under the influence of any narcotic or controlled substance as defined in the Uniform Controlled Substances Act, chapter 69.50 RCW, as amended, except when the use or possession of a drug is specifically prescribed as medication by an authorized medical doctor or dentist.

(15) Weapons and dangerous chemicals. Unauthorized use, possession or storage of any weapon, explosives, dangerous chemicals, substances or instruments, which may be used to inflict bodily harm on another or damage upon school property or personal property.

(16) Other conduct. Any other conduct or action, the terms and violations of which are published annually in the student/parent handbook, in which the school can demonstrate a clear and distinct interest and which substantially threatens the educational process or other legitimate function of the school or the health or safety of any member of the school community is prohibited.

NEW SECTION

WAC 148-120-120 Misdemeanor and/or felony. Any student who commits any other act on school property or at a school-sponsored event which is punishable as a misdemeanor or felony under the laws of the state of Washington and which act is not a violation of any other provision of the student conduct code, shall be subject to disciplinary action.

When a student has been apprehended for the violation of law, the school will not request or agree to special consideration for the student because of his/her status as a student. The school will cooperate, however, with law enforcement and other agencies on any student rehabilitation program.

DISCIPLINARY PROCESS AND PROCEDURES

NEW SECTION

WAC 148-120-200 Policy. The Washington school for the deaf has established standards of conduct for students and the disciplinary process to protect members of the school community, maintain and advance its educational mission, and provide for the orderly conduct of the school's activities. Disciplinary procedures used by the school are considered part of its educational process. In every case of misconduct, the nature and circumstances of the violation will be considered and appropriate disciplinary actions will be administered on a less restrictive alternative basis, including but not

limited to time out, detention, behavior contracts, restriction of privileges, reprimand, restitution, suspension or expulsion.

NEW SECTION

WAC 148-120-205 Limitations. (1) No form of disciplinary action shall be enforced in such a manner as to prevent a student from accomplishing specific academic grade, subject, or graduation requirement: *Provided*, That a student's academic grade or credit in a particular subject or course may be adversely affected as a result of excessive tardiness or absences.

(2) Corporal punishment as defined by the board of education in WAC 180-40-235 as now or hereafter amended, is prohibited.

NEW SECTION

WAC 148-120-210 Emergency removal from class or activity. (1) Notwithstanding any other provision of this chapter, a student may be removed immediately from a class, subject, or activity by a certificated teacher or an administrator and sent to the principal or his/her designee: *Provided*, That the teacher or administrator has good and sufficient reason to believe that the student's presence poses an immediate and continuing danger to the student, other students, or school personnel, or an immediate and continuing threat of substantial disruption of the class, subject, activity, or educational process of the school. The removal from classes, subjects, or activities shall continue only until:

(a) The danger or threat ceases; or

(b) The principal or his/her designee acts to impose disciplinary action pursuant to this chapter.

(2) The principal or his/her designee shall meet with the student as soon as reasonably possible following the student's removal and take appropriate disciplinary action. In no case shall the student's opportunity for such meeting be delayed beyond the commencement of the next school day. Prior to or at the time any such student is returned to the class(es), subject(s), or activity(ies), the principal or his/her designee shall notify the teacher or administrator who removed the student therefrom of the action which has been taken.

NEW SECTION

WAC 148-120-220 Short-term suspension. (1) As used in this chapter, "short-term suspension" shall mean a denial of attendance at any class or admission to or entry upon school property for up to and not exceeding ten consecutive school days.

(2) Unless otherwise prohibited, short-term suspension may be imposed upon a student for violation(s) of student conduct code rules.

(3) A student may be suspended for a short-term after another less restrictive form of disciplinary action, reasonably calculated to modify his or her conduct, has been imposed as a consequence of misconduct of the same nature: *Provided*, That the school may resort to immediate short-term suspension in cases involving exceptional misconduct. For the purposes of this section, "exceptional misconduct" means misconduct, other than absenteeism, (a) of such frequent occurrence, notwithstanding prior attempts by the

school to control such misconduct through the use of other forms of disciplinary action, as to warrant immediate resort to short-term suspension, and/or (b) so serious in nature and/or in terms of the disruptive effect upon the operation of the school, as to warrant immediate resort to short-term suspension.

(4) Any student subject to short-term suspension shall be provided the opportunity upon return to make up assignments and tests missed by reason of the suspension if such assignments or tests have a substantial effect upon academic standing.

NEW SECTION

WAC 148-120-225 Short-term suspension—Notice and conference—Grievance procedure. (1) Prior to the short-term suspension of any student pursuant to WAC 148-120-220, a conference shall be conducted with the student as follows:

(a) Notice of the alleged misconduct and violation(s) of school rules shall be provided to the student in writing or the mode of communication of the student;

(b) An explanation of the evidence in support of the allegation(s) shall be provided to the student in writing or the mode of communication of the student;

(c) An explanation of the disciplinary action which may be imposed shall be provided to the student in writing or the mode of communication of the student; and

(d) The student shall have the opportunity to present his/her explanation.

(2) In the event a suspension is to exceed one calendar day the parent(s) or guardian(s) of the student shall be notified of the reason for the student's suspension and the duration of the suspension orally and/or by letter deposited in the United States mail as soon as reasonably possible. The notice shall also inform the parent or guardian of the right to a brief adjudicative proceeding and that the suspension may possibly be reduced as a result of such proceeding.

(3) Any student, parent, or guardian aggrieved by the imposition of a short-term suspension pursuant to WAC 148-120-220, shall have the right to a brief adjudicative proceeding under WAC 148-108-100 as soon as reasonably possible. The disciplinary action may continue notwithstanding the implementation of the brief adjudicative proceeding set forth in this section.

(4) The presiding officer shall give a written decision including a brief statement of the reasons for the decision within ten days of the brief adjudicative proceeding.

NEW SECTION

WAC 148-120-230 Long-term suspension. (1) As used in this chapter, "long-term suspension" shall mean a denial of attendance at any class or admission to or entry upon school property in excess of ten consecutive school days.

(2) Unless otherwise prohibited, long-term suspensions may be imposed on a student for violation(s) of student conduct code rules.

(3) When a student engages in conduct that would warrant long-term suspension, the student, parent(s) or guardian(s) shall be notified immediately of the misconduct, the disciplinary action proposed, and the time and location

of any individualized education program (IEP) team meeting review.

(4) If long-term suspension is recommended, the school shall convene a meeting to review the student's IEP pursuant to WAC 148-171-210. The IEP team shall determine whether the misconduct is a manifestation of or is substantially related to the student's handicapping condition(s).

(5) If the IEP team concludes that the misconduct is not a manifestation of the student's handicapping condition(s), the student may be disciplined under the procedures set forth in WAC 148-120-234 through 148-120-236.

(6) If the IEP team concludes that the misconduct is a manifestation of the student's handicapping condition(s), suspension for more than ten days shall not be imposed unless:

(a) The school and parent(s) or guardian(s) agree otherwise; or

(b) The IEP team recommends a change of placement.

(7) A student involved in the complaint shall remain at the school during the pendency of any administrative or judicial proceeding, unless:

(a) The student's misconduct poses an immediate threat to the safety of others or where maintaining the student in his/her current placement at the school has a substantial likelihood of resulting in injury either to the student or to others; or

(b) The school, student, and parent(s) agree otherwise.

(8) A party may request a hearing pursuant to WAC 148-171-600, on any manner described in this section.

(9) Nothing in this section shall be construed to limit the superintendent's ability to seek injunctive relief in appropriate cases from a court of competent jurisdiction.

NEW SECTION

WAC 148-120-234 Long-term suspension—Misconduct unrelated to handicapping condition(s)—Notice. (1) A student may be suspended for a long term after another less restrictive form of disciplinary action, reasonably calculated to modify his or her conduct, has been imposed as a consequence of misconduct of the same nature: PROVIDED, That the school may resort to immediate long-term suspension in cases involving exceptional misconduct. For the purposes of this section, "exceptional misconduct" means misconduct, other than absenteeism, (a) of such frequent occurrence, notwithstanding prior attempts by the school to control such misconduct through the use of other forms of disciplinary action, as to warrant immediate resort to long-term suspension, and/or (b) so serious in nature and/or in terms of the disruptive effect upon the operation of the school, as to warrant immediate resort to long-term suspension.

(2) Prior to the long-term suspension of any student for misconduct unrelated to his/her handicapping condition(s), written notice of an opportunity for a hearing shall be delivered in person or by certified mail to the student and parent(s) or guardian(s). The notice shall:

(a) Be provided in the predominant language of a student and/or a parent(s) or guardian(s) who predominantly speak a language other than English, to the extent feasible;

(b) Specify the alleged misconduct and the rule(s) alleged to have been violated;

(c) Set forth the disciplinary action proposed;

(d) Set forth the right of the student and/or his or her parent(s) or guardian(s) to a hearing for the purpose of contesting the allegation(s).

(e) State that a written request for a hearing must be received by the school employee designated, or by his or her office within three school days after receipt of the notice of opportunity for a hearing; and

(f) State that if such a request is not received within the prescribed period of time, then the right to a hearing may be deemed to have been waived and the proposed long-term suspension may be imposed.

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 148-120-236 Long-term suspension—Misconduct unrelated to handicapping condition(s)—Hearing—Appeal. (1) If a request for a hearing is received pursuant to WAC 148-120-234 within the required time period, the school shall schedule a hearing to commence within seven school days after the date upon which the request for a hearing was received.

(2) The student and parent(s) or guardian(s) has the right to:

(a) Inspect in advance of the hearing any documentary and other physical evidence which the school intends to introduce at the hearing;

(b) Be advised or represented by an attorney;

(c) Present relevant evidence, confront and compel the attendance of witnesses.

(3) The designee of the school assigned to present the school's case shall have the right to inspect in advance of the hearing any documentary and other physical evidence which the student and parent(s) or guardian(s) intends to introduce at the hearing;

(4) The person(s) hearing the case shall not be a witness and the decision on the suspension shall be based solely on the evidence presented at the hearing.

(5) A written or electronic verbatim record of the hearing shall be made.

(6) A written decision setting forth findings of fact, conclusions, and the nature and duration of the long-term suspension or lesser form of disciplinary action to be imposed, if any, shall be provided to the student, parent(s) or guardian(s), and attorney.

(7) If a request for hearing is not received within the prescribed period of time, then the right to a hearing may be deemed to have been waived and the proposed long-term suspension may be imposed without any further opportunity for the student or his or her parent(s) to contest the matter.

(8) A decision which imposes a long-term suspension upon a student shall be final and no further appeal within the school is provided.

(9) During the pendency of any administrative or judicial proceeding involving suspension under this section, unless the school and the parent(s) of the student (or the adult student as defined in WAC 148-171-010(1)) agree otherwise, the student shall remain in the educational placement he or she was in when the request for hearing was

made: *Provided*, That nothing in this section shall be construed to limit the superintendent's ability to seek injunctive relief in appropriate cases from a court of competent jurisdiction.

WSR 94-09-002
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF LICENSING
 [Filed April 7, 1994, 10:30 a.m.]

The Department of Licensing has opted to withdraw proposed rule making WAC 308-330-418 filed under WSR 93-20-079. The new rule proposed for adoption subject to this WSR will not be adopted because the proposed rule is contrary to RCW 46.61.230 and [46.61].240 adopted by reference in WAC 308-330-415.

Nancy Kelly, Administrator
 Title and Registration Services
 Vehicle Services Division

WSR 94-09-003
WITHDRAWAL OF PROPOSED RULES
HORSE RACING COMMISSION
 [Filed April 7, 1994, 10:32 a.m.]

The Washington Horse Racing Commission wishes to withdraw the following filed rule changes:

- | | |
|---------------|----------------|
| WSR 93-20-115 | WAC 260-12-090 |
| WSR 93-20-116 | WAC 260-12-010 |
| WSR 93-20-117 | WAC 260-24-010 |
| | WAC 260-24-080 |
| | WAC 260-24-110 |
| | WAC 260-24-120 |
| | WAC 260-24-140 |
| | WAC 260-24-150 |
| | WAC 260-24-170 |
| | WAC 260-24-180 |
| | WAC 260-24-200 |
| WSR 93-20-118 | WAC 260-24-285 |
| | WAC 260-24-315 |
| | WAC 360-24-500 |
| | WAC 360-24-510 |
| | WAC 260-24-520 |
| WSR 93-20-119 | WAC 260-34-030 |
| WSR 93-20-120 | WAC 260-70-010 |
| WSR 93-20-122 | WAC 260-24-210 |
| | WAC 260-24-290 |
| | WAC 260-24-440 |
| | WAC 260-24-460 |
| | WAC 260-24-470 |

Bruce Batson
 Executive Secretary

WSR 94-09-007
PROPOSED RULES
DEPARTMENT OF HEALTH
 [Filed April 11, 1994, 9:16 a.m.]

Original Notice.

Title of Rule: Chapter 246-455 WAC, Hospital patient discharge reporting.

Statutory Authority for Adoption: 43.070 [Chapter 43.07 RCW].

Statute Being Implemented: Chapter 70.170 RCW.

Summary: The revision is necessary to be in compliance with the federal requirements from Health Care Financial Administration (HCFA) to change from using the Uniform Billing 82 (UB-82) format to the UB-92 format. Other changes are administrative, changing the term "Hospital Commission" to "Department of Health."

Reasons Supporting Proposal: Allows hospitals to submit data to CHARS in the same format used in reporting data to Medicare, Medicaid, and other payers.

Name of Agency Personnel Responsible for Drafting: Diana Johnson, CHARS Manager, 1102 S.E. Quince Street, Olympia, WA, (206) 705-6011; Implementation and Enforcement: H. H. Brown, 1102 S.E. Quince Street, Olympia, WA, (206) 705-6007.

Name of Proponent: Office of Hospital and Patient Data Systems, governmental.

Rule is necessary because of federal law, 93-22335 - September 10, 1993.

Explanation of Rule, its Purpose, and Anticipated Effects: The revision is necessary to accept data from hospitals in the format described in the Federal Register, Vol. 58, No. 175, Notices, Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA), p. 47904, Number 9. The current revised version (HCFA-1450) is designated as the UB-92 and contains various improvements recommended by the National Uniform Billing Commission (NUBC). After approval, the form will be phased in, and by April 1, 1994, will be the preferred billing format for Medicare and Medicaid services. Other changes are administrative, changing the term "Hospital Commission" to "Department of Health."

Proposal Changes the Following Existing Rules: Additions to the data submitted on the UB-92 format include changing the number of diagnoses codes submitted from five to nine, and the number of procedure codes submitted from three to five. The sequence of data submission in the UB-92 format is arranged in a different order.

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

Hearing Location: Department of Health, 1102 S.E. Quince Street (Blue Awning), 1st Floor Conference Room, Olympia, WA, on May 24, 1994, at 10:00 a.m.

Submit Written Comments to: Department of Health, Ann Foster, Department of Health Rules Coordinator, P.O. Box 47890, Olympia, WA 98504-7890, by May 23, 1994.

Date of Intended Adoption: June 1, 1994.

April 8, 1994
 Bruce Miyahara
 Secretary

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-455-001 Purpose. This chapter is adopted by the Washington state (~~hospital commission~~) department of health pursuant to RCW (~~70.39.180 to implement provisions of RCW 70.39.100 as amended by section 10, chapter 288, Laws of 1984,~~) 70.170.100 relating to the collection and maintenance of patient discharge data, including data necessary for identification of discharges by diagnosis-related groups.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-455-010 Definitions. As used in this chapter, unless the context requires otherwise,

(1) (~~"Commission" means the Washington state hospital commission created by chapter 70.39 RCW;~~) "Department" means department of health.

(2) "Diagnosis-related groups" is a classification system that groups hospital patients according to principal and secondary diagnosis, presence or absence of a surgical procedure, age, presence or absence of significant comorbidities or complications, and other relevant criteria(=);.

(3) "Hospital" means any health care institution which is required to qualify for a license under RCW 70.41.020(2); or as a psychiatric hospital under chapter 71.12 RCW(~~, but shall not include beds utilized by a comprehensive cancer center for cancer research, or any health care institution conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any church or denomination;~~);.

(4) (~~"(UB-82) UB-92 data set" means the data element specifications developed by the Washington state uniform billing ((implementation)) committee and set forth in the state of Washington ((UB-82)) UB-92 Procedure Manual, which is available to the public upon request(, which are to be reported by a hospital in processing hospital patient bills/claims for payment).~~)

(5) "Patient discharge" means the termination of an inpatient admission or stay, including an admission as a result of a birth, in a Washington hospital.

(6) "HMO" means a health maintenance organization.

(7) "SNF" means a skilled nursing facility.

(8) "HCF" means a health care facility.

(9) "ICF" means an intermediate care facility.

(10) "HHA" means a home health agency.

(11) "IV" means intravenous.

(12) "UPIN" means unique physician identification number.

(13) "CHARS" means comprehensive hospital abstract reporting system.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-455-020 Reporting of ((UB-82)) UB-92 data set information. (1) Effective with all hospital patient discharges on or after ((July 1, 1984)) April 1, 1994, hospitals shall collect and report the following ((UB-82)) UB-92 data set elements to the ((~~commission~~) department):

(a) Patient control number

Patient's unique alpha-numeric number assigned by the hospital to facilitate retrieval of individual patient records ((~~and posting of payments~~)). This number should be constructed to allow prompt hospital access to the patient's discharge record for data verification.

(b) Type of bill

This three-digit code requires 1 digit each, in the following sequence form: Type of facility, bill classification, frequency.

Digit #1 must be "1" to indicate a hospital.

Digit #2 must be a "1," a "2" or an "8" to indicate an inpatient.

Digit #3 must be ((~~one of the following:~~

~~1-)) a "1" to indicate admit through discharge claim.~~

(c) Medicare provider number

This is the number assigned to the provider by Medicare.

(d) Patient identifier

The patient identifier shall be composed of the first two letters of the patient's last name, the first two letters of the patient's first name, or one or two initials if no first name is available, or when the last name is a single letter add three letters of first name, and the patient's birthdate.

(e) ((~~Zipcode~~) ZIP Code

Patient's five or nine digit ((~~zipcode~~) ZIP Code. In the case of a foreign country, enter the first nine characters of the name.

(f) Birthdate

The patient's date of birth in ((~~MMDDYY~~) MMDDYYYY format. ((~~Note: If the patient is over 100 years old at the date of admission, then "17" must be the value in the "condition code #1" field.~~))

(g) Sex

Patient's sex in M/F format.

(h) Admission date

Admission date in MMDDYY format.

(i) Type of admission

This field is filled with one of the following codes:

1 Emergency

2 Urgent

3 Elective

4 Newborn

((~~5-Other~~))

(j) Source of admission

This field is completed with one of the following codes:

1 Physician referral

2 Clinic referral

3 HMO referral

4 Transfer from another hospital

5 Transfer from a SNF

6 Transfer from another HCF

7 Emergency room

8 Court/law enforcement

9 Other

When type of admission is a "4 newborn," enter one of the following for source of admission:

1 Normal delivery

2 Premature delivery

3 Sick baby

4 Extramural birth

5 Multiple birth

(k) Patient status

Patient discharge disposition in one of the following codes:

- 01 Discharged home or self care
- 02 Discharged to another short-term general hospital
- 03 Discharged to SNF
- 04 Discharged to an ICF
- 05 Discharged to another type institution
- 06 Discharged to home under care of HHA
- 07 Left against medical advice
- 08 Discharged/transferred to home under care of home IV provider
- 20 Expired

(l) Statement covers period

This is the beginning and ending dates for which the ~~((UB-82))~~ UB-92 covers.

~~((Chapter 261-50 WAC))~~

(m) ~~((Condition code #1~~

~~If a patient is equal to or over 100 years old at the time of admission, the value "17" must be the value of this field.~~

~~((n))~~ Revenue code

The Medicare required revenue code (as defined in the ~~((UB-82))~~ UB-92 Procedure~~((s))~~ Manual), which identifies a specific accommodation, ancillary service or billing calculation. ~~((Effective January 1, 1987.~~

~~((o))~~ (n) Units of service

The Medicare required units of service (as defined in the ~~((UB-82))~~ UB-92 Procedure~~((s))~~ Manual) which provide a quantitative measure of services rendered by revenue category to or for the patient. Where no units of service are required by Medicare, the units of service may be those used by the hospital. ~~((Effective January 1, 1987.~~

~~((p))~~ (o) Total charges by revenue code category

Total charges pertaining to the related revenue code. ~~((Effective January 1, 1987.~~

~~((q))~~ (p) Payer identification #1

Enter the three-digit code that identifies the primary payer. The required code options include:

- 001 for Medicare
- 002 for Medicaid
- 004 for health maintenance organizations
- 006 for commercial insurance
- 008 for ~~((labor and industries))~~ workers' compensation which includes state fund, self-insured employers, and labor and industries crime victims claims
- 009 for self pay
- 610 for health care service contractors, e.g., Blue Cross, county medical bureaus, Washington Physicians Service
- 625 for other sponsored patients, e.g., CHAMPUS, Indian health
- 630 charity care, as defined in ~~((WAC 261-14-020(5)))~~ chapter 70.170 RCW

~~((r))~~ (q) Payer identification #2

Same requirements as in payer identification #1. This field should only be completed when a secondary payer has been identified.

~~((s))~~ (r) Principal diagnosis code

~~((ICD9-CM))~~ ICD-9-CM code describing the principal diagnosis (the condition established after study to be chiefly responsible ~~((r))~~ for causing the ~~((hospitalization))~~ that exists at time of) admission of the patient for care.

~~((t))~~ Diagnosis #2 code

~~ICD9-CM code of secondary diagnosis corresponding to additional diagnosis that coexist at the time of admission, or develop subsequently, and which have an effect on the treatment received or the length of stay.~~

~~((u))~~ Diagnosis #3 code

~~ICD9-CM code of secondary diagnosis corresponding to additional diagnosis that coexist at the time of admission, or develop subsequently, and which have an effect on the treatment received or the length of stay.~~

~~((v))~~ Diagnosis #4 code

~~ICD9-CM code of secondary diagnosis corresponding to additional diagnosis that coexist at the time of admission, or develop subsequently, and which have an effect on the treatment received or the length of stay.~~

~~((w))~~ Diagnosis #5 code

~~ICD9-CM code of secondary diagnosis corresponding to additional diagnosis that coexist at the time of admission, or develop subsequently, and which have an effect on the treatment received or the length of stay.)~~

(s) Other diagnoses codes

ICD-9-CM codes identifying up to eight additional conditions that coexist at the time of admission, or develop subsequently, and which have an effect on the treatment received or the length of stay).

~~((x))~~ (t) Principal procedure code

The ~~((ICD9-CM))~~ ICD-9-CM code that identifies the principal procedure performed during the patient admission.

~~((y))~~ Procedure #2 code

~~Secondary procedure code identifying procedures, other than the principal procedure, performed during the admission.~~

~~((z))~~ Procedure #3 code

~~Secondary procedure code identifying procedures, other than the principal procedure, performed during the admission.~~

~~((aa))~~ Attending physician ID

~~The Medicaid assigned number of the licensed physician who would normally be expected to certify and recertify the medical necessity of the services rendered and/or who has primary responsibility for the patient's medical care and treatment. For physicians who do not have a Medicaid number assigned, the state license number should be used. Effective July 1, 1987.~~

~~((bb))~~ Other physician ID

~~The Medicaid assigned number of the licensed physician who performed the principal procedure. For physicians who do not have a Medicaid number, the state license number should be used. If no principal procedure was performed, this field should be left blank. Effective July 1, 1987.)~~

(u) Other procedure codes

ICD-9-CM codes identifying up to five significant procedures other than the principal procedure performed during the admission.

(v) Attending physician identification

The UPIN number of the licensed physician who would normally be expected to certify and recertify the medical necessity of the services rendered and/or who has primary responsibility for the patient's medical care and treatment. For physicians who do not have a UPIN number, the state Medicaid number or the state license number should be used.

(w) Other physician identification

The UPIN number of the licensed physician who performed the principal procedure. For physicians who do not have a UPIN number, the state Medicaid number or the state license number should be used. If no principal procedure was performed, this field should be left blank.

(2) ~~(It shall be the responsibility of each hospital to ensure that data reported pursuant to WAC 261-50-030(1) is provided for all patient discharges.)~~ The hospital shall report all inpatients discharge data described in WAC 246-455-020. Each patient discharge must carry a separate, unique patient control number on a separate ~~((UB-82))~~ UB-92 record. For example, a mother and her newborn require separate ~~((UB-82s))~~ UB-92s, each with a separate, unique patient control number.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-455-040 Acceptable media for submission of data. ~~((For purposes of the data collected and reported pursuant to WAC 261-50-030 and 261-50-035;))~~ Hospitals shall submit ~~((such))~~ data in ~~((such))~~ the form ~~((as))~~ prescribed by the ~~((commission))~~ department in the *CHARS Procedure Manual* ~~((for Submitting Discharge Data))~~.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-455-050 Time deadline for submission of data. ~~((Data collected by hospitals pursuant to WAC 261-50-030 and 261-50-035))~~ The hospital shall ~~((be submitted))~~ submit data to the ~~((commission))~~ department or its designee within forty-five days following the end of each calendar month.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-455-060 Edits to data. ~~((The commission or its designee shall subject the data submitted to the commission pursuant to WAC 261-50-030 and 261-50-035 to the following set of edits:))~~ The department shall edit the data as follows:

(1) Record layout compatibility edits on data submitted in accordance with WAC ~~((261-50-040))~~ 246-455-020; and

(2) Verification of the data set elements set forth in WAC ~~((261-50-030 and 261-50-035))~~ 246-455-020.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-455-070 Revisions to submitted data. (1) All data revisions required as a result of the edits performed pursuant to WAC ~~((261-50-060))~~ 246-455-020 shall be corrected and ~~((resubmitted in the prescribed manner to the~~

~~commission))~~ returned to the department or its designee within fourteen working days.

(2) The ~~((commission))~~ department may assess a civil penalty as provided in RCW ~~((70.39.200 and WAC 261-50-090))~~ 70.170.070 and WAC 246-455-100 for the costs associated with more than one cycle of edits as described in WAC ~~((261-50-060))~~ 246-455-060.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-455-080 Confidentiality of data. ~~((The commission deems information submitted pursuant to WAC 261-50-030 (1)(a) and (d) privileged medical information as stated in RCW 70.39.110, as amended by section 11(5), chapter 288, Laws of 1984 and, therefore, such information will not be available for public inspection and copying pursuant to chapter 42.17 RCW.))~~ The department and any of its contractors or agents shall maintain the confidentiality of any information which may in any manner identify individual patients. RCW 70.170.090.

The following confidential data elements are not public data: Patient control number, patient identifier, patient birthdate, admission date, discharge day, and nine-digit ZIP Code. The following data elements are public data: Patient's age at admission, discharge month and year, length of stay, and a five-digit ZIP Code.

Records containing confidential data elements may be disclosed for research purposes after approval from the human research review board in accordance with RCW 42.48.020.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-455-090 Certification of data accuracy. ~~((Following the end of each calendar quarter, the commission shall furnish each hospital a report of its discharge data for that quarter contained in the commission's discharge system.))~~ The department shall furnish each hospital a report of its quarterly discharge data contained in the department's discharge data system. The chief executive officer of the hospital shall, within fourteen calendar days of receipt of the report, certify that the information contained in the ~~((commission's discharge))~~ department's discharge data system is complete and accurate to within ninety-five percent of the total discharges and total charges experienced at the hospital during that quarter, or submit the necessary corrections to the data to permit such certification.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-455-100 Penalties for violation. ~~((RCW 70.39.200 provides that every person who shall violate or knowingly aid and abet the violation of chapter 70.39 RCW or any valid orders, rules, or regulations thereunder, or who fails to perform any act which that chapter makes it his/her duty to perform shall be guilty of misdemeanor. Following official notice to the accused by the commission of the existence of an alleged violation, each day upon which a violation occurs shall constitute a separate violation. Any person violating the provisions of chapter 70.39 RCW may~~

~~be enjoined from continuing such violation. Failure to file the information required by WAC 261-50-030, 261-50-035, 261-50-040, 261-50-065 and 261-50-075 shall constitute a violation, and the commission may levy a civil penalty not to exceed one hundred dollars per day for each day following official notice of violation by the commission. The executive director of the commission)) RCW 70.170.070 describes the penalty for violation of any valid orders, rules, regulations, and reporting requirements. The department may grant extensions of time to file the information, in which cases failure to file the information shall not constitute a violation until the extension period has expired.~~

WSR 94-09-017
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed April 13, 1994, 2:26 p.m.]

Original Notice.

Title of Rule: Pesticide regulations—Endrin, WAC 16-228-235 through 16-228-275.

Purpose: Repeal rules regarding the product Endrin.

Statutory Authority for Adoption: Chapter 17.21 RCW.

Statute Being Implemented: Chapter 17.21 RCW.

Summary: Endrin no longer has a federal registration for use in orchards.

Name of Agency Personnel Responsible for Drafting and Implementation: Dannie McQueen, P.O. Box 42562, Olympia, WA, 902-1809; and Enforcement: William Brookreson, P.O. Box 42562, Olympia, WA, 902-2011.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Repeal rules regarding the product Endrin.

Proposal does not change existing rules.

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

Hearing Location: Department of Agriculture, Natural Resources Building, 2nd Floor, Conference Room #223, Olympia, Washington 98504-2560, on May 27, 1994, at 9:00 a.m.

Submit Written Comments to: Debbie Anderson, Pesticide Management Division, P.O. Box 42560, Olympia, WA 98504-2560, by May 27, 1994.

Date of Intended Adoption: May 31, 1994.

April 13, 1994
William E. Brookreson
Assistant Director

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 16-228-235 Purpose of rules—Endrin use.
- WAC 16-228-245 Endrin application—Criteria for determining crisis use on orchards.
- WAC 16-228-250 Endrin—Written recommendation—Licensed consultant—Game representative.

- WAC 16-228-255 Endrin—Distribution—Dealer records.
- WAC 16-228-260 Endrin—Application restrictions.
- WAC 16-228-265 Endrin—Posting requirements.
- WAC 16-228-275 Endrin—Applicator records.

WSR 94-09-018
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed April 13, 1994, 4:22 p.m.]

Original Notice.

Title of Rule: WAC 308-18-150 Private security guard company, private security guard, and armed private security guard fees.

Purpose: To establish a level of revenue to meet program expenditures and costs incurred with customer services.

Statutory Authority for Adoption: RCW 18.170.180(1).

Statute Being Implemented: RCW 43.24.086.

Summary: This amendment establishes appropriate fees to meet program expenditures and costs related to customer services.

Reasons Supporting Proposal: To make the program self supporting.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: James D. Hanson, 2424 Bristol Court, Olympia, (206) 753-6967.

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: This fee change will require all new companies and individuals to pay for the first year's license and the costs incurred to conduct background checks and checks with local law enforcement agencies. This also includes a new fee for transfer of an individual license.

Proposal does not change existing rules.

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

Hearing Location: First Floor Conference Room, 405 Black Lake Boulevard, Olympia, WA, on May 26, 1994, at 10:00 a.m.

Submit Written Comments to: Arnold F. Stoehr, Private Security Guards, P.O. Box 9045, Olympia, WA 98507-9045, TDD (206) 753-1966, FAX (206) 586-0998, by May 20, 1994.

Date of Intended Adoption: May 26, 1994.

April 13, 1994
Arnold F. Stoehr
for James D. Hanson
Program Administrator

AMENDATORY SECTION (Amending WSR 93-11-025, filed 5/7/93, effective 7/1/93)

WAC 308-18-150 Private security guard company, private security guard, and armed private security guard fees. The following fees ((for a one year period)) shall be

charged by (~~professional licensing services of~~) the department of licensing:

Title of Fee	Fee
Private security guard company:	
Application ((/examination))	\$250.00
Reexamination	25.00
License (<u>initial and annual renewal</u>)	((250.00)) 267.00
Late renewal with penalty	((350.00)) 367.00
Certification	25.00
Private security guard:	
((Original)) <u>Application for license</u>	((35.00)) 37.00
<u>Fingerprint background check</u>	35.00
Certified trainer examination/ reexamination	25.00
License (<u>initial and annual renewal</u>)	((25.00)) 26.00
Late renewal with penalty	((30.00)) 32.00
Certification	25.00
Armed private security guard:	
((Original)) <u>Application for upgrade of unarmed license</u>	((15.00)) 16.00
<u>Fingerprint background check</u>	35.00
Certified trainer examination/ reexamination	25.00
License (<u>initial and annual renewal</u>)	((25.00)) 26.00
Late renewal with penalty	((30.00)) 32.00
Certification	25.00
<u>License transfer</u>	35.00

WSR 94-09-026
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed April 15, 1994, 8:54 a.m.]

Original Notice.

Title of Rule: Chapter 246-450 WAC, Compliance with public records, chapter 246-451 WAC, Hospital assessments for the financing of hospital data collection and reporting activities, chapter 246-452 WAC, Collection of current hospital price changes, chapter 246-453 WAC, Hospital policies related to charity care, and chapter 246-454 WAC, Hospital financial reporting requirements.

Statutory Authority for Adoption: RCW 43.70.040.

Statute Being Implemented: Chapter 70.170 RCW.

Summary: Chapters 246-450 and 246-452 WAC, repealed; chapter 246-451 WAC, Assessments—Commission to department, update to reflect RCW and WAC numerical changes; chapter 246-453 WAC, Charity care, minor housekeeping changes; and chapter 246-454 WAC, Hospital reporting requirements, third addition of accounting and

reporting manual, reduced reporting requirements, commission to department, update to reflect RCW and WAC numerical changes.

Reasons Supporting Proposal: The majority of changes are administrative. The changes also reflect current practices in the financial data collection of hospitals.

Name of Agency Personnel Responsible for Drafting: Larry Hettick, Office of Hospital and Patient Data, 705-6014; Implementation and Enforcement: Hank Brown, Office of Hospital and Patient Data, 705-6007.

Name of Proponent: Department of Health, Office of Hospital and Patient Data Systems, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed changes correct former references from the Hospital Commission to the Department of Health, updates RCW and WAC numerical changes, incorporates the revision of the Accounting and Reporting Manual for Hospitals, and repeals two unnecessary WACs, chapters 246-450 and 246-452 WAC. The proposed changes reflect current practices in the financial data collection of hospitals to the Department of Health.

Proposal does not change existing rules.

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

Hearing Location: Department of Health, 1102 S.E. Quince (Blue Awning), 1st Floor Conference Room, Olympia, WA, on May 24, 1994, at 10:00 a.m.

Submit Written Comments to: Department of Health, Ann Foster, Department of Health Rules Coordinator, P.O. Box 47890, Olympia, WA 98504-7890, by May 23, 1994.

Date of Intended Adoption: June 1, 1994.

April 12, 1994
Bruce Miyahara
Secretary

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-450-001	Purpose.
WAC 246-450-010	Definitions.
WAC 246-450-020	Public records available.
WAC 246-450-030	Public records officer.
WAC 246-450-040	Office hours.
WAC 246-450-050	Requests for public records.
WAC 246-450-060	Inspections and copying.
WAC 246-450-070	Exemptions.
WAC 246-450-080	Review of denials of public records requests.
WAC 246-450-090	Protection of public records.
WAC 246-450-100	Records index.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-451-001 Purpose. This chapter is adopted by the Washington state (~~hospital commission pursuant to RCW 70.39.180~~) department of health to implement the provisions of RCW (~~(70.39.170)~~) 70.170.080, regarding the financing of the basic expenses (~~(of the Washington state~~

~~hospital commission))~~ for the hospital data collection and reporting activities by the department by an assessment against hospitals.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-451-010 Definitions. As used in this chapter, unless the context requires otherwise,

(1) (~~"Commission"~~) "Department" shall mean the Washington state (~~hospital commission~~) department of health created by chapter (~~(70.39)~~) 43.70 RCW.

(2) "Hospital" shall mean any health care institution which is required to qualify for a license under RCW 70.41.020(2); or as a psychiatric hospital under chapter 71.12 RCW (~~, but shall not include beds utilized by a comprehensive cancer center for cancer research, or any health care institution conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any church or denomination~~).

(3) "Gross operating costs" shall mean the sum of direct operating expenses required to be reported in cost centers 6000-~~(8899)~~ 8999, (~~excluding the professional component of hospital-based physicians, and prior to the distribution of other operating revenue reported in accounts 5000-5799, all~~) as specified in the manual adopted under WAC (~~(261-20-030)~~) 246-454-020.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-451-020 Levying of assessment. Rate: The (~~commission~~) department, pursuant to RCW (~~(70.39-170)~~) 70.170.080 hereby levies upon each hospital an annual assessment at the rate of four one-hundredths of one percent of such hospital's gross operating costs incurred during its fiscal year ending on or before June 30th of the preceding calendar year.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-451-030 Payment of assessment. (1) The (~~commission~~) department annually shall calculate the amount of assessment due from each hospital, and shall prepare and mail to such hospital a statement indicating the amount of the assessment. The assessment shall be paid within ninety days after the statement of such assessment is mailed by the (~~commission~~) department.

(2) An assessment reminder notice shall be mailed forty-five days after the mailing of the initial statement.

(3) A second assessment reminder notice shall be mailed ninety days after the mailing of the initial statement. This reminder shall declare the assessment delinquent and a penalty shall be payable, calculated as interest on the delinquent assessment at the rate of twelve percent per annum.

(4) A third assessment reminder notice shall be mailed one hundred twenty days after the mailing of the initial statement. This reminder shall state the delinquent status of the assessment and the total accrued interest to the date of this reminder notice.

(5) A fourth assessment reminder notice shall be mailed one hundred fifty days after the mailing of the initial statement. This reminder shall be the final reminder and shall state the amount of the delinquent assessment and total interest accrued to the date of this reminder. In addition, the hospital will be notified that if payment of the assessment and all accrued interest (~~(it)~~) is not made within thirty days of the reminder, the account will be sent to the attorney general for appropriate action.

(6) Whenever a partial payment is made, the remaining balance shall be treated in the same manner as provided in subsections (2) through (5) of this section.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-451-040 (~~Exemption from~~) Assessment exceptions. (1) Upon receipt of a request in detail to the satisfaction of the (~~commission~~) department, the (~~commission~~) department may grant an exemption from assessment to a hospital for such assessment period(s) or portion thereof as the (~~commission~~) department shall specify, for the following reasons:

(a) The hospital was not in operation for the entire twelve months of its assessable fiscal year. (Such hospital, however, shall be liable for an assessment based on its gross operating costs for the period of its assessable fiscal year during which it was in operation.)

(b) (~~A change in ownership of the operating entity of the hospital has occurred during such hospital's assessable fiscal year. (From and after February 15, 1974, however, an entity that assumes the operation of, or otherwise becomes the operator of a hospital shall also assume the assessment obligation of any previous operating entity.)~~)

(~~e~~) The hospital charges no fee to users of its services; presents no billing, either direct or indirect, to users of its services; and presents no billing and accepts no payment for services from private or public insurers.

(2) The request for an exemption from assessment shall specify the assessment period(s) or portion thereof for which exemption is sought, and the reasons why the (~~commission~~) department should grant the exemption. A request for an exemption shall be acted upon by the (~~commission~~) department within sixty days of the receipt thereof.

(3) Any hospital granted an exemption from assessment under this chapter, nevertheless, shall be required to conform to all reporting requirements as the (~~commission~~) department may prescribe.

(4) An entity that assumes the operation of, or otherwise becomes the operator of a hospital shall also assume the assessment obligation of any previous operating entity.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-451-050 Reporting of information. For the purpose of calculating the assessment, the (~~commission~~) department will use the most recent year-end report submitted pursuant to WAC (~~(261-20-050)~~) 246-454-050.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-451-060 Penalties for violation. RCW ~~((70.39.200))~~ 70.170.070 provides that every person who shall violate or knowingly aid and abet the violation of chapter ~~((70.39))~~ 70.170 RCW or any valid orders, rules, or regulations thereunder, or who fails to perform any act which that chapter makes it his/her duty to perform shall be guilty of a misdemeanor. Following official notice to the accused by the ~~((commission))~~ department of the existence of an alleged violation, each day upon which a violation occurs shall constitute a separate violation. Any person violating the provisions of chapter ~~((70.39))~~ 70.170 RCW may be enjoined from continuing such violation. Failure to remit the payment required by WAC ~~((261-10-040))~~ 246-451-030 or file the reports required by WAC ~~((261-10-060))~~ 246-451-050 shall constitute a violation, and the ~~((commission))~~ department may levy a civil penalty not to exceed one ~~((hundred))~~ thousand dollars per day for each day following official notice of the violation by the ~~((commission))~~ department. The ~~((executive director of the commission))~~ department may grant extensions of time to remit the payment or file the reports, in which cases failure to file the reports shall not constitute a violation until the extension period has expired.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-452-001	Purpose.
WAC 246-452-010	Definitions.
WAC 246-452-020	Report of changes in or new prices—Reporting form.
WAC 246-452-030	Information regarding pricing policy.
WAC 246-452-040	Time deadline for submission of report.
WAC 246-452-050	Changes in contracts.
WAC 246-452-060	Additional information request.
WAC 246-452-070	Commission review and response to reports.
WAC 246-452-080	Penalties for violation.

AMENDATORY SECTION (Amending Order 142, filed 2/14/91, effective 3/17/91)

WAC 246-453-001 Purpose. This chapter is adopted by the Washington state department of health to implement the provisions of ~~((section 506, chapter 9, Laws of 1989 1st ex. sess. and))~~ chapter 70.170 RCW. These sections relate to hospital policies for charity care, bad debt and emergency medical care, including admission practices, the compilation and measurement of the level of charity care services provided by each hospital, and penalties for violation of these provisions.

AMENDATORY SECTION (Amending Order 142, filed 2/14/91, effective 3/17/91)

WAC 246-453-010 Definitions. As used in this chapter, unless the context requires otherwise,

(1) "Department" means the Washington state department of health created by chapter ~~((9, Laws of 1989 1st ex. sess.))~~ 43.70 RCW ~~((43.70.020))~~;

(2) "Hospital" means any health care institution which is required to qualify for a license under RCW 70.41.020(2); or as a psychiatric hospital under chapter 71.12 RCW;

(3) "Manual" means the Washington State Department of Health Accounting and Reporting Manual for Hospitals, adopted under WAC ~~((261-20-030))~~ 246-454-020;

(4) "Indigent persons" ~~((shall))~~ means those patients who have exhausted any third-party sources, including Medicare and Medicaid, and whose income is equal to or below 200% of the federal poverty standards, adjusted for family size or is otherwise not sufficient to enable them to pay for the care or to pay deductibles or coinsurance amounts required by a third-party payor;

(5) "Charity care" means appropriate hospital-based medical services provided to indigent persons, as defined in this section;

(6) "Bad debts" ~~((shall))~~ means uncollectible amounts, excluding contractual adjustments, arising from failure to pay by patients whose care has not been classified as charity care;

(7) "Appropriate hospital-based medical services" ~~((shall))~~ means those hospital services which are reasonably calculated to diagnose, correct, cure, alleviate, or prevent the worsening of conditions that endanger life, or cause suffering or pain, or result in illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no other equally effective more conservative or substantially less costly course of treatment available or suitable for the person requesting the service. For purpose of this section, "course of treatment" may include mere observation or, where appropriate, no treatment at all;

(8) "Medical staff" ~~((shall))~~ means physicians, dentists, nurses, and other professional individuals who have admitting privileges to the hospital, and may also participate as members of the medical staff committees, serve as officers of the medical staff, and serve as directors or chiefs of hospital departments;

(9) "Third-party coverage" and "third-party sponsorship" ~~((shall))~~ means an obligation on the part of an insurance company or governmental program which contracts with hospitals and patients to pay for the care of covered patients and services, and may include settlements, judgments, or awards actually received related to the negligent acts of others which have resulted in the medical condition for which the patient has received hospital services;

(10) "Unusually costly or prolonged treatment" ~~((shall))~~ means those services or combinations of services which exceed two standard deviations above the average charge, and/or three standard deviations above the average length of stay, as determined by the department's discharge data base;

(11) "Emergency care or emergency services" ~~((shall))~~ means services provided for care related to an emergency medical or mental condition;

(12) "Emergency department" and "emergency room" ~~((shall))~~ means that portion of the hospital facility organized for the purpose of providing emergency care or emergency services;

(13) "Emergency medical condition" ~~((shall))~~ means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:

(a) Placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

(b) Serious impairment of bodily functions;

(c) Serious dysfunction of any bodily organ or part.

With respect to a pregnant woman who is having contractions the term shall mean:

(d) That there is inadequate time to effect a safe transfer to another hospital before delivery; or

(e) That transfer may pose a threat to the health or safety of the woman or the unborn child;

(14) "Responsible party" ~~((shall))~~ means that individual who is responsible for the payment of any hospital charges which are not subject to third-party sponsorship;

(15) "Limited medical resources" ~~((shall))~~ means the nonavailability of services or medical expertise which are required or are expected to be required for the appropriate diagnosis, treatment, or stabilization per federal requirements of an individual's medical or mental situation;

(16) "Publicly available" ~~((shall))~~ means posted or prominently displayed within public areas of the hospital, and provided to the individual in writing and explained, at the time that the hospital requests information from the responsible party with regard to the availability of any third-party coverage, in any language spoken by more than ten percent of the population in the hospital's service area, and interpreted for other non-English speaking or limited-English speaking or other patients who can not read or understand the writing and explanation;

(17) "Income" ~~((shall))~~ means total cash receipts before taxes derived from wages and salaries, welfare payments, Social Security payments, strike benefits, unemployment or disability benefits, child support, alimony, and net earnings from business and investment activities paid to the individual;

(18) "Family" means a group of two or more persons related by birth, marriage, or adoption who live together; all such related persons are considered as members of one family;

(19) "Initial determination of sponsorship status" ~~((shall))~~ means an indication, pending verification, that the services provided by the hospital may or may not be covered by third party sponsorship, or an indication from the responsible party, pending verification, that he or she may meet the criteria for designation as an indigent person qualifying for charity care; and

(20) "Final determination of sponsorship status" ~~((shall))~~ means the verification of third party coverage or lack of third party coverage, as evidenced by payment received from the third party sponsor or denial of payment by the alleged third party sponsor, and verification of the responsible party's qualification for classification as an indigent person, subsequent to the completion of any appeals to which the

responsible party may be entitled and which on their merits have a reasonable chance of achieving third-party sponsorship in full or in part.

AMENDATORY SECTION (Amending Order 142, filed 2/14/91, effective 3/17/91)

WAC 246-453-050 Guidelines for the development of sliding fee schedules. All hospitals shall, within ninety days of the adoption of these rules, implement a sliding fee schedule for determination of discounts from billed charges for responsible parties meeting the criteria in WAC 246-453-040(2). These sliding fee schedules must be made available upon request.

(1) In developing these sliding fee schedules, hospitals ~~((must))~~ shall consider the following guidelines:

(a) The sliding fee schedule ~~((should))~~ shall consider the level of charges that are not covered by any public or private sponsorship in relation to or as a percentage of the responsible party's family income;

(b) The sliding fee schedule ~~((should))~~ shall determine the maximum amount of charges for which the responsible party will be expected to provide payment, with flexibility for hospital management to hold the responsible party accountable for a lesser amount after taking into account the specific financial situation of the responsible party;

(c) The sliding fee schedule ~~((should))~~ shall take into account the potential necessity for allowing the responsible party to satisfy the maximum amount of charges for which the responsible party will be expected to provide payment over a reasonable period of time, without interest or late fees; and

(d) Hospital policies and procedures regarding the sliding fee schedule ~~((should))~~ shall specify the individual financial circumstances which may be considered by appropriate hospital personnel for purposes of adjusting the amount resulting from the application of the sliding fee schedule, such as:

(i) Extraordinary nondiscretionary expenses relative to the amount of the responsible party's medical care expenses;

(ii) The existence and availability of family assets, which may only be considered with regard to the applicability of the sliding fee schedule;

(iii) The responsible party's future income earning capacity, especially where his or her ability to work in the future may be limited as a result of illness; and

(iv) The responsible party's ability to make payments over an extended period of time.

(2) Examples of sliding fee schedules which address the guidelines in the previous subsection are:

(a) A person whose annual family income is between one hundred one and two hundred percent of the federal poverty standard, adjusted for family size, shall ~~((be responsible for that portion of))~~ have his/her hospital charges that are not covered by public or private sponsorship ~~((that is))~~ limited to forty percent of the ~~((amount by which))~~ excess of that person's annual family income ~~((exceeds))~~ over one hundred percent of the federal poverty standard, adjusted for family size. This responsibility may be adjusted by appropriate hospital personnel after taking into consideration the individual financial circumstances of the responsible party. The responsible party's financial obligation which remains

after the application of this sliding fee schedule may be payable in monthly installments over a reasonable period of time, without interest or late fees, as negotiated between the hospital and the responsible party.

(b) A person whose family income is between one hundred one and two hundred percent of the federal poverty standard, adjusted for family size, shall have his/her hospital charges that are not covered by public or private sponsorship reduced according to the schedule below. The resulting responsibility may be adjusted by appropriate hospital personnel after taking into consideration the individual financial circumstances of the responsible party. The responsible party's financial obligation which remains after the application of this sliding fee schedule may be payable in monthly installments over a reasonable period of time, without interest or late fees, as negotiated between the hospital and the responsible party. The schedule is as follows:

<u>INCOME AS A PERCENTAGE OF FEDERAL POVERTY LEVEL</u>	<u>PERCENTAGE DISCOUNT</u>
One hundred one to one hundred thirty-three	Seventy-five percent
One hundred thirty-four to one hundred sixty-six	Fifty percent
One hundred sixty-seven to two hundred	Twenty-five percent

(3) The provisions of this section and RCW 70.170.060(5) shall not apply to the professional services of the hospital's medical staff, provided that the charges for such services are either submitted by the individual medical staff or are separately identified within the hospital's billing system.

AMENDATORY SECTION (Amending Order 142, filed 2/14/91, effective 3/17/91)

WAC 246-453-070 Standards for acceptability of hospital policies for charity care and bad debts. (1) Each hospital shall develop, and submit to the department, (~~within ninety days of the adoption of these rules,~~) charity care policies, procedures, and sliding fee schedules consistent with the requirements included in WAC 246-453-020, 246-453-030, 246-453-040, and 246-453-050. Any subsequent modifications to those policies, procedures, and sliding fee schedules must be submitted to the department no later than thirty days prior to their adoption by the hospital.

(2) Each hospital shall develop, and submit to the department (~~within ninety days of the adoption of these rules,~~) bad debt policies and procedures, including reasonable and uniform standards for collection of the unpaid portions of hospital charges that are the patient's responsibility. These standards are to be part of each hospital's system of accounts receivable management manuals, which support hospital collection policies. Manuals should cover procedures for preadmission, admission, discharge, outpatient registration and discharge, billing, and credit and collections. All subsequent modifications to these bad debt policies must be submitted to the department no later than thirty days prior to their adoption by the hospital.

(3) The department (~~will~~) shall review the charity care and bad debt policies and procedures submitted in accor-

dance with the provisions of this section. If any of the policies and procedures do not meet the requirements of this section or WAC 246-453-020, 246-453-030, 246-453-040, or 246-453-050, the department shall reject the policies and procedures and shall so notify the hospital. Such notification shall be in writing, addressed to the hospital's chief executive officer or equivalent, and shall specify the reason(s) that the policies and procedures have been rejected. Any such notification must be mailed within fourteen calendar days of the receipt of the hospital's policies and procedures. Within fourteen days of the date of the rejection notification, the hospital shall revise and resubmit the policies and procedures.

AMENDATORY SECTION (Amending Order 142, filed 2/14/91, effective 3/17/91)

WAC 246-453-090 Penalties for violation. (1) Failure to file the policies, procedures, and sliding fee schedules as required by WAC 246-453-070 or the reports required by WAC 246-453-080 shall constitute a violation of (~~chapter 9, Laws of 1989 1st ex. sess.,~~) RCW 70.170.060, and the department will levy a civil penalty of one (~~hundred~~) thousand dollars per day for each day following official notice of the violation. The department may grant extensions of time to file the reports, in which cases failure to file the reports shall not constitute a violation until the extension period has expired.

(2) Failure to comply with other provisions of (~~Part V of chapter 9, Laws of 1989 1st ex. sess., and~~) chapter 70.170 RCW, and chapter 246-453 WAC, (~~will~~) shall result in civil penalties as provided within RCW 70.170.070(2), with the exception that the terms "not exceeding" and "not to exceed" will be read to mean "of."

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-454-001 Purpose. This chapter is adopted by the Washington state (~~hospital commission pursuant to RCW 70.39.180~~) department of health to implement the provisions of RCW (~~(70.39.100, 70.39.110, 70.39.120,)~~) 70.170.100 and (~~(70.39.140)~~) 43.70.050 regarding the establishment of a uniform system of accounting, financial reporting, budgeting(~~(;)~~) and cost allocation(~~(; and prospective rate setting)~~) for hospitals in Washington state. This system shall be utilized by each hospital to record and report to the (~~commission~~) department its revenues, expenses, other income, other outlays, assets and liabilities, and units of service and to submit information, as may be required by the (~~commission~~) department, pertaining to the total financial needs of the hospital and the resources available or expected to become available to meet such needs. (~~This system is intended to carry out the commission's mandate to assure all purchasers of hospital health care services that the total costs of a hospital are reasonably related to the total services offered by that hospital, that the hospital's costs do not exceed those that are necessary for a prudently and reasonably managed hospital, that the hospital's aggregate revenues as expressed by rates are reasonably related to the hospital's aggregate costs, and that rates are set equitably among all purchasers or classes of purchasers of services without undue discrimination or preference.~~)

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-454-010 Definitions. As used in this chapter, unless the context requires otherwise.

(1) ("~~Washington state hospital commission~~" and "~~commission~~" each shall) "Department" means the Washington state (~~hospital commission~~) department of health created by chapter (~~70.39~~) 43.70 RCW.

(2) "Hospital" (~~shall~~) means any health care institution which is required to qualify for a license under RCW 70.41.020(2); or as a psychiatric hospital under chapter 71.12 RCW(~~, but shall not include beds utilized by a comprehensive cancer center for cancer research, or any health care institution conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any church or denomination.~~

(3) "~~Basic service hospital~~" means a hospital classified in peer groups 1 and 2 or a specialty hospital having fewer than fifty licensed beds).

(~~(4)~~) (3) "Manual" means the *Washington State (~~Hospital Commission~~) Department of Health Accounting and Reporting Manual for Hospitals*, (~~second~~) third edition adopted under WAC (~~261-20-030~~) 246-454-020.

(~~(5)~~) (4) "System of accounts" means the list of accounts, code numbers, definitions, units of measure, and principles and concepts included in the manual.

(~~(6)~~) "Rate" means the maximum revenue which a hospital may receive for each unit of service, as determined by the commission.

(~~(7)~~) (5) "Budget" means the forecast of each hospital's total financial needs and the resources available to meet such needs for its next fiscal year and includes such information as shall be specified in the manual concerning (~~goals and objectives~~) volume and utilization projections, operating expenses, capital requirements, and deductions from revenue(~~, and proposed rates~~).

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-454-020 Adoption and establishment of uniform system. The (~~commission~~) department, pursuant to RCW (~~70.39.100~~) 70.170.100, hereby adopts and establishes a uniform system of accounting, financial reporting, budgeting, and cost allocation(~~, and prospective rate setting~~) for hospitals in Washington state, which system is described in the (~~commission's~~) department's publication entitled *Washington State (~~Hospital Commission~~) Department of Health Accounting and Reporting Manual for Hospitals*, (~~second~~) third edition, which publication is hereby incorporated by this reference. The (~~manual shall be utilized by each~~) hospital shall utilize the manual for submitting information(~~,~~) as may be required by the (~~commission~~) department, pertaining to the total financial needs of the hospital and the resources available or expected to become available to meet such needs.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-454-030 Submission of budget (~~and rate request~~). (1) Each hospital shall submit its annual budget (~~and rate request~~) to the (~~commission~~) department not less than (~~eighty-three~~) thirty days prior to the beginning of its fiscal year(~~, including the effect of proposals made by area-wide and state comprehensive health planning agencies~~). The budget (~~and rate request~~) shall contain that information specified in the (~~commission's~~) manual and shall be submitted in the form and manner specified in the manual. (~~Where~~) If more than one hospital is operated by the reporting organization, the information required by this section shall be reported for each hospital separately.

(2) The hospital chief executive officer and presiding officer of the hospital's governing body shall attest that the information submitted under this section (~~or budget amendments under WAC 261-20-045~~) has been examined by such person and that to the best of his/her knowledge and belief such information is a true and correct statement of the total financial needs of the hospital (~~and the rates necessary to meet those needs~~) for the budget period.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-454-050 Submission of year-end report.

(1) Each hospital annually shall file its year-end report with the (~~commission~~) department within one hundred twenty days after the close of its fiscal year in the form and manner specified in the manual (~~(chapter 10000)~~): *Provided, however,* The one hundred twenty-day period may be extended up to and including an additional sixty days upon submission of adequate justification to the (~~commission, of what it in its discretion, may consider good and sufficient reasons~~) department. (~~Where~~) If more than one hospital is operated by the reporting organization, the information required by this section shall be reported for each hospital separately.

(2) Information submitted pursuant to this section shall be certified (~~(by the hospital's certified or licensed public accountant, or under oath)~~) by the hospital's administrative and financial officers, that such reports, to the best of their knowledge and belief, have been prepared in accordance with the prescribed system of accounting and reporting, and fairly state the financial position of the hospital as of the specified date(~~, the commission~~). The department also may require attestation as to such statements from responsible officials of the hospital so designated by the governing body, if any, of the hospital.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-454-070 Submission of quarterly reports.

(~~(1)~~) Each hospital shall submit a quarterly summary utilization and financial report within forty-five days after the end of each calendar quarter (~~(beginning on or after January 1, 1985)~~). The quarterly report shall contain that information specified by the (~~commission~~) department and shall be submitted in the form and manner specified by the (~~commission~~) department.

~~((2) The report submitted pursuant to this section must be signed by the hospital's chief executive officer or chief financial officer.))~~

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-454-080 Alternative system of financial reporting. Upon receipt of a request in detail to the satisfaction of the ~~((commission))~~ department, the ~~((commission))~~ department in its discretion may approve ~~((by resolution))~~ an alternative system for reporting of information under WAC ~~((261-20-040 or 261-20-050))~~ 246-454-030 or 246-454-050 by a hospital for such period(s) or portion thereof as the ~~((commission))~~ department shall specify, if:

(1) The hospital charges no fee to users of its services, presents no billing, either direct or indirect, to users of its services, and presents no billing and accepts no payment for services from private or public insurers.

(2) The hospital is significantly different from other hospitals in one or more of the following respects: Size; financial structure; methods of payment for services; or scope, type, and method of providing services.

(3) The hospital has other pertinent distinguishing characteristics.

(4) Such alternative system will avoid otherwise unduly burdensome costs in meeting the requirements of the uniform reporting system established by the ~~((commission))~~ department.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-454-090 Modifications of uniform system. The ~~((commission))~~ department, after due consideration, in its discretion, may prepare and publish modifications of the manual, for such period and under such conditions as the ~~((commission))~~ department shall determine. Such modifications shall be prepared in the format of, and shall be adopted by the ~~((commission))~~ department as a rule pursuant to chapter 34.04 [34.05] RCW. A copy of such modifications shall be mailed to each hospital and manual holder of record.

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

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-454-110 Uniformly applicable interpretive rulings and minor manual modifications. (1) The ~~((executive director of the commission))~~ department is authorized to make uniformly applicable interpretive rulings with respect to matters contained in the manual. The ~~((executive director of the commission))~~ department is also authorized to correct typographical and coding errors as well as make other minor organizational modifications when such corrections and modifications appear to be necessary. ~~((The commission shall be notified in advance of the executive director's proposed actions.))~~

(2) Any such interpretive ruling, correction, or modification shall be in writing and distributed as an attachment to a consecutively numbered transmittal. Such transmittal shall

describe the changes in detail and shall include instructions regarding the placement of such material in the manual. Each hospital and manual holder of record shall be sent a copy of any such transmittal together with all attachments.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-454-120 Penalties for violation. RCW ~~((70-39-200))~~ 70.170.070 provides that every person who shall violate or knowingly aid and abet the violation of chapter ~~((70-39))~~ 70.170 RCW or any valid orders, rules, or regulations thereunder, or who fails to perform any act which that chapter makes it his/her duty to perform shall be guilty of a misdemeanor. Following official notice to the accused by the ~~((commission))~~ department of the existence of an alleged violation, each day upon which a violation occurs shall constitute a separate violation. Any person violating the provisions of chapter ~~((70-39))~~ 70.170 RCW may be enjoined from continuing such violation. Failure to file the reports required by WAC ~~((261-20-040(1), 261-20-050(1), and 261-20-057(1)))~~ 246-454-030(1), 246-454-050(1), and 246-454-070 shall constitute a violation, and the ~~((commission))~~ department may levy a civil penalty not to exceed one ~~((hundred))~~ thousand dollars per day for each day following official notice of the violation by the ~~((commission))~~ department. The ~~((executive director of the commission))~~ department may grant extensions of time to file the reports, in which cases failure to file the reports shall not constitute a violation until the extension period has expired.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|-----------------|---|
| WAC 246-454-040 | Budget amendment submittals authorized—Time limitations—Presumption. |
| WAC 246-454-060 | Inspection of hospitals' books and records. |
| WAC 246-454-100 | Modifications of uniform system applicable to only "basic service" hospitals. |

WSR 94-09-027

PROPOSED RULES

DEPARTMENT OF HEALTH

(Sex Offender Treatment Providers)

[Filed April 15, 1994, 8:56 a.m.]

Original Notice.

Title of Rule: Amending WAC 246-930-010 General definitions, 246-930-020 Requirement for underlying credential as a health professional, 246-930-030 Education requirement for full certification applicants, 246-930-040 Professional experience requirement for full certification applicants, 246-930-050 Education requirement for affiliate certification applicants, 246-930-060 Professional experience requirement for affiliate certification applicants, 246-930-070 Training for applicants for full or affiliate certification, 246-

930-075 Supervision of affiliates, 246-930-200 Application and examination, 246-930-210 Examination appeal procedures, 246-930-220 Reexamination, 246-930-300 Mandatory reporting, 246-930-301 Purpose—Professional standards and ethics, 246-930-310 Standards for professional conduct and client relationships, 246-930-320 Standards for SSOSA and SSODA assessment and evaluation reports, 246-930-330 Standards for treatment, 246-930-340 Standards for communication with other professionals, 246-930-410 Continuing education requirements, and 246-930-990 Sex offender treatment provider fees; and new sections WAC 246-930-420 Inactive status, 246-930-430 Reinstatement, and 246-930-490 Sexual misconduct.

Purpose: Amend rules regarding requirements for certification, examination, continuing education, fees and standards. Proposing new rule regarding inactive status, reinstatement and sexual misconduct.

Statutory Authority for Adoption: RCW 18.155.040.
Statute Being Implemented: Chapter 18.155 RCW.

Summary: Amend rules to clarify requirements, correct grammatical errors, correct deficiencies that have been noted since beginning of program. Proposing new rules regarding inactive status, reinstatement and sexual misconduct because of need for a rule clearly outlining the procedure on each of these issues.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Terry J. West, 1300 S.E. Quince Street, Olympia, WA 98504, (206) 753-3095.

Name of Proponent: Department of Health, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Amendments will clarify existing rules regarding licensure requirements, continuing education requirements and standards of practice. New rules will allow for inactive license status and detail standards regarding sexual misconduct in conformance with the other health care professions of the Department of Health. New rule will also detail requirements for reinstating lapsed license.

Proposal Changes the Following Existing Rules: See above description.

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

Hearing Location: Department of Health, 1102 S.E. Quince (Blue Awning), First Floor Conference Room, Olympia, WA 98504, on May 24, 1994, at 1:30.

Submit Written Comments to: Ann Foster, Rules Coordinator, Department of Health, P.O. Box 7890, Olympia, WA 98504, by May 23, 1994.

Date of Intended Adoption: May 27, 1994.

April 8, 1994
 Bruce Miyahara
 Secretary

AMENDATORY SECTION (Amending Order 275, filed 5/28/92, effective 6/28/92)

WAC 246-930-010 General definitions. ~~((Whenever used))~~ In these rules, ~~((unless expressly otherwise stated, or unless the context or subject matter requires a different meaning,))~~ the following terms shall have the ~~((following~~

~~meanings))~~ definition described below, unless another definition is stated:

(1) "Department" means the department of health ~~((professional licensing services division)).~~

(2) "Secretary" means the secretary of the department of health, or designee.

(3) "Provider" means a certified sex offender treatment provider.

(4) "Affiliate" means affiliate sex offender treatment provider.

(5) "Committee" means the sex offender treatment providers advisory committee.

(6) "Credential" or its derivative means the process of licensing, registration, certification or the equivalent through which a person is legally recognized by a state agency as lawfully authorized to practice a health profession.

(7) "Evaluation."

(a) For purposes of determining eligibility for certification, ~~((evaluation))~~ is defined as the direct provision of comprehensive evaluation and assessment services to persons who have been investigated by law enforcement or child protective services for commission of a sex offense, or who have been adjudicated or convicted of a sex offense. Such evaluation shall ~~((have had direct relevance))~~ be related to a client's offending behavior. Such services shall have resulted in preparation of a formal written report. To qualify, the individual shall have had primary responsibility for interviewing the offender and shall have completed the written report. Only hours in face-to-face contact with a client may be counted for evaluation credit. Evaluation hours performed by affiliate providers under the supervision of fully certified providers count toward certification under this definition. Note that limited assessments for the purpose of institution classification, treatment monitoring, and reporting do not qualify for evaluation credit under this definition.

(b) Standards for evaluations of clients by certified providers as defined in RCW 9.94A.120 (7)(a) and 13.40.160 are set forth in WAC 246-930-320.

(8) "Treatment" for purposes of determining eligibility for certification, ~~((treatment))~~ is defined as the ~~((direct))~~ provision of face-to-face individual, group, or family therapy with persons who have been investigated by law enforcement or child protective services for commission of a sex offense, or who have been adjudicated or convicted of a sex offense. The professional ~~((shall have had))~~ seeking certification has formal responsibility for ((provision of)) providing primary treatment services, and such services shall have had direct relevance to a client's offending behavior. Face-to-face treatment hours performed by affiliate providers under the supervision of ~~((fully))~~ certified providers count toward certification under this definition. "Co-therapy hours" are defined as the actual number of hours the applicant spent facilitating a group session. Co-therapists may ~~((both))~~ each claim credit for therapy hours as long as both persons have formal responsibility for the group sessions. Time spent in maintaining collateral contacts and written case/progress notes ~~((can))~~ are not ((be)) counted under this definition.

(9) A ~~((fully))~~ certified sex offender treatment provider" is an applicant who has met the educational, experience and training requirements as specified for full certification, has satisfactorily passed the examination, and has been

issued a (~~certification~~) certificate by the department to evaluate and treat sex offenders pursuant to chapter 18.155 RCW.

(10) An "affiliate sex offender treatment provider" is an applicant who has met the educational, experience and training requirements as specified for affiliate certification applicants, and has satisfactorily passed the examination. An affiliate sex offender treatment provider evaluates and treats sex offenders pursuant to chapter 18.155 RCW under the supervision of a (~~fully~~) certified sex offender treatment provider in accordance with the supervision requirements set forth in WAC 246-930-075.

(11) "SSOSA" is special sex offender sentencing alternative as defined in RCW 9.94A.120 (7)(a).

(12) "SSODA" is special sex offender disposition alternative as defined in RCW 13.40.160.

(13) "Supervising officer" means the designated representative of the agency having oversight responsibility for a client sentenced under SSOSA or SSODA, under the sentence or disposition order, (~~e.g.~~) for example, community correction officer, probation officer.

(14) "~~(Evaluation)~~ Treatment plan" means the plan set forth in the evaluation detailing how the treatment needs of the client (~~might~~) will be met (~~and~~) while the community is protected during the course of treatment.

(15) "~~(Provider-client)~~ Community protection contract" means the document specifying the treatment rules and requirements the client has agreed to follow in order to maximize community safety.

(16) "Parties" means the defendant, the prosecuting attorney, the community corrections officer and the juvenile probation officer.

AMENDATORY SECTION (Amending Order 275, filed 5/28/92, effective 6/28/92)

WAC 246-930-020 (~~(Requirement for)~~) Underlying credential as a health professional required. (1) Under RCW 18.155.020(1), only credentialed health professionals may be certified as providers.

(2) A person who is credentialed as a health professional in a state or jurisdiction other than Washington (~~shall~~) may satisfy this requirement by submitting the following:

(a) A copy of the current nonexpired credential issued by the credentialing state;

(b) A copy of the statute, administrative regulation, or other official document of the issuing state which sets forth the minimum requirements for the credential;

(c) A statement from the issuing authority:

(i) That the credential is in good standing;

(ii) That there is no disciplinary action currently pending; and

(iii) Listing any formal discipline actions taken by the issuing authority with regard to the credential;

(d) A statement signed by the applicant, on a form provided by the department, submitting to the jurisdiction of the Washington state courts for the purpose of any litigation involving his or her practice as a sex offender treatment provider;

(e) A statement signed by the applicant on a form provided by the department, that the applicant does not intend to practice the health profession for which he or she

is credentialed by another state within the state of Washington without first obtaining an appropriate credential to do so from the state of Washington, except as may be authorized by Washington state law; and

(f) Evidence to show compliance with the AIDS education requirement:

(i) Education and training shall be consistent with the model curriculum available from the office on AIDS within the department of health pursuant to chapter 70.24 RCW. Such education and training shall be a minimum of four clock hours and shall include, but not be limited to, the following: Etiology and epidemiology; testing and counseling; infection control guidelines; clinical manifestations and treatment; legal and ethical issues to include confidentiality; and psychosocial issues to include special population considerations.

(ii) Documentation. The applicant shall:

(A) Certify, on forms provided, that the minimum education and training has been completed after January 1, 1987;

(B) Keep records for two years documenting attendance and description of the learning; and

(C) Be prepared to validate, through submission of these records, that attendance has taken place.

(3) Underlying registration, certification, or licensure shall be maintained in good standing. If an underlying registration, certification, or licensure is not renewed or is revoked, certification as a sex offender treatment provider, affiliate sex offender treatment provider, or temporary or provisional treatment provider (~~shall be immediately~~) is revoked. If an underlying license is suspended, the sex offender treatment provider certification is suspended. If there is a stay of the suspension of an underlying license the sex offender treatment provider program must independently evaluate the reasonableness of a stay for the sex offender treatment provider.

AMENDATORY SECTION (Amending Order 275, filed 5/28/92, effective 6/28/92)

WAC 246-930-030 Education (~~(requirement for full certification applicants)~~) required prior to examination.

(1) An applicant for full certification shall have completed:

(a) A master's or doctoral degree in social work, psychology, counseling, or educational psychology from a (~~fully~~) regionally accredited (~~college or university~~) institution of higher education; or

(b) A medical doctor or doctor of osteopathy degree if the individual is a board certified/eligible psychiatrist; or

(c) A master's or doctoral degree in (~~a closely related~~) an equivalent field (~~(when there is)~~) from a regionally accredited institution of higher education with documentation of thirty graduate semester hours or forty-five graduate quarter hours in approved subject content. Approved subject content includes at least five graduate semester hours or seven graduate quarter hours in (c)(i) and (ii) of this subsection and five graduate semester hours or seven graduate quarter hours in at least two additional content areas from (~~the entire list~~) (c)(i) through (viii) of this subsection:

(i) Counseling and psychotherapy.

(ii) Personality theory.

(iii) Behavioral science and research.

- (iv) Psychopathology/personality disorders.
- (v) Assessment/tests and measurement.
- (vi) Group therapy/family therapy.
- (vii) Human growth and development/sexuality.
- (viii) Corrections/criminal justice.

(d) The applicant is responsible for submitting proof that the hours used to meet this requirement are in fact, equivalent.

(2) Transcripts of all graduate work shall be submitted directly to the department from the ~~((college or university))~~ institution where earned.

AMENDATORY SECTION (Amending Order 275, filed 5/28/92, effective 6/28/92)

WAC 246-930-040 Professional experience ~~((requirement for full certification applicants))~~ required prior to examination. (1) ~~((In order))~~ To qualify for examination, ~~((the))~~ an applicant ~~((shall have))~~ must complete at least two thousand hours of ~~((direct))~~ treatment and evaluation experience, as defined in WAC 246-930-010. These two thousand hours shall include at least two hundred fifty hours of evaluation experience and at least ~~((five hundred))~~ two hundred fifty hours of treatment experience.

(2) All of the prerequisite experience shall have been within the seven-year period preceding application for certification as a provider.

AMENDATORY SECTION (Amending Order 275, filed 5/28/92, effective 6/28/92)

WAC 246-930-050 Education ~~((requirement))~~ required for affiliate ~~((certification applicants))~~ prior to examination. (1) An applicant for affiliate certification shall have completed: Effective July 1, 1995, new applicants must have a master's or doctorate degree to meet the minimum requirement for affiliate certification.

(a) A bachelor's, master's, or doctorate degree in social work, psychology, counseling, or educational psychology from a ~~((fully))~~ regionally accredited institution of higher education; or

(b) A medical doctor or doctor of osteopathy degree if the individual is a board certified/eligible psychiatrist; or

(c) A bachelor's, master's, or doctorate degree in ~~((a closely related))~~ an equivalent field from a regionally accredited institution of higher education when there is documentation of thirty semester hours or forty-five quarter hours in approved subject content. Approved subject content includes at least five semester hours or seven quarter hours in (c)(i) and (ii) of this subsection and five semester hours or seven quarter hours in at least two additional content areas from ~~((the entire list))~~ (c)(i) through (viii) of this subsection:

- (i) Counseling and psychotherapy.
- (ii) Personality theory.
- (iii) Behavioral science and research.
- (iv) Psychopathology/personality disorders.
- (v) Assessment/tests and measurement.
- (vi) Group therapy/family therapy.
- (vii) Human growth and development/sexuality.
- (viii) Corrections/criminal justice.

(d) The applicant is responsible for submitting proof that the hours used to meet this requirement are in fact, equivalent.

(2) Transcripts of all academic work shall be submitted directly to the department from the ~~((college or university))~~ institution where earned.

AMENDATORY SECTION (Amending Order 275, filed 5/28/92, effective 6/28/92)

WAC 246-930-060 Professional experience ~~((requirement))~~ required for affiliate ~~((certification applicants))~~ prior to examination. (1) An applicant meeting only the minimal academic requirements for affiliate status (bachelor's degree), shall have a total of two thousand hours of experience in evaluation and/or treatment as defined in WAC 246-930-010. No specific minimum number of hours in either category is required for an affiliate applicant.

(2) All of the prerequisite experience shall have been within the seven-year period preceding application for certification as a provider.

(3) If the applicant for affiliate status meets the academic requirements for full certification, post-graduate degree as outlined in WAC 246-930-030, no experience requirement applies.

AMENDATORY SECTION (Amending Order 168, filed 5/16/91, effective 6/16/91)

WAC 246-930-070 Training required for ~~((applicants for full))~~ certified or affiliate ~~((certification))~~ providers. Effective July 1, 1995, applicants for affiliate status will not be required to have fifty hours of training.

(1) All applicants for certification as providers or affiliate providers shall submit documentation of attendance at fifty hours of formal conferences, symposia, or seminars directly related to the treatment and evaluation of sex offenders ~~((or abuse victims))~~. No more than ten hours of training may be related to victims of abuse.

(2) All such training shall have been received within the three years preceding application for certification.

AMENDATORY SECTION (Amending Order 275, filed 5/28/92, effective 6/28/92)

WAC 246-930-075 Description of supervision of affiliates. Supervision of affiliates is considerably different than consultation with other professionals. Consultation is solely advisory; consultants do not assume responsibility for those individuals to whom they consult. Supervision of affiliates requires that the provider take full ethical and legal responsibility for ~~((the professional work and for))~~ the quality of work of the affiliate. The following rules apply to providers and affiliates when service is being provided to SSOSA and SSODA clients:

(1) Whether providing training, consultation, or supervision, sex offender treatment providers shall avoid presenting themselves as having qualifications in areas where they do not have expertise.

(2) The supervisor shall provide sufficient training and supervision to the affiliate to insure the health and safety of the client and community. The supervisor shall have the

expertise and knowledge to directly supervise the work of the affiliate.

(3) The supervisor shall insure that any person he or she supervises has sufficient education, background, and preparation for the work they will be doing.

(4) Supervision of an affiliate shall require that the supervisor and supervisee enter into a formal written contract defining the parameters of the professional relationship. This supervision contract shall be submitted to the department for approval and shall be renewed on a yearly basis. ~~(This document)~~ The contract shall include, but is not limited to:

(a) ~~(The)~~ Supervised areas of professional activity ~~((for which supervision will occur));~~

(b) ~~(The)~~ Amount of supervision time and the frequency of supervisory meetings ~~((to be provided))~~. This information may be presented as a ratio of supervisory time to clinical work conducted by the affiliate;

(c) ~~(The)~~ Supervisory fees and business arrangements, when applicable;

(d) ~~(The)~~ Nature of the supervisory relationship and the anticipated process of supervision;

(e) ~~(The manner in which clinical cases will be)~~ Selected and ~~((reviewed))~~ review of clinical cases;

(f) ~~(The)~~ Methodology for recordkeeping, evaluation of the affiliate, and feedback; and

(g) ~~(The manner in which)~~ How the affiliate ~~((shall be))~~ is represented to the public.

(5) Supervision of affiliates shall involve regular, direct, ~~((on-site))~~ face-to-face supervision. Based on the affiliate's skill and experience levels, supervision shall include a reasonable degree of direct observation of the affiliates by means of the supervisor sitting in sessions, audio tape recording, videotape, etc. ~~((However, it is recognized that certain geographic locales do not have sufficient resources to enable immediate, direct supervision of affiliates.))~~ In ~~((these))~~ some cases, special flexible supervision arrangements which deviate from the standard are ~~((encouraged; these))~~ permitted, for example, due to geography or disability; special flexible supervision contracts shall be submitted to the department for approval.

(6) The level of supervision ~~((provided))~~ shall insure that the affiliate ~~((s preparedness))~~ is prepared to conduct ~~((his or her))~~ professional work and provide adequate oversight. There shall be a minimum of one hour of supervision time for every ten hours of supervised professional work. Supervision meetings shall regularly occur at least every other week.

(7) A certified sex offender treatment provider shall undertake no ~~((supervision))~~ contract which exceeds the provider's ability to comply with supervision standards. A supervisor shall not supervise more than thirty hours of SSOSA and SSODA case clinical work each week.

(8) Generally, a supervisor shall not provide supervision for more than two affiliates. However, the special needs of certain locales, particularly rural areas, are recognized. Where appropriate, deviation from the standards ~~((for amount of supervision time, frequency of supervision, and limitations on supervision by a supervisor are encouraged))~~ in subsections (4)(b), (6) and (7) of this section are permitted subject to department approval, if quality of supervision can be maintained. Special supervisory arrangements shall be

submitted for approval ~~((as part of))~~ with the supervision contract to the department. ~~((As necessary,))~~ A supervisor may adjust a supervision plan, as necessary, but shall notify the department of the amendment to the contract within thirty days.

(9) The status of the affiliate's relationship to the supervisor is to be accurately communicated to the public, other professionals, and to all clients served.

(10) An affiliate sex offender treatment provider ~~((shall))~~ may represent himself or herself as an affiliate only when doing clinical work supervised by the contracted sex offender treatment provider. If the affiliate is providing unsupervised clinical services to clients who are not SSOSA or SSODA cases, the individual shall not utilize the title "affiliate" ~~((in that context)).~~ This is not intended to prohibit an affiliate from describing their experience and qualifications to potential referral sources.

(11) All written reports and correspondence ~~((conducted))~~ by the affiliate acting under SSOSA or SSODA shall be cosigned by the supervisor, indicating the supervisory relationship. The work shall be represented as conducted by the affiliate ~~((and))~~ with oversight provided by the supervisor.

(12) All work relating to SSOSA and SSODA clients ~~((;))~~ conducted by the affiliate ~~((; shall be))~~ is the responsibility of the supervisor. The supervisor shall have ~~((full))~~ authority ~~((over))~~ to direct the practice of the affiliate involving SSOSA and SSODA clients.

(13) Supervision ~~((shall))~~ includes, but is not limited to the following:

(a) Discussion of services provided by the affiliate;

(b) Case selection, service plan, and review of each case or work unit of the affiliate;

(c) Discussions regarding theory and practice ~~((regarding))~~ of the work being conducted;

(d) Review of Washington statutes, rules, and criminal justice procedures relevant to the work being conducted;

(e) Discussion of the standards of practice for providers as adopted by the department and the ethical issues involved in providing professional services for sex offenders;

(f) Discussion regarding coordination of work with other professionals;

(g) Discussion of relevant professional literature and research; and

(h) Periodic review of the supervision itself.

(14) Both the supervisor and affiliate shall maintain full documentation of the work done and supervision provided.

(15) ~~((Timely evaluation of))~~ The supervisor will evaluate the affiliate's work and professional progress ~~((shall be provided by the supervisor))~~ on an ongoing basis.

(16) It is the responsibility of the supervisor to remedy the problems or terminate the supervision contract. If the work of the supervisee does not meet sufficient standards to protect the best interests of the clients and the community ~~((; it is the responsibility of the supervisor to remedy the problems or terminate the supervision contract. If a supervision contract is terminated,))~~ The supervisor shall notify the department and provide the department with a letter of explanation, if a supervision contract is terminated.

(17) Supervision is a power relationship and the supervisee-supervisor relationship is not to be exploited.

This standard in no way precludes reasonable compensation for supervisory services.

(18) It is the responsibility of the supervisor to provide, on request, accurate and objective letters of reference and work documentation regarding the affiliate, when requested by affiliate.

(19) If a supervisee is in the employ of a provider it is the responsibility of the supervisor to provide:

- (a) Appropriate working conditions;
- (b) Opportunities to further the supervisee's skills and professional development; and
- (c) Consultation in all areas of professional practice appropriate to the supervisee's employment.

(20) All records of both affiliate and supervisor (~~shall be~~) are subject to audit to determine compliance with appropriate statutes and rules.

AMENDATORY SECTION (Amending Order 275, filed 5/28/92, effective 6/28/92)

WAC 246-930-200 Application and examination. (1) In order to be certified to practice under this chapter as a provider or affiliate provider in the state of Washington all applicants shall pass an examination approved by the secretary.

(2) An applicant shall meet all education, experience, and training requirements and be a health care provider before being allowed to sit for the examination.

(3) Examinations shall be given (~~twice annually~~) at a time and place determined by the secretary.

(4) A completed application with the appropriate fee for certification shall be received in the office of the department, no later than sixty days prior to the examination (~~administration~~) date. All supporting documentation shall be received no later than twenty days prior to the scheduled examination date.

(5) Any applicant who fails to follow written or oral instructions relative to the conduct of the examination, is observed talking or attempting to give or receive information, or attempting to remove materials from the examination or using or attempting to use unauthorized materials during any portion of the examination shall be terminated from the examination and not permitted to complete it.

(6) The department shall approve the method of grading each examination, and (~~shall~~) apply (~~such~~) the method uniformly to all applicants taking the examination.

(7) (~~An applicant shall~~) Applicants will be notified in writing of (~~his or her~~) their examination scores.

(8) (~~An~~) Applicant's examination scores (~~shall~~) are not (~~be~~) disclosed to anyone other than the applicant, unless requested to do so in writing by the applicant.

(9) An applicant who fails to make the required grade in the first examination is entitled to take up to two additional examinations upon the payment of a reexamination fee for each subsequent examination (~~determined by the secretary~~). (~~Upon~~) After failure of three examinations, the secretary may require remedial education before admission to future examinations.

AMENDATORY SECTION (Amending Order 275, filed 5/28/92, effective 6/28/92)

WAC 246-930-210 Examination appeal procedures. (1) Any candidate who takes and does not pass the sex offender treatment provider examination may request an informal review of the results of the examination.

(a) The examination results shall not be modified unless the candidate presents clear and convincing evidence of error in the examination content or procedure, or bias, prejudice, or discrimination in the examination process.

(b) Any challenges to examination scores shall not be considered unless the total of the potentially revised score would result in issuance of a certificate.

(2) The procedure for requesting an informal review of examination results is as follows: The request shall be in writing and shall be received by the department within thirty days of the date on the letter of notification of examination results sent to the candidate.

(3) (~~The advisory committee shall schedule a closed session meeting to review the failed examination questions and forms completed by the candidate. The candidate shall be notified in writing of the decision.~~)

(~~a~~) The candidate shall be identified only by candidate number for the purpose of this review. The candidate shall be notified in writing of the decision.

(~~b~~) Letters of referral or requests for special consideration shall not be read or considered.

(4) Any candidate not satisfied with the results of the informal examination review may request a formal hearing before the secretary to challenge the informal review decision. The procedures for requesting a formal hearing are as follows:

(a) The candidate shall complete the informal review process before requesting a formal hearing.

(b) The request for formal hearing shall be received by the department within twenty days of the date on the notice of the results of the informal review.

(c) The written request shall specifically identify the challenged portion(s) of the examination and shall state the specific reason(s) why the candidate believes the examination results should be modified.

(~~5~~) ~~Before the hearing is scheduled the parties shall attempt by informal means to resolve the following:~~

(~~a~~) ~~The simplification of issues;~~

(~~b~~) ~~Amendments to the candidate's notice identifying the challenged portion(s) of the examination and the statement of the specific reason(s) why the candidate feels the results of the examination should be changed;~~

(~~c~~) ~~The possibility of obtaining stipulations, admission of facts, and documents;~~

(~~d~~) ~~The limitation of the number of expert witnesses;~~

(~~e~~) ~~A schedule for completion of all discovery; and~~

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

If the parties are unable to resolve any of these issues informally, either party may request a prehearing conference to be held before an administrative law judge.

(~~6~~) ~~In the event there is a prehearing conference, the administrative law judge shall enter an order which sets forth the actions taken at the conference, the amendments allowed to the pleading, and the agreements made by the parties of~~

~~their qualified representatives as to any of the matters considered, including the settlement or simplification of issues. The prehearing order limits the issues for hearing to those not disposed of by admissions or agreements. Such order shall control the subsequent course of the proceeding unless modified for good cause by subsequent prehearing order.~~

~~(7) Candidates shall receive at least twenty days' notice of the time and place of the formal hearing.~~

~~(8)) (d) Appeals are brief adjudicative proceedings, as provided under the Administrative Procedure Act, chapter 34.05 RCW and chapter 246-11 WAC. The presiding officer is the secretary or the secretary's designee.~~

~~(5) The hearing shall be restricted to the specific portion(s) of the examination the candidate had identified in the request for formal hearing.~~

~~((9) The formal hearing shall be conducted pursuant to the Administrative Procedure Act, chapter 34.05 RCW.)~~

AMENDATORY SECTION (Amending Order 275, filed 5/28/92, effective 6/28/92)

WAC 246-930-220 Reexamination. (1) An applicant for certification who has been previously certified shall retake the examination and achieve a passing score before recertification under any of the following circumstances:

(a) The applicant has been uncertified voluntarily for more than ~~((thirty-six))~~ twenty-four calendar months; or

(b) The applicant's certificate has been revoked or suspended by reason of a disciplinary action by the secretary.

(2) The secretary may require reexamination in any disciplinary order as a condition of reissuing a certificate or confirming certification.

(3) Whenever reexamination is required, the applicant shall pay the ~~((appropriate))~~ examination fees set forth in WAC 246-930-990.

AMENDATORY SECTION (Amending Order 275, filed 5/28/92, effective 6/28/92)

WAC 246-930-300 Mandatory reporting. (1) Pursuant to RCW 18.130.070, the persons designated in subsection (2) of this section are required to report to the department~~((~~

~~(a)) any conviction, determination, or finding of which they have personal knowledge that any person certified as a provider or affiliate provider has committed an act which constitutes unprofessional conduct under RCW 18.130.180((; and~~

~~(b) Any information of which they have personal knowledge which indicates that any person certified as a provider or affiliate provider may not be able to practice with reasonable skill and safety to the public as a result of a mental or physical condition)).~~

(2) The following persons are required to report the information identified in subsection (1) of this section:

(a) Persons certified as providers or affiliate providers;

(b) The president, chief executive officer, or designated official of any professional association or society whose members are certified providers or affiliate providers;

(c) Prosecuting attorneys and deputy prosecuting attorneys;
(d) Community corrections officers employed by the department of corrections;

(e) Juvenile probation or parole counselors who provide counseling or supervision to juveniles;

(f) The president, chief executive officer, or designated official of any public or private agency which employs certified providers or affiliate providers;

(g) The president, chief executive officer, or designated official of any credentialing agency for health professionals.

(3) Reports under this section shall be made in writing, and must include the name, address, and telephone number of the person making the report, the name and address of the person about whom the report is made, and complete information about the circumstances giving rise to the report.

AMENDATORY SECTION (Amending Order 275, filed 5/28/92, effective 6/28/92)

WAC 246-930-301 Purpose—Professional standards and ethics. (1) ~~((The standards set forth in WAC 246-930-301 through 246-930-340 apply to sex offender treatment providers (SOTP) while evaluating or treating SSOSA or SSODA clients.~~

~~(2)) Sex offender treatment providers ((shall be otherwise)) are also credentialed health professionals, and are subject to the standards of practice of their primary field of practice. However, standards of practice vary from profession to profession, and sex offender evaluation and treatment represents significant differences in practice from general mental health interventions.~~

~~((3) Given the uniqueness)) (2) The standards set forth in WAC 246-930-301 through 246-930-340 apply to all sex offender treatment providers evaluating or treating SSOSA or SSODA clients. Failure to comply with these standards in providing evaluation and/or treatment to SSOSA/SSODA clients may constitute unprofessional conduct pursuant to RCW 18.130.180(7).~~

~~(3) Standards of practice specific to this area of specialization are necessary due to the unique characteristics of this area of practice, the degree of control that a provider exercises over the lives of clients, and the community protection issues inherent in this work((, standards of practice specific to this area of specialization are necessary.~~

~~(4) The purpose of these rules is to establish standards of practice for sex offender treatment providers. Failure to comply with these standards in providing evaluation and/or treatment to clients sentenced under SSOSA or SSODA may constitute unprofessional conduct pursuant to RCW 18.130.180(7).~~

~~(5) When there is a conflict between the terms or conditions of a court order in a specific case and these standards, the provider shall comply with the court order)).~~

AMENDATORY SECTION (Amending Order 275, filed 5/28/92, effective 6/28/92)

WAC 246-930-310 Standards for professional conduct and client relationships. (1) General considerations. Sex offender treatment providers shall:

(a) ~~((Report to the department any unethical or incompetent practices by other sex offender treatment providers that jeopardize public safety or cause a risk of harm to clients;~~

~~(b))~~ Not discriminate against clients with regard to race, religion, gender or disability; and

~~((e))~~ (b) Treat clients with dignity and respect, regardless of the nature of their crimes or offenses.

(2) Competence in practice. Providers shall:

(a) Be fully aware of the standards of their area of credentialing as health professionals and adhere to those standards;

(b) Be knowledgeable of statutes and scientific data relevant to ~~((this area of))~~ specialized sex offender treatment and evaluation practice;

(c) Be familiar with the statutory requirements for assessments, treatment plans and reports for the court ~~((for))~~ under SSOSA and SSODA;

(d) Perform professional duties with the highest level of integrity, maintaining confidentiality within the scope of statutory responsibilities;

(e) Be committed to community protection and safety;

~~(f)~~ Be aware of all statutes related to client confidentiality;

~~(g)~~ (g) Not make claims regarding the efficacy of treatment that exceed what can be reasonably expected;

~~((g))~~ (h) Make appropriate referrals when they are not qualified or are otherwise unable to offer services to a client; and

~~((h))~~ (i) Exercise due prudence and care in making referral to other professionals.

(3) Confidentiality. Providers shall:

(a) Insure that the client fully understands the scope and limits of confidentiality, and the relevance to the client's particular situation. The provider shall inform the client of the provider's method of reporting disclosures made by the client and to whom disclosures are ~~((made))~~ reported, before evaluation and treatment commence;

(b) Inform clients of any circumstances which may trigger an exception to the agreed upon confidentiality;

(c) Not require or seek waivers of privacy or confidentiality beyond the requirements of evaluation, treatment, training, or community safety. Providers shall evaluate the impact of authorizations for release of information upon their clients; and

(d) Understand and explain to their juvenile clients the rights of their parents and/or guardians to obtain information relating to the client.

(4) Conflict of interest. Providers shall:

(a) Refrain from using professional relationships to further their personal, religious, political, or economic interest other than accepting customary fees;

(b) Avoid relationships with clients which may constitute a conflict of interest, impair professional judgment and risk exploitation. (For example, bartering, service for service, and/or treating individuals where a social, business, or personal relationship exists); and

(c) Have no sexual relationships with a client.

(5) Fee-setting and client interaction. Providers shall:

(a) Prior to commencing service, fully inform the client of the scope of professional services to be provided and the fees associated with the services;

(b) Review any changes in financial arrangements and requirements with the client pursuant to the rules initially specified; ~~((and))~~

(c) Neither offer nor accept payment for referral; and

(d) Provide clients or their responsible person timely statements accurately indicating all services provided, the fees charged, and payments made.

(6) Termination or alteration of therapist/client relationship. Providers shall:

(a) Not unreasonably withdraw services to clients, and shall take care to minimize possible adverse effects on the client and the community;

(b) Notify clients promptly when termination or disruptions of services are anticipated, and provide for a transfer, referral, or continuation of service consistent with client needs and preferences, when appropriate; and

(c) Refrain from knowingly providing treatment services to a client who is in mental health treatment with another professional without consultation with the current provider.

(7) The department neither requires nor prohibits the use of ~~((plethysmographs or polygraphs))~~ psychological or physiological testing. The use of these and other treatment and evaluation techniques is at the discretion of the provider, subject to the terms of the court order in a particular case. The following standards apply when such techniques are used.

~~(a) ((Use of plethysmography: The use of physiological assessment measures, such as penile plethysmography, can yield valuable information regarding the sexual arousal patterns of sex offenders. This data can be useful in assessing therapy progress and in monitoring for community safety. When obtained, physiological assessment data shall not be used as the sole basis for offender risk assessment and shall not be used to determine if an individual has committed a specific sexually deviant act. Providers who utilize this data shall be aware of the limitations of plethysmography and shall recognize that plethysmographic data is only meaningful within the context of a comprehensive evaluation and/or treatment process. Sex offender treatment providers shall insure that physiologic assessment data is interpreted only by sex offender treatment providers who possess the necessary training and experience. Sex offender treatment providers shall insure that particular care is taken when performing physiological assessment with juvenile offenders and other special populations, due to concerns about exposure to deviant materials. Given the intrusiveness of this procedure, care shall be given to the dignity of the client.)) Psychological testing: Psychological testing may provide valuable data during the assessment phase and in determining treatment progress. However, psychological testing should not be conducted by a provider who is not a licensed psychologist, unless the specific test(s) standardized administration procedures provide for administration by a nonpsychologist.~~

Psychological assessment data provided by a psychologist, other than the examiner, shall not be integrated into an assessment report unless the provider is familiar with the psychological instruments used and aware of their strengths and/or limitations.

The interpretation of psychological testing through blind analysis has significant limitations. Providers reporting psychological test data derived in this manner shall also report the way in which the information was derived and the limitations of the data.

It is important to report any information which might influence the validity of psychological test findings. Exam-

ples of such information include, but are not limited to, the context of the evaluation, the information available to the professional who interpreted the data, whether the interpretations were computer derived and any special population characteristics of the person examined.

(b) Use of polygraph: The use of the polygraph examination may enhance the assessment, treatment and monitoring ((process)) processes by encouraging disclosure of information relevant and necessary to understanding the extent of present risk and compliance with treatment and court requirements. When obtained, the polygraph data achieved through periodic examinations is an important asset in monitoring the sex offender client in the community. Other alternative sources of verification may also be utilized. Sex offender treatment providers shall be knowledgeable of the limitations of the polygraph and shall take into account its appropriateness with each individual client and special client populations. Examinations shall be given in accordance with the treatment plan. Sex offender treatment providers shall not base decisions solely on the results of the polygraph examination.

(c) Use of plethysmography: The use of physiological assessment measures, such as penile plethysmography, may yield useful information regarding the sexual arousal patterns of sex offenders. This data can be useful in assessing baseline arousal patterns and therapeutic progress. Decisions about the use of plethysmography should be made on a case-by-case basis with due consideration given to the limitations and the intrusiveness of the procedure. Consideration also should be given to the available literature on the usefulness of the information obtained as it relates to a specific sex offender population.

When obtained, physiological assessment data shall not be used as the sole basis for offender risk assessment and shall not be used to determine if an individual has committed a specific sexually deviant act. Providers shall recognize that plethysmographic data is only meaningful within the context of a comprehensive evaluation and/or treatment process. Sex offender treatment providers shall ensure that physiologic assessment data is interpreted only by sex offender treatment providers who possess the necessary training and experience. Sex offender treatment providers shall insure that particular care is taken when performing physiological assessment with juvenile offenders and other special populations, due to concerns about exposure to deviant materials. Given the intrusiveness of this procedure, care shall be given to the dignity of the client.

AMENDATORY SECTION (Amending Order 275, filed 5/28/92, effective 6/28/92)

WAC 246-930-320 Standards for SSOSA and SSODA assessment and evaluation reports. (1) General considerations in evaluating clients. Providers shall:

(a) Be knowledgeable of assessment procedures ((utilized)) used;

(b) Be aware of the strengths and limitations of self-report and make reasonable efforts to verify information provided by the offender;

(c) Be knowledgeable of the client's legal status including any court orders applicable. Have a full under-

standing of the SSOSA and SSODA process and be knowledgeable of relevant criminal and legal considerations;

(d) Be impartial; provide an objective and accurate base of data; and

(e) Avoid addressing or responding to referral questions which exceed the present level of knowledge in the field or the expertise of the evaluator((;

~~(f) Assure that their written reports are accurate, comprehensive and address all of the issues necessary for court disposition;~~

~~(g) Assure that their written reports present all knowledge relevant to the matters at hand in a clear and organized manner;~~

~~(h) Assure that their written reports include the referral sources, the conditions surrounding the referral and the referral questions addressed; and~~

~~(i) Assure that their written reports state the sources of information utilized in the evaluation)).~~

(2) Scope of assessment data.

~~((a) Comprehensive evaluations shall include a compilation of data from as many sources as reasonable, appropriate, and available. These sources may include:~~

~~(i) Collateral information (i.e. police reports, CPS information, criminal correctional history and victim statements);~~

~~(ii) Psychological testing information;~~

~~(iii) Physiological testing information;~~

~~(iv) Interviews with the offender;~~

~~(v) Previous assessments conducted (i.e. medical, substance abuse, psychological, sexual deviancy); and~~

~~(vi) Interviews with significant others.~~

~~(b) The written report shall reflect the information considered including:)) Comprehensive evaluations under SSOSA and SSODA shall include a compilation of data from as many sources as reasonable, appropriate, and available. These sources may include but are not limited to:~~

~~(a) Collateral information (i.e., police reports, child protective services information, criminal correctional history and victim statements);~~

~~(b) Interviews with the offender;~~

~~(c) Interviews with significant others;~~

~~(d) Previous assessments of the offender conducted (i.e., medical, substance abuse, psychological and sexual deviancy);~~

~~(e) Psychological/physiological tests;~~

~~(f) If a report fails to include information specified in (a) through (e) of this subsection, the evaluation should indicate the information not included and cite the reason the information is not included; and~~

~~(g) Second evaluations shall state whether other evaluations were considered. The decision regarding use of other evaluations prior to conducting the second evaluation is within the professional discretion of the provider. The second evaluation need not repeat all assessment or data compilation measures if it reasonably relies on existing current information. The second evaluation must address all issues outlined in subsection (3) of this section, and include conclusions, recommendations and a treatment plan if one is recommended.~~

(3) Evaluation reports.

(a) Written reports shall be accurate, comprehensive and address all of the issues required for court disposition as provided in the statutes governing SSOSA and SSODA;

(b) Written reports shall present all knowledge relevant to the matters at hand in a clear and organized manner;

(c) Written reports shall include the referral sources, the conditions surrounding the referral and the referral questions addressed; and

(d) Written reports shall state the sources of information utilized in the evaluation. The evaluation and written report shall address, at a minimum, the following issues:

(i) A description of the current offense(s) including, but not limited to, the evaluator's conclusion about the reasons for any ~~((discrepancies))~~ discrepancy between the official and offender's versions of the offenses;

(ii) A sexual history, sexual offense history and patterns of sexual arousal/preference/interest;

(iii) Prior attempts to remediate and control offense behavior including prior treatment;

(iv) Perceptions of significant others, when appropriate, including their ability and/or willingness to support treatment efforts;

(v) Potentiators of offending behavior to include alcohol and drug abuse, stress, mood, sexual patterns, use of pornography, and social and environmental influences;

(vi) A personal history to include medical, marital/relationships, employment, education and military;

(vii) A family history;

(viii) History of violence and/or criminal behavior;

(ix) Mental health functioning to include coping abilities, adaptational styles, intellectual functioning and personality attributes; and

(x) The overall findings of psychological/physiological/medical assessment when such assessments have been conducted.

~~((3))~~ (e) Conclusions and recommendations~~((--The conclusions and recommendations))~~ shall ~~((flow from))~~ be supported by the data presented in the body of the report and include:

~~((a))~~ (i) The evaluator's conclusions regarding the appropriateness of community treatment;

~~((b))~~ (ii) A summary of the clinician's diagnostic impressions;

~~((c))~~ (iii) A specific assessment of relative risk factors, including the extent of the offender's dangerousness in the community at large;

~~((d))~~ (iv) The client's amenability to outpatient treatment and conditions of treatment necessary to maintain a safe treatment environment.

~~((4))~~ (f) Proposed treatment plan~~((--The plan))~~ shall be described ~~((with sufficient))~~ in detail and clarity and include:

~~((a))~~ (i) Anticipated length of treatment, frequency and type of contact with providers, and supplemental or adjunctive treatment;

~~((b))~~ (ii) The specific issues to be addressed in treatment and a description of planned treatment interventions including involvement of significant others in treatment and ancillary treatment activities;

~~((c))~~ (iii) Recommendations for specific behavioral prohibitions, requirements and restrictions on living conditions, lifestyle requirements, and monitoring by family

members and others that are necessary to the treatment process and community safety;

~~((d))~~ (iv) Proposed methods for monitoring and verifying compliance with the conditions and prohibitions of the treatment program; and

~~((e))~~ (v) If the evaluator will not be providing ~~((the ensuing))~~ treatment, a specific certified provider should be identified to the court. ~~((Such))~~ The provider shall adopt the proposed treatment plan or submit an alternative treatment plan for approval by the court, ~~((to include))~~ including each of the ~~((foregoing))~~ elements in (5)(a) through (d).

~~((f) Such))~~ (4) The provider shall submit to the court and the parties a statement that the provider is either adopting the proposed treatment plan or submitting an alternate plan. The plan and the statement shall be provided to the court before sentencing.

AMENDATORY SECTION (Amending Order 275, filed 5/28/92, effective 6/28/92)

WAC 246-930-330 Standards for treatment.

Introduction-SSOSA/SSODA offender treatment: It is recognized that effective sexual deviancy treatment will involve a broad set of planned therapeutic experiences and interventions designed to ultimately reduce the risk of a client engaging in criminal sexual behavior. Such treatment shall be consistent with current professional literature ~~((and practices))~~ and shall ~~((maximize))~~ emphasize community safety.

(1) General considerations.

~~((Clients shall generally be seen a minimum of once per week for at least forty five minutes by a certified or affiliate sex offender treatment provider.~~

~~((Circumstances may make a temporary reduction in duration or frequency of contacts appropriate and shall be determined on an individual case basis.))~~ In most cases clients shall be seen by a certified or affiliate treatment provider a minimum of once per week for at least forty-five minutes for individual or ninety minutes for group.

(b) Changes in client circumstances or treatment provider schedule may require a reduction in frequency or duration of contacts appropriate, provided that:

(i) Such changes are made on a case-by-case basis;

(ii) Any changes that constitute a permanent change in the treatment plan or that reduce community safety shall be communicated to the supervising officer, the prosecutor and the court prior to the implementation of the change; and

(iii) Other short term, temporary changes in the treatment plan due to illness, vacation, etc., should be reported in the regular progress report.

(c) Any reduction in frequency or duration of contacts which constitutes a ~~((change in))~~ deviation from the treatment plan shall be reported to the supervising officer, the prosecutor, and the court~~((-));~~ and

(d) The treatment methods employed by the provider shall:

~~((Be supportable by the professional literature and practice;~~

~~((+)))~~ Reflect concern for the well being of clients, victims and the safety of potential victims;

~~((iii))~~ (ii) Take into account the legal/civil rights of clients, including the right to refuse therapy and return to court for review; and

~~((iv))~~ (iii) Be individualized to meet the unique needs of each client.

(2) **Planning and interventions.** The treatment plan and the interventions used by the provider to achieve the goals of the plan shall:

(a) ~~(Be based on the needs detailed in the evaluation;)~~ Address the sexual deviancy treatment needs identified;

(b) Include provisions for the protection ~~((for))~~ of victims and potential victims;

(c) ~~(Prioritize)~~ Give priority to those ((therapy events)) treatment interventions most ((necessary)) likely to avoid sexual reoffense; and

(d) Take reasonable care to not cause victims to have unsafe, or unwanted contact with their offenders.

~~((3) Provider-client contract. The provider-client contract shall:~~

~~(a) Include treatment requirements and rules that are directly related to community safety;~~

~~(b) Be signed by the client and acknowledge the contract, treatment requirements, and rules; and~~

~~(c) Be provided to the supervising officer after sentencing and within ninety days of the start of treatment.)~~ (3)

Community protection contract. The provider shall present a contract to the client within ninety days of the start of treatment which:

(a) Details the treatment rules and requirements which the client must follow in order to preserve community safety;

(b) Outlines the client's responsibility to adhere to the contract and the provider's responsibility to report any violations;

(c) Is a separate document from any other evaluation or treatment agreements between the client and the provider; and

(d) Is signed by both client and provider, sent to the supervising officer after sentencing, and updated when conditions change throughout the course of treatment.

(4) **Treatment methods.** The methods used by the provider shall:

(a) Address clients' deviant sexual urges and recurrent deviant sexual fantasies;

(b) ~~((Attempt to))~~ Educate clients and the individuals who are part of their support systems about the potential for reoffense, and risk factors;

(c) ~~((Attempt to))~~ Teach clients to ~~((utilize))~~ use self control methods to avoid sexual reoffense;

(d) Consider the effects of trauma and past victimization as factors in reoffense potential where applicable;

(e) Address clients' thought processes which facilitate sexual reoffense and other victimizing or assaultive behaviors;

(f) ~~((Attempt to))~~ Modify client thinking errors and cognitive distortions;

(g) ~~((Attempt to))~~ Enhance clients appropriate adaptive/legal sexual functioning;

(h) ~~((Attempt to))~~ Insure that clients have accurate knowledge about the effect of sexual offending upon victims, their families, and the community;

(i) ~~((Assist))~~ Help clients to develop a sensitivity to the effects of sexual abuse upon victims;

(j) Address clients' personality traits and personality deficits which are related to increased reoffense potential;

(k) Address clients' deficits in coping skills ~~((in present life circumstances where applicable));~~

(l) Include and integrate clients' families, guardians, and residential program staff into the ~~((therapy))~~ treatment process when appropriate; and

(m) ~~((Attempt))~~ To maintain communication with other significant persons in the client's support system, when deemed appropriate by the provider ~~((to assist in meeting treatment goals)).~~

(5) **Monitoring of treatment ~~((and sentence))~~ requirements.** The monitoring of the client's compliance with treatment ~~((and sentence))~~ requirements by the provider shall:

(a) Recognize the reoffense potential of the sex offender client, the damage that may be caused by sexual reoffense or attempted reoffense, and the limits of self report by the sex offender client;

(b) ~~((Employ))~~ Consider multiple sources of input regarding the client's out of office behavior ~~((when possible and utilize methods which are objective in nature));~~

(c) As a general principle, increase monitoring during those times of increased risk and notify the supervising officer:

(i) When a client is in crisis;

(ii) When visits with victims or potential victims are authorized; and

(iii) When clients are in high risk environments.

(d) Work in collaboration with the supervising officer ~~((in the independent verification of a client's:~~

~~(i) Compliance with sentence requirements and treatment directives;~~

~~(ii) Cessation of sexually deviant behaviors;~~

~~(iii) Reduction in those behaviors most likely to be related to sexual reoffense; and~~

~~(iv) Living, work and social environments to insure that these environments have sufficient protection against the client's reoffense potential.~~

~~(6) Contacts with victims/vulnerable children. When sex offender clients have any contact with the victims or children, the provider shall recognize that supervision during contact with children is critical for those offenders who have had crimes against children, or have the potential to abuse children. Providers shall:~~

~~(a) Consider victims' wishes about contact and ensure that all contact is safe and in accordance with any court directives;~~

~~(b) Limit child molester decision-making authority over vulnerable children;~~

~~(c) Collaborate with other relevant professionals and solicit their input regarding contact with victims, rather than make isolated decisions;~~

~~(d) Consult with parents, custodial parents, or guardians prior to authorizing any contact between offenders and children;~~

~~(e) Include educational experiences for chaperones/supervisors of SSOSA/SSODA clients; and~~

~~(f) Establish plans/protocols for reuniting or returning SSOSA/SSODA clients to homes where children reside that emphasizes child safety.~~

~~(7))~~ to verify that the client is following the treatment plan by reducing the frequency of those behaviors that are most closely related to sexual reoffense and that the client's living, work and social environments have sufficient safeguards and protection for victims and potential victims; and

~~(e)~~ The provider and the supervising officer should discuss the verification methods used so that each can more fully collaborate to protect community safety and assist the client in successfully completing treatment.

~~(6) **Contacts with victims/vulnerable persons for SSOSA clients.**~~ When authorizing SSOSA clients to have contact with victims or children, the provider shall recognize that supervision during contact with children is critical for those offenders who have had crimes against children, or have the potential to abuse children. Providers shall:

~~(a)~~ Consider victim's wishes about contact and reasonably ensure that all contact is safe and in accordance with court directives;

~~(b)~~ Restrict, as necessary, offender decision-making authority over victims and vulnerable children;

~~(c)~~ Prior to offender contact with children, collaborate with other relevant professionals regarding contact with victims, rather than make isolated decisions;

~~(d)~~ Consult with the victim's parents, custodial parents, or guardians prior to authorizing any contact between offenders and children;

~~(e)~~ Include educational experiences for chaperones/supervisors of SSOSA clients; and

~~(f)~~ Devise a plan/protocol for reuniting or returning SSOSA clients to homes where children reside. Such plan/protocol should emphasize child safety, and provide for some monitoring of the impact on the victim and other children.

~~(7) **Contacts with victims/vulnerable persons for SSODA clients.**~~ While the rationale behind the standards for SSOSA clients in subsection (6)(a) through (f) of this section is equally relevant for juvenile SSODA clients, there are some substantial differences that warrant specific standards. The prohibitions on contact with children are not intended to prohibit reasonable peer-age social or educational contacts for juvenile SSODA clients. It is further understood that providers working with juvenile SSODA clients have limited authority over their clients, and that they have limited authority to govern the decisions or supervision of a juvenile client's parents. Reasonable and practical supervision plans/strategies for juvenile SSODA clients require the cooperation and involvement of parents, foster parents, group home staff, and the supervising officer. Providers shall work in collaboration with the supervising officer to meet the following standards:

~~(a)~~ Establish reasonable guidelines for contacts with victims or vulnerable children commensurate with the offender's offending history, treatment progress, and the current disposition order.

~~(b)~~ Make reasonable efforts to advise, inform, and educate adults who will be in contact with and responsible for the offender's behavior around victims or vulnerable children.

~~(c)~~ Restrict, as necessary, offender decision-making authority over victims and vulnerable children.

~~(d)~~ Devise plans/protocols for reuniting or returning SSODA clients to homes where the victim or other children reside, specifically considering the victim's wishes and victim impact of reunification.

~~(e)~~ Closely scrutinize victim requests for offender contact to ensure the request is free of emotional strain and is in the victim's best interests.

~~(8) **Documentation of treatment.**~~ Providers shall maintain and safeguard client files in accordance with the professional standards of their individual disciplines and with Washington state law regarding health care records (~~and shall:~~

~~(a)~~ Document the goals of treatment, the methods used and the observed progress of clients towards reaching the goals;

~~(b))~~ Providers shall insure that the client files (~~(accurately)~~) reflect the content of professional contact, treatment progress, sessions attended and treatment plan change information necessary for completion of the required SSOSA/SSODA reports; and

~~((c) Safeguard the confidentiality of client files in recognition of the sensitive nature of the contents.~~

~~(8)) (9) **Completion of court ordered treatment.**~~ ~~((The sex offender treatment provider shall make treatment completion decisions that logically follow the evaluation, treatment plan, course of treatment sequence.))~~ In ~~((addition to))~~ fulfilling the SSOSA~~((/SSODA))~~ requirements for the end of court ordered treatment hearing, the treatment provider shall:

~~(a)~~ ~~((Assess actual changes in a client's reoffense potential prior to recommending treatment termination;~~

~~(b)~~ Attempt to repeat, where appropriate, those assessments which might show client change;

~~(e))~~ Assess and document how the goals of the treatment plan have been met, what ~~((actual))~~ changes in the client's reoffense potential have been accomplished, and what risk factors remain;

~~((d) Seek input from others knowledgeable about a client's progress as part of the treatment completion/termination decision process;~~

~~(e)) (b)~~ Report to the court in a timely manner regarding the client's compliance with treatment and monitoring requirements and make a recommendation regarding modification of conditions of community supervision, and either termination of treatment or extension of treatment for up to the remaining period of community supervision.

~~((f) When appropriate, inform the client regarding the end of court ordered treatment recommendation.)) (10) **Completion of treatment for SSODA.**~~ Sex offender treatment providers who are treating juvenile offenders shall comply with subsection (9) of this section.

AMENDATORY SECTION (Amending Order 275, filed 5/28/92, effective 6/28/92)

WAC 246-930-340 Standards for communication with other professionals. (1) Professional relationships with corrections/probation officers and other supervising agencies.

(a) The provider shall establish a cooperative ~~((and collaborative))~~ relationship with the supervising officer and/or responsible agency for purposes of the effective supervi-

sion and monitoring of an offender's behavior in the community.

(b) All violations of the provider client contract shall be reported immediately to the supervising officer.

(c) Quarterly progress reports documenting dates of attendance, treatment activities and duration, changes in the treatment plan, client compliance with requirements, and treatment progress shall be made in a timely manner to the court and parties. Providers shall provide additional information regarding treatment progress when requested by the court or a party ~~(, to include:~~

- ~~(i) Changes in treatment plan;~~
- ~~(ii) Dates of attendance;~~
- ~~(iii) Client compliance with requirements;~~
- ~~(iv) Treatment activities;~~
- ~~(v) Client's relative progress in treatment; and~~
- ~~(vi) Any other material as specified by the court at sentencing).~~

If there is more than one provider, the primary provider shall confer on all quarterly reports and provide one report to the required parties in a timely manner.

(d) ~~((Specific))~~ Prior to implementation, plans for ((any and all)) contact with the victim, potential victims and plans for family reunification or return (where appropriate) should be reviewed with the supervising officer.

(e) Prior to implementation the provider shall communicate with the supervising officer when approving chaperones and ~~((knowledgeable))~~ supervisors for offender contact with children. If an urgency of circumstances requires independent approval of a chaperone by a provider, the provider will notify the community correction officer or supervising officer in a timely manner.

(2) Communication with the department of social and health services or other agencies responsible for the care or supervision of the client. When appropriate, the provider shall seek an authorization for release of information from the client to communicate with such agencies for treatment or monitoring purposes.

(3) Communication with others. Where appropriate and consistent with the offender's informed consent, the provider shall communicate with the victim's therapist, guardian ad litem, custodial parent, guardian, caseworker, or other involved professional in making decisions regarding family reunification or return, or victim contact with the offender.

(4) Reporting of additional victims.

(a) Providers are expected to comply with the mandatory reporting law, RCW 26.44.030.

(b) All clients shall be notified of the limits of confidentiality imposed on therapists by the mandatory reporting law (RCW 26.44.030).

AMENDATORY SECTION (Amending Order 275, filed 5/28/92, effective 6/28/92)

WAC 246-930-410 Continuing education requirements. (1) **Purpose and scope.** The aim of continuing education for sex offender treatment providers is to ensure that professionals practicing in this specialty field are knowledgeable of current scientific and practice principles that affect the supervision and treatment of sex offenders in community-based treatment. Since the treatment of sex offenders in communities raises significant public safety concerns, continuing education is required to help sex

offender treatment providers deliver the highest quality of professional service by being familiar with current developments in a rapidly changing profession. Certified sex offender treatment providers, regardless of certification status (e.g., full, affiliate, or provisional), shall meet the continuing education requirements set forth in this section as a prerequisite to license renewal.

(2) **General requirements.** Certified sex offender treatment providers shall complete forty credit hours of continuing ~~((sexual deviancy))~~ education (hereafter referred to as ~~((CSDE))~~ CE) every two years. One clock hour of acceptable ~~((CSDE))~~ CE activity equals one credit hour. The number of creditable hours will be determined by counting the actual contact hours of instruction or, in the case of workshops or conferences, the formal hours of the workshop or conference. All certified sex offender treatment providers will have two years in which to accrue the required ~~((CSDE))~~ CE credit, and renewals of sex offender treatment provider certificates on alternate years will require documentation of forty credit hours of ~~((CSDE))~~ CE. This requirement will be implemented with the 1993 renewal year.

(3) **Specific requirements.**

(a) A minimum of thirty hours of the ~~((CSDE))~~ CE shall be earned through attendance at courses, workshops, institutes, and/or formal conference presentations with direct, specific relevance to the assessment and treatment of sex offenders.

(i) Consultative or supervisory training obtained from other certified sex offender treatment providers is not creditable under this ~~((CSDE))~~ CE definition.

(ii) Independent study of audio or video tapes of seminar presentations not actually attended are creditable under this definition, up to a maximum of ten hours in any two-year period. Credit for independent study will only be granted if accompanied by documentation of the learning activity, such as a written summary of the independent study activity.

(iii) ~~((CSDE))~~ CE credit for ~~((sexual deviancy))~~ assessment and treatment of sex offender training courses presented to other professionals may be claimed by the certified provider who provides the training one time only (usually the first time it is taught, unless there is substantial revision), up to a maximum of ten hours in any two-year period.

(iv) Courses specifically oriented toward assessment or treatment of sex offenders may be claimed as ~~((CSDE))~~ CE. The following are examples of subjects that qualify under this definition:

- (A) Ethics and professional standards;
- (B) Relapse prevention with sex offenders;
- (C) Plethysmographic assessment;
- (D) Sexual arousal assessment and reconditioning;
- (E) Risk assessment with sex offenders;
- (F) Psychopharmacological therapy with sex offenders;
- (G) Family therapy with sex offenders;
- (H) Research concerning sexual deviancy;
- (I) Sexual addiction; and
- (J) Therapy/clinical methods specific to sex offenders.

(b) In addition to the thirty hours of ~~((CSDE))~~ CE with direct, specific relevance to the assessment and treatment of sex offenders, ten hours of the total requirement may be earned through participation in training courses with indirect

relevance to the assessment and treatment of sex offenders. The following subjects qualify under this definition:

- (i) Victimology/victim therapy;
- (ii) General counseling methods;
- (iii) Psychological test interpretation;
- (iv) Addiction/substance abuse;
- (v) Family therapy;
- (vi) Group therapy; and
- (vii) Legal issues.

(4) **Program or course approval.** The department shall accept any ((CSDE)) CE that reasonably falls within the above categories and requirements. The department relies upon each individual provider's integrity with the intent and spirit of the ((CSDE)) CE requirements.

(5) **Enforcement.** Failure to meet the ((CSDE)) CE requirements within each two-year time period will result in nonrenewal of the certificate.

(6) **Exemptions.** In the event a provider fails to meet requirements because of illness, retirement (with no further provision of sex offender treatment provider services to clients), failure to renew, or other extenuating circumstances, the department may grant a time extension. The department shall review each case on an individual basis.

(7) **Proof of compliance.** Every two years the sex offender treatment provider shall submit an affidavit and proof of compliance with the ((CSDE)) CE requirement with the annual renewal application. Documentation to prove compliance includes, but is not limited to, course or program certificates of training, transcripts, course or workshop brochure descriptions. It is the responsibility of the sex offender treatment provider to maintain such documentation. Year of collection is determined by year of birth, i.e., a provider born in an odd-numbered year shall submit proof of compliance each odd-numbered year; a provider born in an even-numbered year shall submit proof of compliance each even-numbered year.

(8) CE requirement for newly certified providers. Providers who are newly certified within six months of their renewal date shall not be required to submit proof of continuing education for the preceding twelve-month period. Providers who are newly certified from six to nine months prior to the renewal date shall be required to submit proof of ten hours of the annual CE requirement for the preceding twelve-month period. Providers who are newly certified from nine to twelve months prior to the renewal date shall be required to submit proof of the full twenty hour annual CE requirement at the renewal date. The above noted prorated CE requirements apply only to the first renewal following certification. If proof of CE is not required at the first renewal (dependent on birthdate), the prorated amount shall be added to the full twenty hour annual requirement for the second year following certification.

NEW SECTION

WAC 246-930-420 Inactive status. Sex offender treatment providers, in good standing, may place their certification on inactive status by providing written notice in advance to the secretary, and may within five years thereafter resume active practice upon payment of a late renewal fee, accompanied by proof of completion of the continuing education requirements as specified in WAC 246-930-410,

and proof of a current underlying certification/license. To resume active status after five years or longer of inactive status, a provider must submit an original application with appropriate fees and retake the examination. A person may not practice as a sex offender treatment provider while the certification is on inactive status.

NEW SECTION

WAC 246-930-430 Reinstatement. A sex offender treatment provider who has allowed their certificate to lapse for two years or less shall submit the overdue renewal fees including the late fee, provide proof the continuing education requirement is completed and complete the reinstatement form required by the secretary. If the certificate has been lapsed for two years or more, a provider is required to submit an original application with appropriate fees and retake the examination. A person may not practice as a sex offender treatment provider while the certification is expired.

NEW SECTION

WAC 246-930-490 Sexual misconduct. (1) The sex offender treatment provider shall not engage in sexual contact or sexual activity with SSOSA/SSODA clients.

(2) Sexual contact or sexual activity is prohibited with former SSOSA/SSODA clients for ten years after cessation or termination of professional services.

(3) The sex offender treatment provider shall not engage in sexual contact or sexual activity with any former client if such contact or activity involves the abuse of the sex offender treatment provider and client relationship. Factors to be considered in evaluating if the sex offender treatment provider and client relationship is abused include, but are not limited to:

- (a) The amount of time that has passed since the last therapeutic contact;
- (b) The nature and duration of the therapy;
- (c) The circumstances of cessation or termination;
- (d) The client's personal history;
- (e) The client's current mental status;
- (f) The likelihood of adverse impact on the client and others; and
- (g) Any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a post termination sexual or romantic relationship with the client.

(4) The sex offender treatment provider shall not engage in sexual contact or sexual activity with any person participating in the treatment process of a SSOSA or SSODA client while the therapy is ongoing.

(5) The sex offender treatment provider shall not engage in sexual contact or sexual activity with any person formally participating in the treatment process, if such contact or activity involves the abuse of the sex offender treatment provider and client relationship. Factors to be considered in evaluating if the sex offender treatment provider and client relationship is abused include, but are not limited to:

- (a) The amount of time that has passed since the last therapeutic contact;
- (b) The amount of time that has passed since the last professional contact between the provider and the other person;

- (c) The knowledge the provider has obtained about the person because of the professional contact; and
- (d) The likelihood of adverse impact on the former client.

AMENDATORY SECTION (Amending Order 275, filed 5/28/92, effective 6/28/92)

WAC 246-930-990 Sex offender treatment provider fees. The following fees shall be charged by the professional licensing services division of the department of health:

Title of Fee	Fee
Sex offender treatment provider:	
Application and examination	\$ 650.00
Reexamination	325.00
Initial certification	100.00
Renewal	1,175.00
<u>Inactive status</u>	<u>585.00</u>
Late renewal penalty	200.00
Duplicate certificate	15.00
Extension fee	1,475.00
Affiliate treatment provider:	
Application and examination	300.00
Reexamination	150.00
Initial certification	50.00
Renewal	600.00
<u>Inactive status</u>	<u>300.00</u>
Late renewal penalty	200.00
Duplicate certificate	15.00
Extension fee	850.00

WSR 94-09-029
PROPOSED RULES
FOREST PRACTICES BOARD
 [Filed April 15, 1994, 10:29 a.m.]

Original Notice.

Title of Rule: Amendment to forest practices rules, Title 222 WAC.

Purpose: To modify provisions of forest practices rules to protect public resources while maintaining a viable timber industry.

Statutory Authority for Adoption: RCW 76.09.040, 76.09.060, and chapter 34.05 RCW.

Statute Being Implemented: Chapter 76.09 RCW.

Summary: To modify forest practice rules to correct an error in the wetlands rules that were adopted in June 1992 and became effective on August 2, 1992.

Reasons Supporting Proposal: To correct wording so that any future forest practices applications within any bog or fen becomes a Class IV-Special, requiring additional environmental review.

Name of Agency Personnel Responsible for Drafting: Judith Holter, 1111 Washington Street S.E., Olympia, WA, (206) 902-1412; Implementation and Enforcement: John Edwards, 1111 Washington Street S.E., Olympia, WA, (206) 902-1400.

Name of Proponent: State of Washington Forest Practices Board, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed rule corrects an inadvertent error in the wetland rules adopted in 1992. The error permitted a forest practice to occur in a forested bog or fen. Bogs and fens are found in both forested and nonforested wetland ecosystems. The proposed rule provides protection for all forested and nonforested bogs and fens by designating all greater than 0.25 acres as Type A wetlands.

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: Natural Resources Building, Conference Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on June 8, 1994, at 9 a.m.

Submit Written Comments to: Judith Holter, Department of Natural Resources, Forest Practices Division, P.O. Box 47012, Olympia, WA 98504-7012, by June 10, 1994.

Date of Intended Adoption: July 13, 1994.

April 14, 1994

Jennifer M. Belcher

Commissioner of Public Lands

AMENDATORY SECTION (Amending WSR 93-12-001, filed 5/19/93, effective 6/19/93)

WAC 222-16-010 General definitions.* Unless otherwise required by context, as used in these regulations:

"Act" means the Forest Practices Act, chapter 76.09 RCW.

"Affected Indian tribe" means any federally recognized Indian tribe that requests in writing from the department information on forest practices applications and notification filed on specified areas.

"Appeals board" means the forest practices appeals board established in the act.

"Area of resource sensitivity" means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060(2).

"Board" means the forest practices board established by the act.

"Bog" means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as sphagnum moss, labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce, western hemlock, lodgepole pine, cedar, crabapple, or aspen, and may be associated with open water.

"Borrow pit" shall mean an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

"Chemicals" means substances applied to forest lands or timber including pesticides, fertilizers, and other forest chemicals.

"Clearcut" means a harvest method in which the entire stand of trees is removed in one timber harvesting operation. Except as provided in WAC 222-30-110, an area remains clearcut until:

It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Commercial tree species" means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

"Completion of harvest" means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: *Provided*, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

"Constructed wetlands" means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

"Contamination" means the introducing into the atmosphere, soil, or water, sufficient quantities of substances as may be injurious to public health, safety or welfare, or to domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

"Conversion option harvest plan" means a voluntary plan developed by the landowner and approved by the local government entity indicating the limits of harvest areas, road locations, and open space.

"Conversion to a use other than commercial timber operation" shall mean a bona fide conversion to an active use which is incompatible with timber growing.

"Critical habitat (federal)" means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior under Sections 3(5)(A) and 4(a)(3) of the Federal Endangered Species Act.

"Critical wildlife habitat (state)" means those habitats designated by the board in accordance with WAC 222-16-080.

"Cultural resources" means archaeological and historic sites and artifacts and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

"Cumulative effects" means the changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices.

"Debris" means woody vegetative residue less than 3 cubic feet in size resulting from forest practice activities which would reasonably be expected to cause significant damage to a public resource.

"Department" means the department of natural resources.

"Eastern Washington" means the lands of the state lying east of an administrative line which approximates the change from the Western Washington timber types to the Eastern Washington timber types described as follows:

Beginning at the International Border and Okanogan National Forest boundary at the N1/4 corner Section 6, T. 40N, R. 24E., W.M., south and west along the Pasayten Wilderness boundary to the west line of Section 30, T. 37N, R. 19E.,

Thence south on range line between R. 18E. and R. 19E., to the Lake Chelan-Sawtooth Wilderness at Section 31, T. 35N, R. 19E.,

Thence south and east along the eastern wilderness boundary of Lake Chelan-Sawtooth Wilderness to the west line of Section 18, T. 31N, R. 19E. on the north shore of Lake Chelan,

Thence south on the range line between R. 18E. and R. 19E. to the SE corner of T. 28N, R. 18E.,

Thence west on the township line between T. 27N, and T. 28N to the NW corner of T. 27N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the Alpine Lakes Wilderness at Section 31, T. 26N, R. 17E.,

Thence south along the eastern wilderness boundary to the west line of Section 6, T. 22N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the SE corner of T. 22N, R. 16E.,

Thence west along township line between T. 21N, and T. 22N to the NW corner of T. 21N, R. 15E.,

Thence south along range line between R. 14E. and R. 15E. to SW corner of T. 20N, R. 15E.,

Thence east along township line between T. 19N, and T. 20N to the SW corner of T. 20N, R. 16E.,

Thence south along range line between R. 15E. and R. 16E. to the SW corner of T. 18N, R. 16E.,

Thence west along township line between T. 17N, and T. 18N to the SE corner of T. 18N, R. 14E.,

Thence south along range line between T. 14E. and R. 15E. to the SW corner of T. 14N, R. 15E.,

Thence south and west along Wenatchee National Forest Boundary to the NW corner of T. 12N, R. 14E.,

Thence south along range line between R. 13E. and R. 14E. to SE corner of T. 10N, R. 13E.,

Thence west along township line between T. 9N, and T. 10N to the NW corner of T. 9N, R. 12E.,

Thence south along range line between R. 11E. and R. 12E. to SE corner of T. 8N, R. 11E.,

Thence west along township line between T. 7N, and T. 8N to the Gifford Pinchot National Forest Boundary,

Thence south along Forest Boundary to SE corner of Section 33, T. 7N, R. 11E.,

Thence west along township line between T. 6N, and T. 7N to SE corner of T. 7N, R. 9E.,

Thence south along Skamania-Klickitat County line to Oregon-Washington state line.

"End hauling" means the removal and transportation of excavated material, pit or quarry overburden, or landing or road cut material from the excavation site to a deposit site not adjacent to the point of removal.

"Erodible soils" means those soils exposed or displaced by a forest practice operation, that would be readily moved by water.

"Even-aged harvest methods" means the following harvest methods:

Clearcuts;

Seed tree harvests in which twenty or fewer trees per acre remain after harvest;

Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;

Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;

Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;

Partial cutting in which fewer than fifty trees per acre remain after harvest;

Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and

Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC 222-30-010(2) or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Fen" means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce, western hemlock, lodgepole pine, cedar, crabapple, or aspen, and may be associated with open water.

"Fertilizers" means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

"Fill" means the placement of earth material or aggregate for road or landing construction or other similar activities. Fill does not include the growing or harvesting of timber including, but not limited to, slash burning, site preparation, reforestation, precommercial thinning, intermediate or final harvesting, salvage of trees, brush control, or fertilization.

"Flood level - 50 year." For purposes of field interpretation of these regulations, the 50-year flood level shall be considered to refer to a vertical elevation measured from the ordinary high-water mark which is 1.25 times the vertical distance between the average stream bed and the ordinary high-water mark, and in horizontal extent shall not exceed 2 times the channel width measured on either side from the ordinary high-water mark, unless a different area is specified by the department based on identifiable topographic or vegetative features or based on an engineering computation of flood magnitude that has a 2 percent chance of occurring in any given year. The 50-year flood level shall not include

those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.

"Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing.

"Forest land owner" shall mean any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner: *Provided*, That any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest land owner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

"Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

Road and trail construction;

Harvesting, final and intermediate;

Precommercial thinning;

Reforestation;

Fertilization;

Prevention and suppression of diseases and insects;

Salvage of trees; and

Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

"Forest trees" excludes trees cultivated by agricultural methods in growing cycles shorter than ten years: *Provided*, That Christmas trees are forest trees and: *Provided further*, That this exclusion applies only to trees planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees.

"Green recruitment trees" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

"Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

"Historic site" includes:

Sites, areas and structures or other evidence of human activities illustrative of the origins, evolution and development of the nation, state or locality; or

Places associated with a personality important in history; or

Places where significant historical events are known to have occurred even though no physical evidence of the event remains.

"Identified watershed processes" means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

Mass wasting;
 Surface and road erosion;
 Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);
 Large organic debris;
 Shading; and
 Stream bank and bed stability.

"Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

"Interdisciplinary team" (ID Team) means a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practice activity.

"Islands" means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

"Limits of construction" means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

"Load bearing portion" means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

"Local government entity" means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

"Low impact harvest" means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process. The department shall determine such equipment, methods or systems in consultation with the department of ecology.

"Merchantable stand of timber" means a stand of trees that will yield logs and/or fiber:

- Suitable in size and quality for the production of lumber, plywood, pulp or other forest products;
- Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

"Notice to comply" means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

"Operator" shall mean any person engaging in forest practices except an employee with wages as his/her sole compensation.

"Ordinary high-water mark" means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: *Provided*, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

"Other forest chemicals" means fire retardants when used to control burning (other than water), nontoxic repel-

lents, oil, dust-control agents (other than water), salt, and other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

"Park" means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

"Partial cutting" means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

"Pesticide" means any insecticide, herbicide, fungicide, or rodenticide but does not include nontoxic repellents or other forest chemicals.

"Plantable area" is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility rights-of-way, that portion of riparian management zones where scarification is not permitted, and any other area devoted to a use incompatible with commercial timber growing.

"Power equipment" means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

"Public resources" means water, fish, and wildlife and in addition shall mean capital improvements of the state or its political subdivisions.

"Rehabilitation" means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

"Relief culvert" means a structure to relieve surface runoff from roadside ditches to prevent excessive buildup in water volume and velocity.

"Resource characteristics" means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

- For fish and water:
 - Physical fish habitat, including temperature and turbidity;
 - Turbidity in hatchery water supplies; and
 - Turbidity and volume for areas of water supply.
- For capital improvements of the state or its political subdivisions:
 - Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other characteristics of fish, water, and capital improvements of the state or its subdivisions, the board shall amend this list to include these characteristics.

"Riparian management zone" means a specified area alongside Type 1, 2 and 3 Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

"Salvage" means the removal of snags, down logs, windthrow, or dead and dying material.

"**Scarification**" means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

"**Shorelines of the state**" shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

"**Side casting**" means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

"**Site preparation**" means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

"**Skid trail**" means a route used by tracked or wheeled skidders to move logs to a landing or road.

"**Slash**" means pieces of woody material containing more than 3 cubic feet resulting from forest practice activities.

"**Spoil**" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"**Stop work order**" means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

"**Threatened or endangered species**" means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior, and all species of wildlife designated as "threatened" or "endangered" by the Washington wildlife commission.

"**Timber**" shall mean forest trees, standing or down, of a commercial species, including Christmas trees.

"**Water bar**" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

"**Watershed administrative unit (WAU)**" means an area shown on the map specified in WAC 222-22-020(1).

"**Watershed analysis**" means, for a given WAU, the assessment completed under WAC 222-22-050 or 222-22-060 together with the prescriptions selected under WAC 222-22-070 and shall include assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity.

"**Weed**" is any plant which tends to overgrow or choke out more desirable vegetation.

"**Western Washington**" means the lands of the state lying west of the administrative line described in the definition of Eastern Washington.

"**Wetland**" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

"**Wetland functions**" include the protection of water quality and quantity, providing fish and wildlife habitat, and the production of timber.

"**Wetland management zone**" means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

"**Wildlife**" means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

"**Wildlife reserve trees**" means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

"**Windthrow**" means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

AMENDATORY SECTION (Amending WSR 92-15-011 [94-01-134], filed 7/2/92 [12/20/93], effective 8/2/92 [1/1/94])

WAC 222-16-035 Wetland typing system. *The department in cooperation with the departments of fisheries, wildlife, and ecology, and affected Indian tribes shall classify wetlands. The wetlands will be classified in order to distinguish those which require wetland management zones and those which do not. Wetlands which require wetland management zones shall be identified using the following criteria. Accurate delineation of wetlands in accordance with the manual shall be required only where necessary to determine whether replacement by substitution or enhancement is required pursuant to WAC 222-24-025(10) and shall

be limited to the area of wetland proposed to be filled. For the purposes of determining acreage to classify or type wetlands under this section, approximate determination using aerial photographs and maps, including the national wetlands inventory, shall be sufficient. In addition, the innermost boundary of the wetland management zone on Type A or B wetlands may be determined by either of two methods: Delineation of the wetland edge, or identifying the point where the crown cover changes from less than 30% to 30% or more. Except where necessary to determine whether replacement by substitution or enhancement is required pursuant to WAC 222-24-025(10), accurate delineation shall not be required under this Title 222 WAC for activities regulated by these rules, including but not limited to the location of roads, landings, culverts, and cross drains. Landowners are encouraged to leave vegetation in these forested wetlands in undisturbed leave areas where possible. When so requested by any affected landowners, applicant or aggrieved person, the department shall make available informal conferences, which shall include the departments of fisheries, wildlife, and ecology, and affected Indian tribes and those contesting the adopted wetland types. These conferences shall be established under procedures established in WAC 222-46-020.

(1) **"Nonforested wetlands"** means any wetland or portion thereof that has, or if the trees were mature would have, a crown closure of less than 30 percent.

(a) **"Type A Wetland"** classification shall be applied to all nonforested wetlands which:

(i) Are greater than 0.5 acre in size, including any acreage of open water where the water is completely surrounded by the wetland; and

(ii) Are associated with at least 0.5 acre of ponded or standing open water. The open water must be present on the site for at least 7 consecutive days between April 1 and October 1 to be considered for the purposes of these rules(~~of~~

~~(iii) Are bogs and fens greater than 0.25 acre)).~~

(b) **"Type B Wetland"** classification shall be applied to all other nonforested wetlands greater than 0.25 acre.

(2) **"Forested wetland"** means any wetland or portion thereof that has, or if the trees were mature would have, a crown closure of 30 percent or more.

(3) **"All forested and nonforested bogs and fens"** greater than 0.25 acres shall be considered Type A Wetlands.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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 WSR 93-12-001, filed 5/19/93, effective 6/19/93)

WAC 222-30-020 Harvest unit planning and design.

(1) **Logging system.** The logging system should be appropriate for the terrain, soils, and timber type so yarding or skidding can be economically accomplished in compliance with these regulations.

***(2) Landing locations.** Locate landings to prevent damage to public resources. Avoid excessive excavation and filling.

***(3) Western Washington riparian management zones.** These zones shall be measured horizontally from the ordinary high-water mark of Type 1, 2 or 3 Water and extend to the line where vegetation changes from wetland to upland plant community, or the line required to leave sufficient shade as required by WAC 222-30-040, whichever is greater, but shall not be less than 25 feet in width nor more than the maximum widths described in (c) of this subsection, provided that the riparian management zone width shall be expanded as necessary to include wetlands or ponds adjacent to the stream. When the riparian management zone overlaps a Type A or B Wetland or a wetland management zone, the requirement which best protects public resources shall apply.

(a) Harvest units shall be designed so that felling, bucking, yarding or skidding, and reforestation can be accomplished in accordance with these regulations, including those regulations relating to stream bank integrity and shade requirements to maintain stream temperature. Where the need for additional actions or restrictions adjacent to waters not covered by the following become evident, WAC 222-12-050 and 222-12-060 may apply.

(b) When requested in writing by the applicant, the department shall assist in preparation of an alternate plan for the riparian management zone.

(c) Within the riparian management zone, there shall be trees left for wildlife and fisheries habitat as provided for in the chart below. Fifty percent or more of the trees shall be live and undamaged on completion of the harvest. The leave trees shall be randomly distributed where feasible; some clumping is allowed to accommodate operational considerations. The number, size, species and ratio of leave trees, deciduous to conifer, is specified by the bed material and average width of the water type within the harvest unit. Trees left according to (d) of this subsection may be included in the number of required leave trees in this subsection.

WATER RMZ TYPE/ AVERAGE WIDTH WIDTH	MAXIMUM DECIDUOUS/ MINIMUM	RATIO OF CONIFER TO DECIDUOUS/ GRAVEL/ SIZE	# TREES/1000 FT. EACH SIDE	BOULDER/ BEDROCK DIAMETER
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1 & 2 Water & over 100' 50 trees 25 trees

1 & 2 Water under 75' 75' 100 trees 50 trees

3 Water 5' & over 50' 2 to 1/12" or next largest available 75 trees 25 trees

3 Water less than 5' 25' 1 to 1/6" or next largest available)) 25 trees 25 trees

Water Type / Average Width	RMZ Maximum Width	Ratio of Conifer to Deciduous/ Minimum Size Leave Trees	# Trees/1000 ft. each side	
			Gravel/ Cobble <10" Diameter	Boulder/ Bedrock
1 & 2 Water 75' & over	100'	representative of stand	50 trees	25 trees
1 & 2 Water under 75'	75'	representative of stand	100 trees	50 trees
3 Water 5' & over	50'	2 to 1/ 12" or next largest available	75 trees	25 trees
3 Water less than 5'	25'	1 to 1/ 6" or next largest available	25 trees	25 trees

"Or next largest available" requires that the next largest trees to those specified in the rule be left standing when those available are smaller than the sizes specified. Ponds or lakes which are Type 1, 2 or 3 Waters shall have the same leave tree requirements as boulder/bedrock streams.

(d) For wildlife habitat within the riparian management zone, leave an average of 5 undisturbed and uncut wildlife trees per acre at the ratio of 1 deciduous tree to 1 conifer tree equal in size to the largest existing trees of those species within the zone. Where the 1 to 1 ratio is not possible, then substitute either species present. Forty percent or more of the leave trees shall be live and undamaged on completion of harvest. Wildlife trees shall be left in clumps whenever possible.

(e) When 10 percent or more of the harvest unit lies within any combination of a riparian management zone of Type 1, 2 or 3 Waters or a wetland management zone and the harvest unit is a clearcutting of 30 acres or less, leave not less than 50 percent of the trees required in (c) of this subsection.

*** (4) Eastern Washington riparian management zones.** These zones shall be measured horizontally from the ordinary high-water mark of Type 1, 2 or 3 Waters and extend to the line where vegetation changes from wetland to upland plant community, or to the line required to leave sufficient shade as required by WAC 222-30-040, whichever is greater, but shall not be less than the minimum width nor more than the maximum widths described in (c) of this subsection, provided that the riparian management zone width shall be expanded as necessary to include wetlands or ponds adjacent to the stream. When the riparian management zone overlaps a Type A or B Wetland or a wetland management zone, the requirement which best protects public resources shall apply.

(a) Harvest units shall be designed so that felling, bucking, yarding or skidding, and reforestation can be accomplished in accordance with these regulations, including those regulations relating to stream bank integrity and shade requirements to maintain stream temperature. Where the need for additional actions or restrictions adjacent to waters not covered by the following become evident, WAC 222-12-050 and 222-12-060 may apply.

(b) When requested in writing by the applicant, the department shall assist in preparation of an alternate plan for the riparian management zone.

(c) Within the riparian management zone, there shall be trees left for wildlife and fisheries habitat as provided for below. Fifty percent or more of the trees shall be live and undamaged on completion of the harvest. The leave trees

shall be randomly distributed where feasible; some clumping is allowed to accommodate operational considerations.

(i) The width of the riparian management zone shall be based on the adjacent harvest type as defined in WAC 222-16-010 "Partial cutting." When the adjacent unit harvest type is:

Partial cutting - The riparian management zone width shall be a minimum of 30 feet to a maximum of 50 feet on each side of the stream.

Other harvest types - The riparian management zone shall average 50 feet in width on each side of the stream with a minimum width of 30 feet and a maximum of 300 feet on each side of the stream.

(ii) Leave tree requirements within the riparian management zones of Type 1, 2 or 3 Waters:

(A) Leave all trees 12 inches or less in diameter breast height (dbh); and

(B) Leave all wildlife reserve trees within the riparian management zone where operations in the vicinity do not violate the state safety regulations (chapter 296-54 WAC and chapter 49.17 RCW administered by department of labor and industries, safety division); and

(C) Leave 16 live conifer trees/acre between 12 inches dbh and 20 inches dbh distributed by size, as representative of the stand; and

(D) Leave 3 live conifer trees/acre 20 inches dbh or larger and the 2 largest live deciduous trees/acre 16 inches dbh or larger. Where these deciduous trees do not exist, and where 2 wildlife reserve trees/acre 20 inches or larger do not exist, substitute 2 live conifer trees/acre 20 inches dbh or larger. If live conifer trees of 20 inches dbh or larger do not exist within the riparian management zone, then substitute the 5 largest live conifer trees/acre; and

(E) Leave 3 live deciduous trees/acre between 12 inches and 16 inches dbh where they exist.

(iii) Minimum leave tree requirements per acre for Type 1, 2 and 3 Waters. Trees left for (c)(ii) of this subsection shall be included in the minimum counts.

(A) On streams with a boulder/bedrock bed, the minimum leave tree requirements shall be 75 trees/acre 4 inches dbh or larger.

(B) On streams with a gravel/cobble (less than 10 inches diameter) bed, the minimum leave tree requirement shall be 135 trees/acre 4 inches dbh or larger.

(C) On lakes or ponds the minimum leave tree requirement shall be 75 trees/acre 4 inches dbh or larger.

Note: (See the Forest Practices Board Manual for assistance in calculating trees/acre and average RMZ widths.)

(d) When 10 percent or more of the harvest unit lies within any combination of a riparian management zone of Type 1, 2 or 3 Waters or a wetland management zone and either the harvest unit is a clearcutting of 30 acres or less or the harvest unit is a partial cutting of 80 acres or less, leave not less than 50 percent of the trees required in (c) of this subsection. (See WAC 222-16-010 "Partial cutting.")

*** (5) Riparian leave tree areas.** The department will require trees to be left along Type 4 Water where such practices are necessary to protect public resources. Where such practices are necessary leave at least 25 conifer or deciduous trees, 6 inches in diameter or larger, on each side of every 1000 feet of stream length within 25 feet of the

stream. The leave trees may be arranged to accommodate the operation.

(6) **Forested wetlands.** Within the wetland, unless otherwise approved in writing by the department, harvest methods shall be limited to low impact harvest or cable systems. Where feasible, at least one end of the log shall be suspended during yarding.

(a) When forested wetlands are included within the harvest area, landowners are encouraged to leave a portion (30 to 70%) of the wildlife reserve tree requirement for the harvest area within a wetland. In order to retain undisturbed habitat within forested wetlands, these trees should be left in clumps. Leave tree areas should be clumped adjacent to streams, riparian management zones, or wetland management zones where possible and they exist within forested wetlands. Green recruitment trees should be representative of the size and species found within the wetland. Leave nonmerchantable trees standing where feasible.

(b) If a RMZ or WMZ lies within a forested wetland, the leave tree requirement associated with those areas may be counted toward the percentages in (a) of this subsection.

(c) If the conditions described in (a) and (b) of this subsection are met, the distribution requirements for wildlife reserve trees and green recruitment trees (subsection (11)(e) of this section) are modified as follows: For purposes of distribution, no point within the harvest unit shall be more than 1000 feet from a wildlife reserve tree and green recruitment tree retention area.

(d) Approximate determination of the boundaries of forested wetlands greater than 5 acres shall be required. Approximate boundaries and areas shall be deemed to be sufficient for harvest operations.

(e) The department shall consult with the department of wildlife, the department of fisheries, and affected Indian tribes about site specific impacts of forest practices on wetland-sensitive species in forested wetlands.

(7) **Wetland management zones (WMZ).** These zones shall apply to Type A and B Wetlands, as indicated in (a) of this subsection, and shall be measured horizontally from the wetland edge or the point where the nonforested wetland becomes a forested wetland, as determined by the method described in the board manual, and shall be of an average width as described in (a) of this subsection. These zones shall not be less than the minimum nor more than the maximum widths described in (a) of this subsection. When these zones overlap a riparian management zone the requirement which best protects public resources shall apply.

*(a) Wetland management zones (WMZ) shall have variable widths based on the size of the wetland and the wetland type, described as follows:

((WETLAND MANAGEMENT ZONE WIDTHS

Wetland Type	Acres of Nonforested Wetland	Maximum WMZ Width	Average WMZ Width	Minimum WMZ Width
A	Greater than 5	200 feet	100 feet	50 feet
A	0.5 to 5	100 feet	50 feet	25 feet
A Bog/Fen	0.25 to 0.5	100 feet	50 feet	25 feet
B	Greater than 5	100 feet	50 feet	25 feet
B	0.5 to 5			25 feet
B	0.25 to 0.5	No WMZ Required		

WETLAND MANAGEMENT ZONES

Wetland Type	Acres of Nonforested Wetland*	Maximum WMZ Width	Average WMZ Width	Minimum WMZ Width
A (including bogs and fens)	Greater than 5	200 feet	100 feet	50 feet
A (including bogs and fens)	0.5 to 5	100 feet	50 feet	25 feet
A (bogs and fens only)	0.25 to 0.5	100 feet	50 feet	25 feet
B	Greater than 5	100 feet	50 feet	25 feet
B	0.5 to 5			25 feet
B	0.25 to 0.5	No WMZ Required	No WMZ Required	

*For bogs and fens, both forested and non-forested acres are included.

(b) Within the WMZ, leave a total of 75 trees per acre of WMZ greater than 6 inches dbh in Western Washington and greater than 4 inches dbh in Eastern Washington, 25 of which shall be greater than 12 inches dbh including 5 trees greater than 20 inches dbh, where they exist. Leave trees shall be representative of the species found within the WMZ.

(c) Retain wildlife reserve trees where feasible. Type 1 and 3 wildlife reserve trees may be counted among, and need not exceed, the trees required in (b) of this subsection. Leave all cull logs on site.

(d) Partial-cutting or removal of groups of trees is acceptable within the WMZ. The maximum width of openings created by harvesting within the WMZ shall not exceed 100 feet as measured parallel to the wetland edge. Openings within WMZs shall be no closer than 200 feet. Landowners are encouraged to concentrate leave trees within the WMZ to the wetland edge.

*(e) Tractors, wheeled skidders, or other ground based harvesting systems shall not be used within the minimum WMZ width without written approval of the department.

*(f) When 10% or more of a harvest unit lies within any combination of a wetland management zone or a riparian management zone of Type 1, 2, or 3 Waters and either the harvest unit is a clearcut of 30 acres or less or the harvest unit is a partial cut of 80 acres or less, leave not less than 50% of the trees required in (b) of this subsection.

*(8) ~~((Nonforested wetlands-))~~ **Type A or B(+) Wetlands.** Within the boundaries of Type A or B Wetlands the following shall apply:

(a) Individual trees or forested wetland areas less than 0.5 acre in size may occur. These trees have a high habitat value to the nonforested wetland. Leave individual trees or forested wetlands less than 0.5 acre. These trees may be counted toward the WMZ requirements.

(b) Harvest of upland areas or forested wetlands which are surrounded by Type A or B Wetlands must be conducted in accordance with a plan, approved in writing by the department.

(c) No timber shall be felled into or cable yarded across Type A or B Wetlands without written approval of the department.

(d) Harvest shall not be allowed within a Type A bog or fen.

(9) **Future productivity.** Harvesting shall leave the land in a condition conducive to future timber production except:

(a) To the degree required for riparian management zones; or

(b) Where the lands are being converted to another use or classified urban lands as specified in WAC 222-34-050.

(10) **Wildlife habitat.** This subsection is designed to encourage timber harvest practices that would protect wildlife habitats, provided, that such action shall not unreasonably restrict landowners action without compensation.

(a) The applicant should make every reasonable effort to cooperate with the department of wildlife to identify critical wildlife habitats (state) as defined by the board. Where these habitats are known to the applicant, they shall be identified in the application or notification.

(b) Harvesting methods and patterns in established big game winter ranges should be designed to insure adequate access routes and escape cover where practical.

(i) Where practical, cutting units should be designed to conform with topographical features.

(ii) Where practical on established big game winter ranges, cutting units should be dispersed over the area to provide cover, access for wildlife, and to increase edge effect.

(11) **Wildlife reserve tree management.** In areas where leaving wildlife reserve trees under this section will not create a significant fire hazard, or significant hazard to overhead power lines and operations that are proposed in the vicinity of wildlife reserve trees will not create a significant safety or residential hazard nor conflict with achieving conformance with the limitation of or performance with the provisions of chapter 76.04 RCW (snag falling law) and chapter 49.17 RCW (safety), wildlife reserve trees will be left to protect habitat for cavity nesting wildlife in accordance with the following:

(a) In Western Washington, for each acre harvested 3 wildlife reserve trees, 2 green recruitment trees, and 2 down logs shall be left. In Eastern Washington for each acre harvested 2 wildlife reserve trees, 2 green recruitment trees, and 2 down logs shall be left. Type 1 wildlife reserve trees may be counted, at the landowner's option, either as a wildlife reserve tree or as a green recruitment tree. If adequate wildlife reserve trees are not available, no additional green recruitment trees will be required as substitutes. Landowners shall not under any circumstances be required to leave more than 2 green recruitment trees per acre for the purpose of wildlife reserve tree recruitment, or be required to leave Type 3 or 4 wildlife reserve trees.

(b) In Eastern Washington, for 5 years from the effective date of this subsection where over-story harvest of seed trees left for purpose of reforestation are proposed and less than 10 trees per acre will be harvested within the 5-year period, 50% of the green recruitment trees otherwise required in this subsection may be left.

(c) In Western Washington, only those wildlife reserve trees 10 or more feet in height and 12 or more inches dbh shall be counted toward wildlife reserve tree retention requirements. In Eastern Washington, only those wildlife reserve trees 10 or more feet in height and 10 or more inches dbh shall be counted toward wildlife reserve tree retention requirements. Green recruitment trees, 10 or more inches dbh and 30 or more feet in height and with at least

1/3 of their height in live crown, left standing after harvest may be counted toward green recruitment tree requirements. Green recruitment trees and/or wildlife reserve trees left to meet other requirements of the rules or those left voluntarily by the landowner shall be counted toward satisfying the requirements of this section. Large, live defective trees with broken tops, cavities, and other severe defects are preferred as green recruitment trees. Only down logs with a small end diameter greater than or equal to 12 inches and a length greater than or equal to 20 feet or equivalent volume shall be counted under (a) of this subsection. Large cull logs are preferred as down logs.

(d) In the areas where wildlife reserve trees are left, the largest diameter wildlife reserve trees shall be retained to meet the specific needs of cavity nesters. Where the opportunity exists, larger trees with numerous cavities should be retained and count as recruitment trees.

(e) In order to facilitate safe and efficient harvesting operations, wildlife reserve trees and recruitment trees may be left in clumps. For purposes of distribution, no point within the harvest unit shall be more than 800 feet from a wildlife reserve tree or green recruitment tree retention area. Subject to this distribution requirement, the location of these retention areas and the selection of recruitment trees shall be at the landowner's discretion. Closer spacing of retention areas through voluntary action of the landowner is encouraged. Wildlife reserve tree and green recruitment tree retention areas may include, but are not limited to, riparian management zones, riparian leave tree areas, other regulatory leave areas, or voluntary leave areas that contain wildlife reserve trees and/or green recruitment trees.

(f) In order to provide for safety, landowners may remove any Type 3 or 4 wildlife reserve tree which poses a threat to humans working, recreating, or residing within the hazard area of that tree. In order to provide for fire safety, the distribution of wildlife reserve tree retention areas, described in (e) of this subsection, may be modified as necessary based on a wildlife reserve tree management plan proposed by the landowner and approved by the department.

WSR 94-09-031

PROPOSED RULES

DEPARTMENT OF TRANSPORTATION

[Filed April 15, 1994, 10:52 a.m.]

Original Notice.

Title of Rule: Chapter 468-66 WAC, Highway Advertising Control Act.

Purpose: Amendments to Highway Advertising Control Act, chapter 468-66 WAC.

Statutory Authority for Adoption: Chapter 47.42 RCW.

Statute Being Implemented: Revise existing WAC.

Summary: Revises five sections of existing WAC, repeals one section, and adds one new section. The majority of the revisions incorporate the applicable portions of chapter 430, Laws of 1993, or are housekeeping in nature.

Reasons Supporting Proposal: Proposal will provide additional clarity for situations that have occurred, but where the existing WAC is insufficient.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David K. Peach, Republic Building, Olympia, Washington, 705-7280.

Name of Proponent: Washington State Department of Transportation, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Clarification of existing rules to enhance administrative efficiency. Adds new section WAC 468-66-055, establishing a National Scenic Byway Demonstration project on two portions of State Route 101; provides for classification of temporary political campaign signs as Type 3, on premise signs; and repeals WAC 468-66-175 Highway fatality markers.

Proposal Changes the Following Existing Rules: Provides for classification of temporary political campaign signs as Type 3, on premise signs.

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

Hearing Location: Board Room 1D2, Transportation Building, Olympia, Washington 98504, on May 27, 1994, at 10:00 a.m.

Submit Written Comments to: David K. Peach, 505 East Union, Republic Building, Olympia, WA 98504, FAX (206) 705-6826, by May 23, 1994.

Date of Intended Adoption: May 27, 1994.

April 15, 1994

S. A. Moon

Deputy Secretary

AMENDATORY SECTION (Amending Order 130, filed 4/10/92, effective 5/11/92)

WAC 468-66-010 Definitions. The following terms when used in this chapter shall have the following meanings:

(1) "Abandoned." A sign for which neither sign owner nor land owner claim any responsibility.

(2) "Act" shall mean the Highway Advertising Act of 1961, as amended and embodied in chapter 47.42 RCW.

(3) "Centerline of the highway" means a line equidistant from the edges of the median separating the main-traveled ways of a divided highway, or the centerline of the main-traveled way of a nondivided highway.

(4) "Commercial and industrial areas" means any area zoned commercial or industrial by a county or municipal code, or if unzoned or zoned for general uses by a county or municipal code, that area occupied by three or more separate and distinct commercial and/or industrial activities within a space of five hundred feet and the area within five hundred feet of such activities on both sides of the highway. The area shall be measured from the outer edges of the regularly used buildings, parking lots, storage or processing areas of the commercial or industrial activity and not from the property lines of the parcels upon which such activities are located. Measurements shall be along or parallel to the edge of the main-traveled way of the highway. The following shall not be considered commercial or industrial activities:

(a) Agricultural, forestry, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands;

(b) Transient or temporary activities;

(c) Railroad tracks and minor sidings;

(d) Signs;

(e) Activities more than six hundred and sixty feet from the nearest edge of the right of way;

(f) Activities conducted in a building principally used as a residence.

Should any commercial or industrial activity, which has been used in defining or delineating an unzoned area, cease to operate for a period of six continuous months, any signs located within the former unzoned area shall become nonconforming and shall not be maintained by any person after May 10, 1974.

(5) "Commission" means the Washington state transportation commission.

(6) "Discontinued." A sign shall be considered discontinued if, after receiving notice of absence of advertising content for three months, the permit holder fails to put advertising content on the sign within three months of the notice.

(7) "Entrance roadway" means any public road or turning roadway including acceleration lanes, by which traffic may enter the main-traveled way of a controlled access highway from the general road system within the state, including rest areas, view points, and sites used by the general public, irrespective of whether traffic may also leave the main-traveled way by such road or turning roadway.

(8) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(9) "Exit roadway" means any public road or turning roadway including deceleration lanes, by which traffic may leave the main-traveled way of a controlled access highway to reach the general road system within the state, including rest areas, view points, and sites used by the general public, irrespective of whether traffic may also enter the main-traveled way by such road or turning roadway.

(10) "Interstate system" means any state highway which is or does become part of the national system of interstate and defense highways as described in section 103(d) of Title 23, United States Code.

(11) "Legible" means capable of being read without visual aid by a person of normal visual acuity.

(12) "Maintain" means to allow to exist. A sign loses its right to remain as a nonconforming sign if its size is increased more than fifteen percent over its size on the effective date of the Scenic Vistas Act on May 10, 1971, or the effective date of control of a given route, whichever is applicable. The sign may continue as long as it is not destroyed, abandoned, or discontinued. Such signs may be reerected in kind if destroyed due to vandalism, and other criminal or tortious acts.

(13) "Main-traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, entrance roadways, exit roadways, or parking areas.

(14) "Person" means this state or any public or private corporation, firm, partnership, association, as well as any individual, or individuals.

(15) "Primary system" means any state highway which is ~~((or does become))~~ part of the federal-aid primary system as described in section 103(b) of Title 23, United States Code, in existence on June 1, 1991, as enacted in the 1991 Intermodal Surface Transportation Efficiency Act.

(16) "Scenic system" means:

(a) Any state highway within any public park, federal forest area, public beach, public recreation area, or national monument;

(b) Any state highway or portion thereof outside the boundaries of any incorporated city or town designated in RCW 47.42.140 by the legislature as a part of the scenic system; or

(c) Any national scenic byway, state scenic byway, or state highway or portion thereof, outside the boundaries of any incorporated city or town, designated by the legislature in chapter 47.39 RCW as a part of the scenic and recreational highway system except for the sections of highways specifically excluded in ((section 2, chapter 62, Laws of 1971 ex. sess)) RCW 47.42.025 or located within areas zoned by the governing county for predominantly commercial and industrial uses, and having development visible to the highway as determined by the department.

(17) "Sign" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of the interstate system or other state highway.

(18) "Trade name" shall include brand name, trademark, distinctive symbol, or other similar device or thing used to identify particular products or services.

(19) "Traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

(20) "Turning roadway" means a connecting roadway for traffic turning between two intersection legs of an interchange.

(21) "Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

(22) "Electronic sign" means an outdoor advertising sign, display, or device whose message may be changed by electrical or electronic process, and includes the device known as the electronically changeable message center for advertising on-premise activities (WAC 468-66-070).

(23) "Public service information" means a message on an electronic sign which provides the time, date, temperature, weather, or information about nonprofit activities sponsored by civic or charitable organizations.

(24) "Temporary agricultural directional sign" means a sign on private property adjacent to state highway right of way to provide directional information to places of business offering for sale seasonal agricultural products.

(25) "National scenic byway" means any state highway designated as part of the national scenic byway system authorized by the 1991 Intermodal Surface Transportation Efficiency Act.

(26) "State scenic byway" means any scenic and recreational highway established by chapter 47.39 RCW.

(27) "Visible development" means those areas determined by the department to have development, both in type and location, that meet the requirements for unzoned

commercial and industrial areas prescribed by RCW 47.42.020(9) and such development is not visually obstructed by vegetation or other natural features. It is prohibited to remove vegetation or other natural features, located within the state highway right of way, that may act as visual obstructions.

AMENDATORY SECTION (Amending Order 116, filed 10/20/88)

WAC 468-66-050 Classification of signs. Signs shall be classified as follows:

(1) Type 1—Directional or other official signs or notices.

(a) Signs and notices erected and maintained by public offices or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in federal, state, or local law for the purposes of carrying out an official duty or responsibility. Historical markers authorized by state law and erected by state or local government agencies or nonprofit historical societies may be considered official signs.

(b) Service club and religious notices, whose message shall contain only the name of a nonprofit service club or religious organization, its address and the time of its meeting or service.

(2) Type 2—For sale or lease sign. A sign not prohibited by state law which is consistent with the applicable provisions of these regulations and which advertises the sale or lease only of the parcel of real property upon which the sign is located. The name of the owner of the property offered for sale or lease or the owner's agent shall not be displayed more conspicuously than the words "for sale" or "for lease." Not more than one such sign advertising the sale or lease of a parcel of property shall be permitted in such manner as to be visible to traffic proceeding in any one direction on an interstate system, primary system or scenic system highway.

(3) Type 3—On-premise sign.

(a) A sign advertising an activity conducted on the property on which the sign is located. The sign, except as provided under (b) of this subsection, shall be limited to identifying the establishment or the principal or accessory products or services offered on the property. A sign consisting principally of a brand name, trade name, product, or service incidental to the principal products or services offered on the property, or bringing rental income to the property owner, is not considered an on-premise sign. Not more than one such sign, visible to traffic proceeding in any one direction on an interstate system, primary system, or scenic system highway may be permitted more than fifty feet from the advertised activity.

(b) Temporary political campaign signs are a Type 3 on-premise sign, on which the property owner expresses endorsement of a political candidate or ballot issue, with the following restrictions:

(i) Temporary political campaign signs are limited to a maximum size of thirty-two square feet in area.

(ii) Temporary political campaign signs must be removed within ten days after the election.

(iii) Except as provided in (b)(i) and (ii) of this subsection, temporary political campaign signs are subject to all

other applicable provisions of chapter 47.42 RCW and chapter 468-66 WAC that pertain to Type 3 on-premise signs.

(c) Signs reading "future site of" or similar wording will be allowed as an on-premise sign without any activity being apparent on the site for one year from date of installation provided the following conditions have been met:

~~((a))~~ (i) The department of transportation has received a letter of notification of intent from the owner of the proposed advertised activity.

~~((b))~~ (ii) The sign shall not inform of activities conducted elsewhere.

~~((c))~~ (iii) The maximum size of a future site sign shall not be greater than one hundred fifty square feet.

The sign must be removed at the end of the one year time period if the advertised activity has not become operational.

(4) Type 4—Signs within twelve air miles of advertised activities. Signs not prohibited by state law which are consistent with the applicable provisions of these regulations and which advertise activities conducted within twelve air miles of such signs.

(5) Type 5—Signs in the specific interest of the traveling public. Signs authorized to be erected or maintained by state law which are consistent with these regulations and which are designed to give information in the specific interest of the traveling public.

(6) Type 6—Signs lawfully in existence on October 22, 1965, determined by the department of transportation, subject to the approval of the United States Secretary of Transportation, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance the preservation of which would be consistent with the purposes of chapter 47.42 RCW.

(7) Type 7—Public service signs located on school bus stop shelters, which:

(a) Identify the donor, sponsor or contributor of said shelters;

(b) Contain safety slogans or messages which do not pertain to the donor and occupy not less than sixty percent of the area of the signs. In addition to this area limitation the donor identification portion of the sign may not appear more prominently than the safety slogan message;

(c) Contain no other message;

(d) Are located on school bus shelters which are authorized or approved by city, county, or state law, regulation or ordinance, off the state highway right of way. School bus shelters shall not exceed 10 feet in length, 10 feet in width or 8 feet in height and shall be constructed with the upper 4 feet of the sides perpendicular to the roadway being occupied by the sign. The remainder is to be constructed of a see through nature. No school bus shelter shall be located along fully controlled access highways as specifically referenced in WAC 468-58-030;

(e) Do not exceed 32 square feet in area. Not more than one sign on each shelter may face in any one direction. The sign shall not protrude above the roof line or beyond the sides of the shelter;

(f) Signs erected pursuant to a permit issued by the department of transportation as provided in RCW 47.42.120 and 47.42.130 and the regulations issued thereunder. A permit shall be required for each individual sign face.

(8) Type 8—Temporary agricultural directional signs, with the following restrictions:

(a) Signs shall be posted only during the period of time the seasonal agricultural product is being sold;

(b) Signs shall not be placed adjacent to the interstate highway system unless the sign qualifies as an on-premise (Type 3) sign;

(c) Signs shall not be placed within an incorporated city or town, but may be placed in unzoned areas and areas zoned for agricultural, commercial, and industrial activities;

(d) Premises on which the seasonal agricultural products are sold must be within fifteen miles of the state highway, and necessary supplemental signing on local roads must be provided before the installation of the signs on the state highway;

(e) Signs must be located so as not to restrict sight distances on approaches to intersections, or restrict the visibility of other authorized signs;

(f) The minimum spacing between sign structures shall be three hundred feet. For the purposes of this subsection, a back-to-back sign and a V-type sign shall be considered one sign structure (spacing is independent of off-premise (Type 4 and Type 5) signs).

NEW SECTION

WAC 468-66-055 National scenic byway demonstration project. Pursuant to the 1991 Intermodal Surface Transportation Efficiency Act, for the purpose of outdoor advertising control effective July 25, 1993, a National Scenic Byway Demonstration project is established on State Route 101, from the Astoria/Megler Bridge to Fowler Street in Raymond and from the junction with State Route 109 near Queets to the junction with State Route 5 near Olympia, with the following restrictions:

(1) No Type 4 or Type 5 signs may be permitted within the limits of this project, except that existing permitted Type 4 or type 5 signs may be maintained.

(2) Signs of Types 1, 2, 3, 7, and 8 may be erected to the extent and manner provided by WAC 468-66-050.

AMENDATORY SECTION (Amending Order 96, filed 8/12/85)

WAC 468-66-060 Signs along scenic, primary, and interstate systems. Signs of Types 4 and 5 shall not be erected or maintained within view of the main-traveled way of the scenic or primary system~~((-))~~, except that signs visible from the main-traveled way of the primary system within commercial and industrial areas shall be permitted as provided in WAC 468-66-110. Only signs of Types 1, 2, 3, 4 and 5 shall be erected or maintained within view of the main-traveled way of the interstate system to the extent and in the manner permitted by WAC 468-66-080, 468-66-090, and 468-66-100: *Provided*, That after May 10, 1974, no Type 4 or Type 5 signs shall be maintained within view of the main-traveled way of the interstate system outside of commercial and industrial areas. Signs of Types 7 and 8 may be erected or maintained within view of the primary and scenic highway systems to the extent and manner permitted by WAC 468-66-050.

AMENDATORY SECTION (Amending DOT Order 10 and Comm. Order 1, Resolution No. 13, filed 12/20/78)

WAC 468-66-080 Number of signs and spacing requirements along interstate system. No Type 4 or Type 5 signs which are visible from the main-traveled way of the interstate system shall be erected or maintained in any manner inconsistent with the following:

(1) In advance of an intersection of the main-traveled way of the interstate highway and an exit roadway, such signs visible to interstate system traffic approaching such intersection may not be permitted to exceed the following number:

Distance from intersection	Number of signs
0-2 miles	0
2-5 miles	6
More than 5 miles	Average of one sign per mile

The specified distances shall be measured to the nearest point of the intersection of the traveled way of the exit roadway and the main-traveled way of the interstate highway.

(2) Subject to the other provisions of this section, not more than two such signs may be permitted within any mile distance measured from any point, and no such signs may be permitted to be less than one thousand feet apart.

(3) Such signs may not be permitted adjacent to any interstate highway right of way upon any part of the width of which is constructed an entrance or exit roadway.

(4) Such signs visible to interstate highway traffic which is approaching or has passed an entrance roadway may not be permitted for one thousand feet beyond the furthest point of the intersection between the traveled way of such entrance roadway and the main-traveled way of the interstate highway.

(5) Not more than one such sign advertising activities being conducted as a single enterprise or giving information about a single place may be permitted to be erected or maintained in such manner as to be visible to traffic moving in any one direction on any one interstate highway.

(6) Subject to the other provisions of this section, such signs are allowed only in commercial or industrial zones within the boundaries of incorporated municipalities, as those boundaries existed on September 21, 1959, and all other commercial or industrial areas established on or before September 21, 1959.

AMENDATORY SECTION (Amending DOT Order 10 and Comm. Order 1, Resolution No. 13, filed 12/20/78)

WAC 468-66-130 Signs to be removed. No sign visible from the main-traveled way of the interstate system, the primary system, or the scenic system which was there lawfully maintained immediately prior to May 10, 1971 but which does not comply with the provisions of the act and these regulations, shall be maintained by any person:

- (1) After May 10, 1974; or
- (2) With respect to any highway hereafter designated by the legislature as a part of the scenic system, after three years from the effective date of the designation. Signs located in areas zoned by the governing county for predomi-

nantly commercial or industrial uses, that do not have development visible to the highway, as determined by the department, and that were lawfully installed after May 10, 1971, visible to any highway now or hereafter designated by the legislature as part of the scenic system, shall be allowed to be maintained.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 468-66-175 Highway fatality markers.

**WSR 94-09-041
PREPROPOSAL COMMENTS
DEPARTMENT OF HEALTH**
[Filed April 19, 1994, 10:01 a.m.]

Subject of Possible Rule Making: This rule will set cleanup standards for environmental radioactivity. The rule will regulate environmental radiation levels caused by residual radioactive materials left in the environment by government and commercial activities. The goal of the rule is to protect public health from radiation in the environment.

Persons may Comment on this Subject in the Following Ways: Contact T. R. Strong or John Erickson at the Department of Health either by phone or in writing. The mailing address is: Department of Health, Radiation Protection Division, Airdustrial Park Building 5, P.O. Box 47827, Olympia, WA 98504-7827, (206) 586-3306, by June 15, 1994, during normal business hours: 8 a.m. to 5 p.m., Monday through Friday.

April 19, 1994
Bruce Miyahara
Secretary

**WSR 94-09-042
PREPROPOSAL COMMENTS
DEPARTMENT OF HEALTH**
[Filed April 19, 1994, 10:04 a.m.]

Subject of Possible Rule Making: To implement the coordinated quality improvement program. This program applies to health care institutions and medical facilities, other than hospitals, professional societies or organizations, certified health plans and health care provider groups that choose to maintain a Department of Health approved quality improvement program (QIP) for the purpose of improving the quality of health care and identifying and preventing health care malpractice.

Persons may Comment on this Subject in the Following Ways: Written: Patti Rathbun, Administrator, Quality Improvement Administration, P.O. Box 47860, Olympia, WA 98504-7860, no later than May 13, 1994; or Oral: Spokane Public Library, 906 West Main Street, Spokane, WA, on May 11, 1994, at 1:30 p.m. to 3:30 p.m. and at the General Administration Building, 11th and Columbia, Olympia, Washington, on May 13, 1994, at 1:30 p.m. to 3:30 p.m.

April 19, 1994
 Bruce Miyahara
 Secretary

DRAFT
 CHAPTER 246-50 WAC
 COORDINATED QUALITY
 IMPROVEMENT PROGRAM RULES

WAC 246-50-001 Purpose and scope. (1) This chapter establishes criteria and an approval process for coordinated quality improvement programs pursuant to RCW 43.70.510.

(2) This chapter applies to health care institutions and medical facilities, other than hospitals, professional societies or organizations, certified health plans, and health care provider groups choosing to maintain a department-approved coordinated quality improvement program for the purpose of improving the quality of health care and identifying and preventing health care malpractice.

(3) Programs submitted for department approval should be consistent with the principles for the continuous improvement of the Washington State health care system published by the Health Care Commission.

(4) This chapter does not apply to hospital quality improvement programs required by RCW 70.41.200.

WAC 246-50-010 Definitions. The words and phrases in this chapter have the following meanings unless the context clearly indicates otherwise.

(1) "Alternative program" means a coordinated quality improvement program determined by the department to be substantially equivalent to RCW 70.41.200(1).

(2) "Certified health plan" means a disability insurer regulated under Chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, a health maintenance organization as defined in RCW 48.46.020, or an entity certified in accordance with RCW 48.43.020 through 48.43.120.

(3) "Department" means the Washington State department of health.

(4) "Health care entity" means a health care institution, medical facility, provider group, professional society or organization, or certified health plan, authorized by RCW 43.70.510 to have a department-approved coordinated quality improvement program.

(5) "Health care institution" or "medical facility" includes the following:

- (a) Adult residential rehabilitation centers regulated pursuant to chapter 71.12 RCW;
- (b) Alcoholism treatment facilities regulated pursuant to chapter 71.12 RCW and chapter 70.96A RCW;
- (c) Alcoholism hospitals regulated pursuant to chapter 71.12 RCW and chapter 70.96A RCW;
- (d) Ambulance and aid services regulated pursuant to chapter 18.73 RCW;
- (e) Boarding homes regulated pursuant to chapter 18.20 RCW;
- (f) Childbirth centers regulated pursuant to chapter 18.46 RCW;

(g) Community mental health centers regulated pursuant to chapter 71.05 or 71.24 RCW;

(h) Eye banks regulated pursuant to RCW 68.50.630;

(i) Home health agencies regulated pursuant to chapter 70.127 RCW;

(j) Hospice care centers regulated pursuant to chapter 70.41 RCW;

(k) Hospice agencies regulated pursuant to chapter 70.127 RCW;

(l) Medical test sites regulated pursuant to chapter 70.42 RCW;

(m) Nursing homes regulated pursuant to chapter 18.51 RCW;

(n) Pharmacies regulated pursuant to chapter 18.64 RCW;

(o) Private psychiatric hospitals regulated pursuant to chapter 71.12 RCW;

(p) Residential treatment facilities for psychiatrically impaired children & youth regulated pursuant to chapter 71.12 RCW;

(q) Rural health facilities regulated pursuant to chapter 70.175 RCW;

(r) Facilities owned and operated by a political subdivision or instrumentality of the state, including but not limited to:

- (i) Public health departments;
- (ii) Fire districts and departments;
- (iii) Soldiers' and veterans' homes;
- (iv) State mental health institutions;
- (v) Health clinics operated by educational institutions;
- (vi) Department of corrections health care facilities; and
- (vii) County jail health clinics; and
- (viii) County drug and alcohol treatment facilities; and
- (s) Facilities required by federal law and implementing regulations, including, but not limited to:

- (i) Native American health facilities; and
- (ii) Veterans' affairs health services; and
- (t) Other facilities determined by the department to be within the parameters of the definition of "health care facility" in RCW 43.72.010.

(6) "Governing body" means:

(a) The person, persons or board responsible for the health care entity; or

(b) In the case of a provider group where no person, persons or board is in charge of all providers; the person, persons or group identified by the provider group to be responsible for the coordinated quality improvement program.

(7) "Health care provider" or "provider" means:

- (a) A person regulated under Title 18 RCW to practice health or health related services or otherwise practicing health care services in this state consistent with state law; or
- (b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of the employee's or agent's employment performing health care or auxiliary services.

(8) "Health care provider group" or "provider group" means an organized body of ten or more providers.

(9) "Negative health care outcome" means a patient death or impairment of bodily function other than those related to the natural course of illness, disease or proper

treatment in accordance with generally accepted health care standards.

(10) "Professional society or organization" means a group of health care professionals, including, but not limited to, state or local health care professional associations.

(11) "Program" means coordinated quality improvement program pursuant to RCW 43.70.510.

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.

WAC 246-50-020 Coordinated quality improvement program—Components. A program under the provisions of RCW 43.70.510 shall include, at a minimum:

- (1) The following components:
 - (a) A governing body;
 - (b) A committee, appointed by the governing body, with a broad representation of the services offered, responsible for:
 - (i) Reviewing categories and methodologies of services rendered and to be rendered with the goal of avoiding and reducing the severity of negative health care outcomes;
 - (ii) Overseeing and coordinating the program;
 - (iii) Ensuring information gathered for the program is reviewed and used to revise health care policies and procedures; and
 - (iv) Reporting to the governing body, at least semi-annually, on program activities and actions taken as a result of those activities;
 - (c) Periodic evaluation of each provider under the purview of the program, including mental and physical capacity, competence in delivering health care, and verification of current credentials;
 - (d) A procedure for promptly resolving grievances pertaining to accidents, injuries, treatment and other events that may result in claims of health care malpractice;
 - (e) A method for continually collecting and maintaining information concerning:
 - (i) Experience with negative health care outcomes and injurious incidents; and
 - (ii) Professional liability premiums, settlements, awards, costs for injury prevention and safety improvement activities;
 - (f) A method for maintaining information gathered under the purview of the program concerning a provider in that provider's personnel or credential file, assuring patient confidentiality;
 - (g) A process for reporting accidents, injuries, negative health outcomes, and other pertinent information to the quality improvement committee;
 - (h) A process assuring compliance with reporting requirements to appropriate local, state and federal authorities;
 - (i) A method for identifying documents and records created specifically for and collected and maintained by the quality improvement committee;
 - (j) Educational activities for personnel engaged in health care activities, including, but not limited to:
 - (i) Quality improvement;
 - (ii) Safety and injury prevention;
 - (iii) Responsibilities for reporting professional misconduct;

- (iv) Legal aspects of providing health care;
 - (v) Improving communication with health care recipients; and
 - (vi) Causes of malpractice claims; or
- (2) Components determined by the department to be substantially equivalent to (1) of this section.

WAC 246-50-030 Approval process. (1) A health care entity seeking department approval of a program shall submit to the department:

- (a) An application on forms provided by the department;
 - (b) The program plan, printed on 8 1/2 by 11 inch paper, including:
 - (i) A table of contents clearly denoting, at a minimum, where each component specified in WAC 246-50-020 is located within the program plan; and
 - (ii) A detailed description of every aspect of the program;
 - (c) The fee specified in WAC 246-50-990; and
 - (d) Other information as may be required by the department.
- (2) To maintain department approval, a health care entity modifying the scope, components or operation of an approved program, shall submit to the department:
- (a) An application package specified in (1) of this section; and
 - (b) A detailed description of the modification and how it effects the program.
- (3) The department shall review each application package submitted pursuant to this section, and:
- (a) Send written notification of approval to a health care entity submitting a program with the components specified in WAC 246-50-020; or
 - (b) Provide the health care entity an opportunity for a brief adjudicative proceeding according to RCW 34.05.482 when the department declines to approve a program.
- (4) The department shall retain a copy of the program plan.

WAC 246-50-040 Alternative programs. A health care entity seeking department approval of an alternative program shall submit to the department, in addition to the items specified in WAC 246-50-030(1), verification of certification or accreditation by an organization approved by the department.

WAC 246-50-990 Fees. A health care entity shall submit a fee with each application for department approval as follows:

- (1) A coordinated quality improvement program pursuant to WAC 246-50-030(1) — two hundred and fifty dollars;
- (2) An alternative program pursuant to WAC 246-50-040 — forty dollars; and
- (3) Modification of a department-approved program pursuant to WAC 246-50-030(2) — sixty-five dollars.

**WSR 94-09-043
PROPOSED RULES
DEPARTMENT OF
VETERANS AFFAIRS**

[Filed April 19, 1994, 1:29 p.m.]

Original Notice.

Title of Rule: Chapter 484-20 WAC (except WAC 484-20-065).

Purpose: Define rule changes for the Medicaid certified programs at the state veterans homes and to clarify, when appropriate, differences between rules for Medicaid funded programs and rules for non-Medicaid funded programs.

Statutory Authority for Adoption: RCW 43.60A.070.

Statute Being Implemented: Chapter 72.36 RCW.

Summary: Changes which affect entire chapter 484-20 WAC, change "member" throughout entire section to "resident" to modernize language; and change "home" throughout entire section to "facility" or "state veterans home" to simplify and modernize language.

WAC 484-20-010 Definitions, add definition, adjudicative proceeding, an adjudicative proceeding is one mechanism which residents may use for dispute resolution; delete allowable income, allowable income has been redefined as personal needs allowance; add definitions related to resident grievances. Grievance procedures are required by Medicaid standards and Medicaid enabling legislation; change definition of "income" to reflect DSHS guidelines for Medicaid recipients; delete "member," "resident" is used throughout chapter 484-20 WAC to define an individual who resides in one of the state veterans homes; change "patient care plan" to "comprehensive care/service plan," to broaden the scope of the definition to include assistance and provision of services to those residents not in need of nursing care; change definition of "resident council," to delete involvement in the revolving fund (the revolving fund was eliminated by Medicaid enabling legislation); change definition of "superintendent," to add the requirement for the superintendent to be a licensed nursing home administrator; and add definition "state veterans home" to simplify language. State veterans home refers to either the Washington Veterans Home or the Washington Soldiers Home and Colony or both.

WAC 484-20-015 Application for admission, centralize the admission process for both state veterans homes through use of a centralized admissions team. The central admission team solicits and reviews all applications to determine care/service needs and recommend admission to a specific service and/or program. Delete reference to bed availability as this is covered in WAC 480-20-023. Add language which allows for an applicant to request a review; either through an informal settlement procedure or an adjudicative proceeding; if he/she is denied admission to a state veterans home. Add language which demonstrates that residents are screened for level of care needs and/or the need for nursing facility care (Medicaid funded programs) prior to approval for admission to a state veterans home.

WAC 484-20-023 Admission to a state veterans home, clarify language related to waiting lists for admission. Add the requirement for updated medical information if health conditions warrant or the applicant's name has been on a waiting list over 90 days. Add the requirement for an updated financial information if changes occur in the applicant's financial status.

WAC 484-20-024 Cost of care payment agreement, add a new section which establishes the requirement for a signed cost of care payment agreement prior to admission. Provisions are also made to allow the resident to request that facility staff assist with the management of his/her finances.

WAC 484-20-030 Eligibility—Military service, delete the admission requirement of wartime service. This will allow the state veterans homes to provide care and services to a greater number of qualifying veterans; and add the United States Department of Veterans Affairs eligibility priorities to set priorities for admission. This ensures that the maximum number of residents are eligible for care and treatment in the United States Department of Veterans Affairs medical centers.

WAC 484-20-035 Eligibility—Transfer of resources, change the language which refers to the transfer of resources to reflect Medicaid guidelines.

WAC 484-20-040 Eligibility—Resource limitation, simplify resource limitation language by using DSHS Medicaid limitations; add the provisions for payment at the private care rate for residents whose resource level exceeds established limits; and add a designated time period following rule adoption for residents and applicants to "dispose of" excess resources or be subject to payment of cost of care at the private rate.

WAC 484-20-045 Eligibility—Inability to support self, delete age as one of the factors which determines inability to support one's self. This complies with recent changes in United States Department of Veterans Affairs eligibility rules to receive care and services at the VA medical centers; add language which defines income limitations (for Medicaid recipients) by medical assistance rules and (for non-Medicaid recipients) by the current cost of care in the level of care which has been determined by the centralized admissions team as most appropriate to meet the applicant's health care/service needs; and add the requirement for a rehabilitation plan for any residents who are not in need of long term supportive services (in domiciliary or non-Medicaid nursing care) or nursing facility care (in Medicaid certified nursing care) and who does not have a long-term disability. Admission with a rehabilitation plan may be for a specified period of time. Clarify that residents who do not successfully complete a rehabilitation plan must be screened for eligibility for continued residency in a nonrehabilitation program or service.

WAC 484-20-061 Comprehensive care/service plan, add a new section which defines the requirement for a comprehensive care/service plan for each resident. Such a plan is required both by Medicaid and the United States Department of Veterans Affairs.

WAC 484-20-062 Vocational rehabilitation programs—Eligibility, admission and discharge, add a new section which defines vocational rehabilitation program eligibility, admission and discharge policies. Rehabilitation programs will be developed and changed to meet the changing needs of the veterans population.

WAC 484-20-063 Bed hold, add a new section which defines the bed hold policy for the state veterans homes. This is required by Medicaid standards.

WAC 484-20-068 Resident council, change title from "duly constituted body" to "resident council"; add specific details related to the functions of the resident council —

election of members, resident council committees, council meetings, council duties and responsibilities; deletes the resident council's involvement in expenditure of local revolving funds; and adds the responsibility to review and provide recommendations on the department's biennial budget and facility policies and procedures.

WAC 484-20-070 State veterans home benefit fund, change title from "state veterans home revolving fund" to "state veterans home benefit fund." Define specific details related to the benefit fund — source of funds, expenditures from the fund and the resident council responsibilities related to the benefit fund.

WAC 484-20-075 Aid and attendance account, repealed.

WAC 484-20-080 Annual declaration of income and assets, add specific language which describes annual requirements to verify continuing eligibility report to the various sources of resident income — United States Department of Veterans Affairs, Social Security Administration, Medicaid, and other pensions/benefits. Add language to clarify that failure to properly report income and assets may result in an over-payment or under-payment of cost of care. Under-payment of cost of care may result in discharge proceedings.

WAC 484-20-087 Resident rights, update resident rights language to reflect the requirements of Medicaid.

WAC 484-20-089 Washington Soldiers Home Colony—Rights and responsibilities, add language which requires the colony residents to exhaust all other sources of payment for health care prior to asking for assistance from the Washington Soldiers Home and to allow the charging of a co-payment to defray costs; and change the period of time allowable for reporting changes in income and/or resources to the Washington Soldiers Home administration.

WAC 484-20-090 Facility rules, change title from "rules of conduct" to "facility rules"; clarify "pass" to mean an overnight pass; add "social leave" (for Medicaid recipients) as an approved type of leave from the facility; and delete the section which refers to resident's attire. Any difficulties noted with resident dress or attire will be addressed in the resident's comprehensive care/service plan.

WAC 484-20-095 Supplementary policies and procedures, delete duplicate language — provisions for the resident council to submit recommendations for consideration into supplementary policies and procedures. Provision is included in WAC 484-20-068.

WAC 484-20-100 Violation—Investigation, add language to define the process used to investigate violations of facility rules.

WAC 484-20-105 Dispute settlement, change title from "penalties" to "dispute settlement"; delete punitive penalties for infractions of facility rules; and add provisions for an informal settlement process and/or a formal adjudicative proceeding under which residents may request review of administrative actions taken by the department.

WAC 484-20-110 Fair hearing, combine language into WAC 484-20-105 and repeal this section.

WAC 484-20-111 Grievance procedure, add a new section which defines a grievance process which may be used by and on behalf of any resident of a state veterans home. Grievance procedures are required by Medicaid guidelines.

WAC 484-20-115 Furlough—Non-Medicaid funded program residents, changes the title and language to clarify

that furlough is for residents of non-Medicaid funded programs.

WAC 484-20-116 Social leave—Medicaid funded program residents, add a new section which provides social leaves from the facility for residents residing in the Medicaid certified sections of the facility.

WAC 484-20-117 Rehabilitation furlough, add a new section which makes provision for the facility to grant a rehabilitation furlough to residents who have participated in the drafting of a rehabilitation plan with the goal to reestablish residency in a community setting.

WAC 484-20-120 Discharge, redefine "disciplinary" discharge as a "dishonorable" discharge; and add the provision for a written discharge notice, given at least thirty days prior to the scheduled discharge date.

WAC 484-20-135 Transfer, add the requirement for the centralized admissions team to review all transfer requests and evaluate the appropriateness of the request based on resident care/service needs.

WAC 484-20-140 Readmission, change update language to reflect current practices.

WAC 484-20-145 Burial, clarify language to clarify that arrangements for funerals as well as payment of funeral costs are the responsibility of the next of kin.

WAC 484-20-150 Population level, delete language which states residents are assigned to a level of care consistent with their health care needs. Similar language is included in WAC 484-20-023.

Name of Agency Personnel Responsible for Drafting: Sherri Madison, 505 East Union, Olympia, WA 98504, (206) 753-4527; Implementation and Enforcement: Beau Bergeron, 505 East Union, Olympia, WA 98504, (206) 753-4522.

Name of Proponent: Department of Veterans Affairs, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: Define rule changes for the Medicaid certified programs at the state veterans homes and to clarify, when appropriate, differences between rules for Medicaid funded programs and rules for non-Medicaid funded programs.

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.

Hearing Location: Washington Veterans Home, Retsil, Washington 98378, on May 25, 1994, at 9:00 a.m.; and at the Washington Soldiers Home, Orting, Washington 98360, on May 26, 1994, at 9:00 a.m.

Submit Written Comments to: Sherri Madison, 505 East Union, Olympia, WA 98504, by May 26, 1994.

Date of Intended Adoption: May 30, 1994.

April 19, 1994

A. J. "Beau" Bergeron
Director

Chapter 484-20 WAC
~~((WASHINGTON SOLDIERS' HOME AND COLONY—WASHINGTON VETERANS)) STATE~~
VETERANS HOMES

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-010 Definitions. The following words or phrases are used in this chapter in the meaning given, unless the context clearly indicates another meaning.

~~(1) ((Allowable income—See personal needs allowance.~~
~~(2))~~ Admission team - A team consisting of a designated veterans benefit counselor and designated medical or nursing staff.

(2) Adjudicative proceeding - A proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an action by the agency.

(3) Comprehensive care/services plan - A plan which outlines details of health care and services which the resident needs and receives.

(4) Department - The department of veterans affairs ((“WDVA.”)).

~~((3))~~ (5) Director - The director of the department of veterans affairs or his/her designee.

~~((4))~~ (6) Facility - A synonym for either the Washington veterans~~(2)~~ home or the Washington soldiers~~(2)~~ home.

~~((5) Gross misconduct—Intentional or negligent conduct evidencing substantial disregard (a) for the interests of other home member(s), staff person(s), or visitor(s), or (b) for the offending member’s duties and obligations as a member of the home.~~

~~(6) Income—Money or other gain received by a resident, or a resident and his/her spouse, on any incremental basis (e.g., yearly, semi-annually, monthly, weekly, or daily) from sources such as but not limited to: Veterans’ benefits, Social Security, civil service annuities, retirement benefits, royalties, interest on bonds, savings accounts, certificates of deposit or similar instruments, and/or earnings. Nonincremental such as but not limited to, distributions derived from interest payments, unanticipated payments on stock held by a resident, and royalties paid for creative endeavors are also considered income for purposes of this section.~~

~~(7) Member—See “resident” below.~~

~~(8))~~ (7) Furlough - An approved absence from the facility for residents of non-Medicaid funded programs.

(8) Grievance - A statement of any difficulty, disagreement, or dispute relating in any way to a facility, a resident or facility staff made orally or in writing initially to a grievance investigator, next a facility superintendent or designee, or lastly the department director.

(9) Income - The receipt by an individual of any property or service which he/she can apply either directly, by sale, or conversion to meet his/her basic needs for food, clothing, and shelter.

(a) Earned income - Gross wages for services rendered and/or net earnings from self-employment. Earned income received at predictable intervals other than monthly or in unequal amounts will be converted to a monthly basis.

(b) Unearned income - All other income.

(10) Personal needs allowance - The amount which a resident may retain from his/her income.

(11) Rehabilitation leave - A period of time granted to permit a resident to attempt to reestablish independent living or other care arrangements in a community of his/her choice while retaining the right to return to the facility without reapplying for admission.

(12) Resources - Cash or other liquid assets or any real or personal property that an individual or spouse, if any, owns and could convert to cash to be used for support or maintenance.

(a) If an individual can reduce a liquid asset to cash, it is a resource.

(b) If an individual cannot reduce an asset to cash, it is not considered an available resource.

(c) Liquid - Assets that are in cash or are financial instruments which are convertible to cash such as, but not limited to, cash in hand, stocks, savings, checking accounts, mutual fund shares, mortgage, promissory notes.

(d) Nonliquid - All other property both real and personal shall be evaluated according to the price that can reasonably be expected to sell for on the open market in the particular geographical area involved.

(13) Resident - An individual ((admitted to the Washington soldiers’ home, the Washington soldiers’ home colony or the Washington veterans’)) who resides at a state veterans home.

~~((9) Personal needs allowance—The minimum amount (as defined in RCW 72.36.120 and 72.36.130) which a resident may retain from his/her income.~~

(10) Rehabilitation furlough - A period of time granted by a superintendent or designee, permitting a resident to attempt to reestablish independent living or other care arrangements in a community of his/her choice while retaining the right to return to the soldiers’/veterans’ home without reapplying for admission.

(11) Patient care plan - A plan which outlines details of health care which the resident needs and receives. Those residents who do not meet admission criteria for age and/or permanent disability must have specific rehabilitation goals included in their patient care plan.

~~((12))~~ (14) Resident council - A ((duly constituted body)) group of residents elected by ((the)) facility residents ((in accordance with RCW 72.36.120 and 72.36.130. The resident council when serving in a capacity other than that specified in RCW 72.36.120 and 72.36.130, acts in an advisory capacity to the facility’s administration in those cases where the RCWs and WACs so specify)). The resident council serves in an advisory capacity to the facility superintendent and the department director.

~~((13))~~ (15) Social leave - An approved absence from the facility for residents of Medicaid funded programs.

(16) Superintendent - ((The superintendent of the Washington soldiers’ home and colony and/or the superintendent of the Washington veterans’ home-)) The licensed nursing home administrator appointed by the director to administer the day-to-day operations of a state veterans home.

(17) State veterans home - Refers to either the Washington soldiers home and colony in Orting or the Washington veterans home in Retsel, or both.

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

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-015 Application for admission. (1) ~~((An))~~ Applications for admission to ~~((membership in the Washington veterans' home, the Washington soldiers' home or the Washington soldiers' home colony))~~ a state veterans home shall be made ~~((to the department on))~~ using forms prescribed by the ~~((agency))~~ department. ~~((Applications may be made for an indefinite or for a specified period of time.))~~

(2) ~~((An applicant))~~ All applications shall ~~((submit))~~ include either a copy of ~~((his or her))~~ the applicant's military discharge or a statement from the applicable military service denoting the dates and character of service ~~((with the application))~~. An individual whose eligibility is based on the military service of a spouse shall provide proof of the spouse's military service.

(3) ~~((Designated agency staff shall review the application and all supporting documents and recommend approval or disapproval for admission. The applicant will receive written notice of the decision. If an applicant is denied admission, the written notice shall include a statement of the reason and authority for denial. The letter will be signed by the agency staff responsible for recommending disapproval for admission.~~

(4) ~~An applicant denied admission may, within thirty days of mailing of a written notification of denial, submit a written request for reconsideration to the agency staff person(s) responsible for the application denial.~~

(5) ~~If the applicant disagrees with the decision of the agency staff designated in subsection (4) of this section, (s)he may submit a written request for review to the director. Within thirty days of receipt of the written request for review, the director, or designee, shall make a written reply to the applicant.~~

(6) ~~Subject to the bed availability in the appropriate level of care and the ability of the home(s) to provide the required care, individuals shall be admitted in the order in which their applications are approved. If the needs of the applicant are of such a nature that current care programs at the facility(ies) cannot meet his/her needs, the superintendent may disapprove the application.))~~ An admissions team shall:

(a) Review each application to ensure inclusion of all information and documents necessary to determine eligibility for admission;

(b) Conduct a preadmission screening to determine level of care need or need for nursing facility placement (as described in chapter 388-88 WAC); and

(c) Recommend to the director that the application be approved or denied. The applicant shall receive written notice of the decision in accordance with WAC 484-20-103.

(4) Applications are reviewed and approved or denied in the order of receipt.

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-020 Conditions of eligibility for admission. An applicant shall be eligible for admission only if (s)he meets the requirements of chapter 72.36 RCW and ~~((the rules of WAC 484-20-025 through 484-20-060))~~ this chapter.

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-023 Admission to ~~((department of veterans' affairs health care facilities))~~ a state veterans home. (1) ~~((Consideration for admission to a DVA care facility shall be on the basis that each facility has the ability to provide the appropriate care services to meet the needs of the applicant. Veterans will be given preference over nonveterans for admission purposes if budgeting and/or bed limit constraints require.~~

(2) Admissions to each of the respective WDVA facilities shall be in the chronological order that applications are approved.

(3) A waiting list will be maintained at each facility for all established levels of service. As applicants are approved and levels of service established, applicants names shall be added in chronological order to established waiting lists.

(4) An applicant may be denied admission, or have his/her position on a specific service waiting list changed to another service waiting list, when:

(a) ~~In the interim between application and scheduled admission, the applicant's needs have changed which will require different degrees of services to meet his/her needs;))~~ Each state veterans home maintains several waiting lists, one for each program or service offered. The names of applicants who are approved for admission shall be placed on the waiting list for the program or service which the admission team has determined shall be most appropriate based on their health care/service needs.

(2) Applicants are admitted from the waiting lists in the order in which their applications are approved; subject to bed availability in the program or service area for which admission has been approved.

(3) An applicant may be denied admission, or be moved from one waiting list to another when in the interim between application approval and scheduled admission:

(a) The applicant's health care needs have changed to the extent that the program or service for which he/she was originally approved can no longer meet his/her health care needs; or

(b) The applicant's service needs have changed to such ~~((a degree))~~ an extent that the facility can no longer meet the applicant's health care/service needs. ~~((Prior to scheduling admission, any person whose application is over one hundred eighty days old is required to have his/her physician update the medical data.))~~

(4) Any applicant whose name has been on a waiting list over ninety days is required to submit an up-to-date medical information form completed by his/her physician prior to being given an admission date.

(5) If an applicant declines a scheduled admission, (s)he will be placed at the bottom of the appropriate service

waiting list. The next person on the waiting list will be invited for admission.

(6) If the applicant's financial status has changed ~~((during the period))~~ in the interim between application approval and scheduled ~~((date for))~~ admission, or additional financial information becomes available, ~~((a new financial assessment shall be required. The applicant's eligibility will be reassessed))~~ the applicant must submit an updated financial information form. If the ~~((revised))~~ change in financial status makes the applicant ineligible, due to excess resources, the ~~((director, for good cause, may approve admission))~~ applicant may be admitted under the provisions of WAC 484-20-040.

~~((7) Prior to admission, the applicant shall be required to sign a payment agreement which will stipulate the method and time of payments to the home; the amount required in payment each month; and penalties for nonpayment. Further, the applicant shall be required, upon admission, to submit changes of address directing benefit checks and other sources of income to be routed to the home's business office where they may be opened by the resident in the presence of authorized staff.))~~

NEW SECTION

WAC 484-20-024 Cost of care payment agreement.

Prior to admission, all applicants are required to sign a cost of care payment agreement which states the monthly charges for care, the due date for monthly payments, the source of funds from which payment is to be made and the consequences of nonpayment.

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-025 Eligibility—State residency. An applicant shall be a resident of the state of Washington at the time of application and at the time when the applicant is to be admitted to the state veterans home. An applicant shall be considered a Washington state resident if (s)he:

(1) Is living in the state at the time of application and has established residence either by declaring an intent to remain in the state or has an unbroken period of physical residence in the state;

(2) Is not living in this state at the time of application, but has demonstrated intent of remaining a resident of this state by maintaining a domicile or voting registration in this state or similar evidence ~~((s of nonrelinquishment))~~ of Washington state ~~((residence))~~ residency;

(3) Is not living in this state ~~((by reason of))~~ due to hospitalization or provision of similar care needs in another state resulting from transfer from a Washington state or federal health care or social service agency as long as the applicant has taken steps to maintain Washington state ~~((citizenship))~~ residency similar to subsection (2) of this section.

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-030 Eligibility—Military service. (1) An applicant must have served in:

(a) ~~((in))~~ The armed forces of the United States government ~~((in any of its wars));~~

(i) For a minimum of ninety days, ~~((some portion of which falls within the dates of WAC 484-20-030(2) below for which the applicant))~~ and must have received a discharge under honorable conditions((:)); or

~~((b) In the armed forces of the United States government in any of its wars with))~~ (ii) If less than ninety days, ~~((some portion of which falls within the dates in WAC 484-20-030(2) below during which the applicant received a))~~ be in receipt of service-connected ((disability)) compensation, and was discharged under honorable conditions ~~((or)).~~

~~((c) As a member of))~~ (b) The state militia (Washington national guard), for a minimum of ninety days and have been disabled in line of duty ~~((without regard to wartime service, and))~~ or have received a discharge under honorable conditions ~~((:)).~~ or

~~((d) As a member of))~~ (c) The Coast Guard, Merchant Marines, or other ~~((typically))~~ nonmilitary organization ~~((s))~~ for a minimum of ninety days, when such service was recognized by the United States government as equivalent to service in the armed forces and ~~((upon discharge, the veteran))~~ have received a discharge under honorable conditions as evidenced by possession of a DD214, or similar document((s)) in accordance with WAC 484-20-015(2).

(2) ~~((The current inclusive dates referred to in subsection (1)(a) are~~

(a) World War I—April 6, 1917, to November 11, 1918; extended to April 1, 1920, for those veterans who served in Russia; also extended through July 1, 1921, for those veterans who served after November 11, 1918, and before July 2, 1921, provided that such veterans had at least one day of service between April 5, 1917, and November 12, 1918;

(b) World War II—December 7, 1941, to December 31, 1946;

(c) Korean War—June 27, 1950, to January 31, 1955;

(d) Viet Nam—August 5, 1964, to May 7, 1975.

(e) ~~Such other or additional conflicts as recognized by the federal Department of Veterans' Affairs as wartime service.))~~ Admission priorities are granted in the following order:

(a) To veterans who meet established eligibility criteria for U.S. Department of Veterans Affairs health care benefits; followed by

(b) Spouses of veterans as described in WAC 484-20-055.

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-035 Eligibility—Transfer of ((property)) resources. ~~((Transfer or assignment of real, or personal property of high intrinsic value within two years of the date of application without having received adequate consideration shall create the presumption that such assignment or transfer was for the purpose of rendering him/herself eligible with respect to the limitations of property resources in WAC 484-20-040. The burden of disproving such intent shall be upon the applicant. The director may waive this requirement for good cause. Personal property, irrespective of value, which has great sentimental value to the applicant shall not~~

~~be subject to the provisions of this section.) Eligibility for admission as related to transfer of resources is determined by application of medical assistance eligibility rules as defined in chapter 388-95 WAC.~~

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-040 Eligibility—((Assets)) Resource limitation. (1) ~~((Applicants for admission may retain any liquid assets up to a value of two thousand dollars, as of September 1, 1992. After that date, asset limits shall be computed at the beginning of the calendar year at a rate in accordance with advances in the Consumer Price Index established on annualized basis for the previous twelve months.)) Eligibility for admission as related to resource limitations is determined by application of medical assistance eligibility rules as defined in chapter 388-95 WAC. Medicaid eligibility is determined through submission of a Medicaid application to the appropriate department of social and health services community service office. If the applicant has ((assets)) resources in excess of established limits, (s)he may be admitted to a veterans' home provided:~~

~~(a) ((His/her assets and total expected annual income for the year following admission, less the established limit, and divided by twelve, would not exceed actual monthly cost of care in the home;~~

~~(b)) The applicant agrees to ((deposit such liquid assets in a safekeeping account held jointly by the home and the resident, such account to be held at the home of admission; and)) sell any nonliquid resources considered nonexempt under chapter 388-95 WAC.~~

~~((e)) (b) The applicant agrees to pay ((actual cost of care)) at the private rate until such ((assets)) resources are reduced to an amount not to exceed ((the provisions of WAC 484-20-065(8)) established limits.~~

~~(2) ((Applicants with real property in excess of the limits set forth in subsection (1) of this section may be admitted to the homes provided that:~~

~~(a) A good faith effort is made to sell the property at current market value;~~

~~(b) The proceeds of the sale of the property are deposited into a safekeeping account held jointly by the home and resident;~~

~~(c) The resident agrees to retroactive payment from the safekeeping account for actual cost of care from the time of admission to the time the funds are deposited into the safekeeping account;~~

~~(d) The resident agrees to allow withdrawal from the safekeeping account an amount equivalent to the difference between monthly income and actual cost of care until his/her assets are reduced to an amount not to exceed the provisions of WAC 484-20-065(8).~~

~~(3)) In the event of admission under conditions in subsection((s)) (1) ((and (2))) of this section where the applicant is discharged or dies, the provisions of WAC 484-20-065(8) apply.~~

~~((4) For good cause shown the director may authorize an exception to the limit in subsection (1) of this section.~~

~~(5)) (3) An applicant for ((membership)) residency in the colony of the ((state)) Washington soldiers((?)) home may not ((hold liquid assets)) possess resources in excess of~~

that established in RCW 72.36.040. ~~((They are permitted to)) Colony residents may own real property provided such property is the domicile of the colony resident and is located within the Orting school district ((of Orting)).~~

~~((6) An applicant for admission to either home may own real property in excess of established limits provided such property is the domicile of the spouse and/or dependent children of the applicant.~~

~~(7) Real property owned by a couple where one is a resident of a state veterans' home and the other lives in the community shall, upon sale of the property, be subject to a division of the net proceeds whereby fifty percent is kept by the spouse living in the community and fifty percent by the spouse living in the home. Any resultant amount of assets held by the resident will be subject to the provisions of WAC 484-20-065(8). Exceptions to this distribution is allowed when the spouse living in the community purchases another residence of equal or greater value than the net proceeds of the sale in which (s)he expects to live. Where the spouse purchases a home of lesser value than the net proceeds from the sale of the first residence, the assets will be divided in accordance with the '50-50' stipulation above will apply.)) (4) Effective thirty days from rule adoption, current residents and all applicants for admission to a state veterans home who possess resources in excess of limits established shall be required to pay the private rate for the period of time necessary to reduce such resources to an amount not to exceed established limits.~~

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-045 Eligibility—Inability to support self. To be eligible for admission an applicant must be indigent and provide evidence of inability to support himself or herself. ~~((An applicant, age sixty five or older, provided his/her income and assets fall within limitations set forth in this chapter, is not required to provide further evidence of inability to support him/herself. If an applicant is less than age sixty five, (s)he)) or their family and be in need of:~~

~~(1) Nursing facility care as described in chapter 388-88 WAC; or~~

~~(2) Domiciliary care; or~~

~~(3) Non-Medicaid nursing care; or~~

~~(4) Must have a long-term disability necessitating care, as determined by the applicant's physician, for an indeterminate period of such duration that it can reasonably be assumed that the applicant's condition will not allow him/her return to independent living. For applicants eligible to receive Medicaid funded nursing facility care (as defined in chapter 388-88 WAC), income limitations under medical assistance eligibility rules (chapter 388-95 WAC) shall apply. For all other applicants income limitations are set at the cost of care for the level of care which the admission team has determined to be the most appropriate to meet the applicant's health care/service needs. Applicants ((under age sixty five who do not have a permanent)) who are not in need of nursing facility care, domiciliary care, or non-Medicaid nursing care or who do not have a long-term disability are eligible for admission only if their application ((contains specific)) includes a rehabilitation ((goals)) plan. Such applicants ((may)) shall be admitted for a specific period ((of~~

time)) as defined by the rehabilitation plan. Any reductions or extensions of the ((admission)) period of residency are made at the discretion of the superintendent upon recommendation of the interdisciplinary patient care team and are based upon the resident's ability to meet goals outlined in the rehabilitation plan.

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-050 Eligibility—Income. An applicant with income in excess of ((that required to purchase the type of care (s)he requires)) established limits shall not be eligible for admission unless:

- (1) The director, upon recommendation of the ((superintendent)) admissions team, has authorized an exception; and
- (2) The applicant agrees to use his/her income in excess of ((allowable income)) the current personal needs allowance as provided in WAC 484-20-065.

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-055 Eligibility—Surviving spouse of veteran. The surviving spouse of a veteran may be admitted to ((the veterans'/soldiers')) a state veterans home provided:

- (1) The veteran was a state resident at the time of death or would have been eligible for admission except for his/her income or resources; and
- (2) The spouse:
 - (a) Meets the provisions of WAC 484-20-045; and
 - (b) Has not remarried a person who is not a state resident or who is not eligible for admission.

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-060 Eligibility—Married couple. A married couple may be admitted to ((the homes)) a state veterans home provided:

- (1) They both meet the requirements of WAC 484-20-045.
- (2) They are legally married, and if not living together, are separated because of different health care needs.
- (3) They have been married at least three years prior to application, or the spouse is personally eligible for admission.

NEW SECTION

WAC 484-20-061 Comprehensive care/service plan.

- (1) Each resident shall receive a comprehensive health care and service needs assessment within fourteen days of admission which includes but is not limited to need for:
 - (a) Personal care services;
 - (b) Nursing services or other medical assistance;
 - (c) Activity therapy, both physical and mental;
 - (d) Social supports and integration into the resident social network;
 - (e) Assistance with activities of daily living, taking into account their individual preferences and desires for scheduling;
 - (f) Physical therapy;
 - (g) Psychotherapy;

- (h) Substance abuse therapy; and
- (i) Dental or vision services.
- (2) Each resident shall have a written comprehensive care/service plan on file.
- (3) Comprehensive care/service plans shall:
 - (a) Be based on the needs assessment and contain goals which meet all identified needs;
 - (b) Be developed by a multidisciplinary team in conjunction with the resident and the resident's appointed representative when appropriate; and
 - (c) Contain the resident's statement of consent to service goals. Consent may be provided by the resident's appointed representative when appropriate.
 - (4) Comprehensive care/service plans shall be routinely reviewed in multidisciplinary care conferences.
 - (a) Care conferences shall include the resident, their appointed representative when appropriate, any other individuals the resident or their appointed representative invites, and the appropriate care or therapy staff involved in carrying out the care/service plan with the resident.
 - (b) The initial care conference shall be held within twenty-one days of admission.
 - (c) Care conferences shall be held at least quarterly following the initial care conference, or whenever there is a significant change in the resident's care/service needs.
 - (d) Care/service options for meeting the resident's needs shall be presented and the resident provided the opportunity to choose options which meet their individual preferences.

NEW SECTION

WAC 484-20-062 Vocational rehabilitation programs—Eligibility, admission and discharge. The state veterans homes may implement and manage vocational rehabilitation programs designed to meet special health care/service needs of veterans.

- (1) An applicant is eligible for admission to vocational rehabilitation programs only if he/she meets the requirements of chapter 72.36 RCW, WAC 484-20-025 through 484-20-060 and other admission criteria as defined in the specific vocational rehabilitation program.
- (2) Program participation shall be defined by means of an individualized rehabilitation plan made between the prospective resident and the state or federal entity funding the rehabilitation program.
- (3) Residents who fail to comply with participation goals as defined in the rehabilitation plan may be subject to discharge from both the rehabilitation program and the state veterans home. Residents who are being discharged for noncompliance with participation goals shall receive written notice in accordance with WAC 484-20-103.
- (4) Continued residency at the state veterans home shall require screening of the initial application for eligibility for admission to a nonrehabilitation section/program as described in chapter 72.36 RCW and this chapter.

NEW SECTION

WAC 484-20-063 Bed hold. (1) All residents receive written notice of the facility's bed hold policy; at the time of admission and at the time of transfer or discharge from the facility. In the event of an emergency transfer to an acute

care facility, notice shall be given to either the designated representative or a responsible family member.

(2) Facility policies describe the length of time and the related cost of holding a bed during absences from the facility.

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-068 (~~Duly constituted body~~) Resident council. (1) Each state veterans home shall have resident council consisting of ((the)) representatives elected by the ((home)) facility residents. ((The council is established to approve revolving fund disbursements and to communicate to the home's administration member needs and concerns.

~~(2) The resident council shall be composed of representatives from domiciliary, nursing care and, in the case of the soldiers' home, the colony.~~

~~(3) Representatives from the living units shall be elected by residents of that living unit or by all residents of the home.~~

~~(4) In the event of a vacancy on the resident council the resident council and the superintendent shall submit names to fill such vacancy subject to confirmation by a majority of the remaining elected representatives.~~

~~(5) The resident council and the superintendent or designee shall meet on a regularly scheduled basis. Agenda items may be submitted by the resident council, any home member, or the administration.~~

~~(6) The resident council may meet on its own at any time without notice to the administration.~~

~~(7) General meetings of the home residents will be held on a regular basis. Locations, times, and dates of such meetings will be published in advance to insure maximum attendance from the general resident population.)~~

(2) The resident council is to serve as a vehicle for residents to exercise their rights, express their views, and protect their interests by serving in an advisory capacity to the respective superintendents and to the director in all matters related to policy and operational decisions affecting resident care and life in the facility. The resident council shall be afforded the opportunity for input into the biennial budget making process and facility supplementary policies and procedures. The superintendent shall give due and proper consideration to such input.

(3) Each resident council shall consist of seven members elected from major living units as follows:

(a) Washington soldiers home and colony:

(i) Two members from the nursing facility;

(ii) One member from Roosevelt — nursing;

(iii) One member from Roosevelt — domiciliary;

(iv) One member from Betsy Ross — domiciliary;

(v) One member from the colony; and

(vi) One member at-large.

(b) Washington veterans home:

(i) One member from building 9 — nursing;

(ii) One member from building 10 — nursing;

(iii) One member from building 7 — nursing;

(iv) One member from building 4/5 — nursing;

(v) One member from building 6 — domiciliary;

(vi) One member from building 3 — domiciliary; and

(vii) One member from building 2 — domiciliary.

(4) Resident council members shall be elected by and represent the residents living in the building (living unit) in which he/she resides. Elections shall be held on the second Monday of January each year, following procedures outlined in facility policy.

(5) Resident council members shall serve two-year terms as follows:

(a) Washington soldiers home — members from Roosevelt — domiciliary, the colony and one member from the nursing facility shall be elected in even years and members from Roosevelt — nursing, Betsy Ross, at-large and the second member from the nursing facility shall be elected in odd years.

(b) Washington veterans home — members from buildings 10, 4/5, and 3 shall be elected in even years and members from buildings 9, 7, 6, and 2 shall be elected in odd years.

(6) In the case of a vacancy on the resident council, the remaining resident council members shall recommend at least two replacements from among the residents living in the building/living unit where the vacancy exists. Such recommendations shall be submitted to the superintendent and the superintendent and the resident council shall agree on a replacement to fill the vacancy until the next scheduled election for that position.

(7) Annually, following elections, each resident council shall elect a chair from among its members. The resident council chair shall call and preside at general assembly meetings and council meetings.

(8) Each resident council shall at least meet monthly. The resident council shall meet with the superintendent monthly and with the department director three times annually. The resident council may meet on its own at any time without notice to the superintendent.

(9) The resident council may appoint residents to serve on committees to advise various department heads on programs and services available to facility residents. Examples of such committees are:

(a) A food service advisory committee to meet with the facility's food manager;

(b) An activities committee to meet with the facility's activity director;

(c) A snack bar committee to meet with the assistant superintendent;

(d) A hospitality committee to meet with facility social work staff and to call on new residents and introduce them to other residents and to acquaint them with different services; the dining area, location of the laundry room and the resident council;

(e) A grievance/resident rights committee to assist other residents through the grievance process as requested and meet with the facility's superintendent or grievance investigator(s) to discuss resident rights or review the grievance process;

(f) An election committee to oversee annual resident council elections;

(g) Other committees as deemed appropriate by the resident council.

(10) Each resident council shall be provided the following:

(a) Assistance with the complaint resolution process through:

- (i) Designated social work staff for problems and complaints related to nursing care; and
- (ii) The assistant superintendent for problems and complaints related to administrative actions;
- (b) Meeting space;
- (c) Appropriate equipment and supplies; and
- (d) Clerical support for minutes of all resident council meetings as requested.

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-070 State veterans(⁽²⁾) home (~~or soldiers' home revolving~~) benefit fund. (~~((1) The superintendent shall deposit all funds received from residents in accordance with provisions of WAC 484-20-065 into a revolving fund.~~

~~(2) Disbursement from the revolving fund shall be for the welfare and benefit of the members.~~

~~(3) Disbursement from the revolving fund shall be on authorization of the superintendent or his duly authorized representative.~~

~~(4) A proposed budget shall be prepared for each fiscal year by the superintendent or a duly authorized representative, and the WDVA assistant director for administrative services, which shall delineate income by sources and allocations by category. This budget shall be presented to the resident council for modification and approval. Approval of the budget shall constitute authority for the superintendent or his duly authorized representative(s) to make disbursements from the revolving fund in accordance with the approved budget. Should the resident council and superintendent disagree over budget items, the resident council or superintendent may request a review by the agency director. In all such reviews, the decision of the director is final.~~

~~(5) Expenditure of the revolving funds shall be subject to the provisions of state law and state personnel merit system rules and any applicable provisions with organizations representing staff. The revolving fund budget must continue funding for existing civil service positions until such time as the director or his/her designee, either individually or pursuant to a good faith request from the majority of the resident council, reduces full time funding of a position or positions from the revolving fund, approves, termination of position(s) through a reduction in force and all appeal rights of affected civil service employees have been exhausted.~~

~~(6) A quarterly report of the revolving fund activity shall be available for public inspection.))~~ (1) Each veterans home shall maintain a benefit fund into which all private donations, bequeaths, and gifts to the facility shall be deposited.

(2) The resident council shall participate in the identification of resident and facility needs for benefit fund solicitations.

(3) The resident council shall develop proposals for expenditures from the benefit fund. The minutes of the resident council meetings shall reflect the council's discussion and decision making process with regard to proposed expenditures. Facility fiscal staff may assist the resident council in the development of expenditure proposals as requested.

(4) Expenditures from the benefit fund shall be made as approved by the resident council and authorized by the superintendent. Whenever individuals or groups have made a donation, bequeath or gift to a state veterans home and have designated a specific purpose for such donation, bequeath or gift, the resident council and the superintendent shall take such designated purpose into account when approving expenditure of the funds. Should the resident council and the superintendent disagree over an expenditure approved by the resident council, the resident council or the superintendent may request a review by the director.

(5) Disbursements from the benefit fund shall be for the benefit and welfare of the residents of the respective state veterans home.

(6) The resident council shall receive quarterly or more frequently if requested a income and benefit fund expenditure report.

AMENDATORY SECTION (Amending Order 80-01, filed 7/17/80)

WAC 484-20-080 Annual declaration of income and (~~assets~~) resources. (~~Each member will provide the superintendent with an annual statement reflecting all income and assets on a form prescribed by the department. When the member is authorized to contribute to the support of his/her dependents under WAC 484-20-065(4), the dependent will also be required to complete a statement of income and assets.))~~ (1) Each resident shall promptly provide the superintendent with a statement reflecting all income and resources:

(a) Annually, at such time as determined by department policy;

(b) Within five days of any change in income; and

(c) Within five days of receipt of any lump sum/backward payment of benefits. The department shall provide forms for reporting of income and resources.

(2) Each resident shall comply with any reporting requirements necessary to continue any benefits and/or pensions to which he/she is entitled.

(3) Reports shall be made at intervals and on forms prescribed by the entity paying the benefits and/or pension. Copies shall be submitted to the facility's administration for filing in the resident's administrative file:

(a) U.S. Department of Veterans Affairs benefits — as prescribed by the U.S. Department of Veterans Affairs.

(b) Social Security benefits — as prescribed by the Social Security Administration.

(c) Medicaid benefits — as prescribed by the department of social and health services.

(d) Other pensions and benefits — as prescribed by the entity paying the pension/benefit.

(4) When a resident is authorized to contribute to the support of a dependent under WAC 484-20-065, the dependent shall also be required to comply with any required reporting intervals, using the prescribed form(s).

(5) The veterans benefit specialist and business office staff at each facility shall be available to assist residents to complete and submit appropriate reports in a timely manner and to resolve any underpayment or overpayment of benefits.

(6) Failure to comply with all income and resource reporting requirements may result in overpayment or

underpayment of cost of care. Underpayment of cost of care may be grounds to begin discharge proceedings in accordance with WAC 484-20-120. Notice of such administrative action shall be given in accordance with WAC 484-20-103.

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-085 Residents' rights and ((rules of conduct)) facility rules. Each ((new-home)) resident ((and new-employee)) and all facility staff shall be furnished ((with the home's)) a copy of the facility's policies regarding resident rights and ((with)) a copy of chapter 484-20 WAC.

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-087 Resident rights. ((1) Prior to or at the time of admission and annually thereafter, each resident shall be fully informed of his/her rights orally and in writing.

(2) The resident will be informed in a language (s)he understands regarding all rules and regulations covering resident conduct and responsibilities.

(3) Acknowledgement of receipt of these rights will be placed in the resident's medical and/or administrative record.

(4) The resident has a right to a dignified existence, self-determination and communication with and access to persons and services inside and outside the facility. The department of veterans' affairs, and such facilities under the control of the department of veterans' affairs, will protect and promote the right of each resident. Each resident shall have the right to:

(a) Exercise his/her rights as a citizen of the United States;

(b) Be free of interference, coercion, discrimination, or reprisal in the exercise of his/her rights;

(c) Inspect and purchase photocopies of all records pertaining to the resident upon written request and forty-eight hours notice (excluding week-ends) to the resident's facility;

(d) Be fully informed in language (s)he can understand of his/her total health status, including but not limited to, his/her medical condition;

(e) Refuse treatment and to refuse to participate in experimental research, provided that the resident is informed of therapeutic alternatives, and the consequences of refusing such nonexperimental treatment, including the option of discharge from the home when it is determined that the resident's or other resident's welfare cannot be guaranteed without such treatment(s).

(f) Know what services and goods which will be provided by the facility and which services and goods the resident must provide for him/herself.

(g) Manage his/her financial affairs without the requirement that (s)he deposit his/her personal funds with the home.

(h) Fully informed in advance about care and treatment and of treatment that may affect the resident's well-being and, unless adjudged incompetent under the laws of the state, participate in planning care and treatment.

(i) Personal privacy and confidentiality of his/her personal and clinical records, which shall include but not necessarily be limited to: Accommodations; medical

treatment; written and telephone communications; personal care; visits; meetings of family and resident groups.

(j) Voice grievances with respect to treatment or care that is, or fails to be furnished, without discrimination or reprisal.

(k) Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents;

(l) Refuse to perform services for the facility, and if (s)he chooses to perform work, the home must document the need or desire to work in the care plan, specify the nature of the services performed, and whether services are voluntary or compensated by stipends established by the superintendent for the work-therapy program. The resident must agree to the work arrangements described in the care plan.

(m) To privacy in written communications, including: The right to send and receive mail promptly that is unopened; and access to stationery, postage, and writing instruments at the resident's expense.

(n) Immediate access to the resident by any representative of the Secretary of HEW; the federal Department of Veterans' Affairs; any representative of a state licensing agency; the resident's individual physician; the state long-term ombudsman.

(o) Regular access to the private use of a telephone, provided that the costs entailed from such use shall be borne by the resident.

(p) Retain and use personal possessions including appropriate clothing and some furnishings, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

(q) Self-administer drugs unless the home's patient care team has determined that this practice is unsafe.

(r) Examine the results of any federal or state inspection of the facility, along with any plan(s) for correction.

(5) In the event that a resident is judged financially incompetent under federal laws or mentally incompetent under the laws of the state by a court of competent jurisdiction, his/her rights may be exercised by a representative appointed under federal law or a guardian appointed under state law.

(6) Each resident shall receive a written description of resident rights to include a description of the manner of protecting personal funds and procedures established to resolve resident grievances or to initiate investigation of any reports of resident abuse, neglect, or misappropriation of resident property in the facility.

(7) The facility will inform each resident of the name, specialty, and way of contacting his/her attending physician.

(8) Except in a medical emergency or when the resident is incompetent, the facility will consult with the resident and notify the resident's physician, legal representative, or interested family member within twenty-four hours when there is:

(a) An accident resulting in injury to the resident;

(b) A significant change in the resident's physical, mental, or psychosocial status;

(c) A need to significantly alter treatment;

(d) A decision to transfer or discharge the resident from the facility.

~~(9) The facility will also promptly notify the resident, appointed representative/guardian, or designated family member when there is:~~

- ~~(a) A change in room or roommate assignment;~~
- ~~(b) A change in the resident's rights under federal or state law or regulations.~~

~~(10) The facility records and periodically updates the address and phone number of the resident's appointed representative or interested family member.~~

~~(11) The facility will establish and maintain a system that assures a full, complete, and separate accounting, according to generally accepted accounting principals, of each resident's personal funds entrusted to the home on the resident's behalf. The system must preclude any commingling of resident funds with facility funds or with the funds of any other resident. Individual financial records must be available on request by the resident or his/her appointed representative.~~

~~(12) The facility will provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.~~

~~(13) The facility will allow representatives of the state ombudsman to examine the resident's records with the written permission of the resident or the resident's appointed representative/guardian, so long as such access is consistent with state law.)) Residents of a state veterans home have the right to a dignified existence, self-determination and communication with and access to persons and services inside and outside the facility. The state veterans homes shall protect and promote the rights of each resident, including each of the following:~~

(1) Exercise of rights.

(a) The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.

(b) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights.

(c) In the case of a resident adjudged incompetent under the laws of the state by a court of competent jurisdiction, the rights of the resident are exercised by the person appointed under state law to act on the resident's behalf.

(d) In the case of a resident who has not been adjudged incompetent by the state court, any legal-surrogate designated in accordance with state law may exercise the resident's rights to the extent provided by state law.

(2) Notice of rights and services.

(a) The facility shall inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. Such notification must be made prior to or upon admission and during the resident's stay. Receipt of such information, and any amendments to it shall be acknowledged in writing by the person(s) receiving it.

(b) The resident or his or her legal representative has the right:

(i) Upon an oral or written request, to access all records pertaining to himself or herself including clinical records within twenty-four hours; and

(ii) After receipt of his or her records for inspection, to purchase at a cost not to exceed the community standard, photocopies of the records or any portions of them upon request and two working days advance notice to the facility.

(c) The resident has the right to be fully informed in language that he or she can understand of his or her total health status, including but not limited to, his or her medical condition.

(d) The resident has the right to refuse treatment, and to refuse to participate in experimental research.

(e) The facility shall:

(i) Inform each resident who is entitled to Medicaid benefits, in writing, at the time of admission to the nursing facility or, when the resident becomes eligible for Medicaid of:

(A) The items and services that are included in nursing facility services under the state plan and for which the resident may not be charged;

(B) Those other items and services that the facility offers and for which the resident may be charged, and the amount of charges for those services; and

(ii) Inform each resident when changes are made to the items and services specified in (e)(i)(A) and (B) of this subsection.

(f) The facility shall inform each resident before, or at the time of admission, and periodically during the resident's stay, of services available in the facility and of charges for those services, including any charges for services not covered under Medicaid or the facility's daily rate.

(g) The facility shall furnish a written description of legal rights which includes:

(i) A description of the manner of protecting personal funds, under subsection (3) of this section;

(ii) A description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment which determines the extent of a couple's nonexempt resources at the time of admission and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the resident's care in his or her process of spending down to Medicaid eligibility levels;

(iii) A posting of names, addresses, and telephone numbers of all pertinent state client advocacy groups such as the state survey and certification agency and the state ombudsman program; and

(iv) A statement that the resident may file a complaint with the state survey and certification agency concerning resident abuse, neglect, and misappropriation of resident property in the facility.

(h) The facility shall inform each resident of the name, specialty, and way of contacting the physician responsible for his or her care.

(i) The facility shall prominently display in the facility written information and provide to residents and applicants for admission oral and written information about how to apply for and use of Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(j) Notification of changes.

(i) A facility shall immediately inform the resident; consult with the resident's physician; and if known, notify

the resident's legal representative or an interested family member when there is:

(A) An accident involving the resident which results in injury and has the potential for requiring physician intervention;

(B) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);

(C) A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(D) A decision to transfer or discharge the resident from the facility as specified in WAC 484-20-120.

(ii) The facility shall also promptly notify the resident and, if known, the resident's legal representative or interested family member when there is:

(A) A change in room or roommate assignment; or

(B) A change in resident rights under federal or state law or regulations.

(iii) The facility shall record and periodically update the address and phone number of the resident's legal representative or interested family member.

(3) Protection of resident funds.

(a) The resident has the right to manage his or her financial affairs, and the facility may not require residents to deposit their personal funds with the facility.

(b) Management of personal funds. Upon written authorization of a resident, the facility shall hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility as specified in (c) through (h) of this subsection.

(c) Deposit of funds.

(i) The facility shall deposit any residents' personal funds in excess of fifty dollars in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on resident's funds to that account. (In pooled accounts, there must be a separate accounting for each resident's share.)

(ii) The facility may maintain a resident's personal funds that do not exceed fifty dollars in a noninterest bearing account, an interest-bearing account, or petty cash fund.

(d) The facility shall establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

(i) The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

(ii) The individual financial records must be available through quarterly statements on request to the resident or his or her legal representative.

(e) The facility shall notify each resident that receives Medicaid benefits:

(i) When the amount in the resident's account reaches two hundred dollars less than the established resource limit for one person; and

(ii) That, if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the resource limit for one person, the resident may lose eligibility for Medicaid.

(f) Upon the death of a resident with a personal fund deposited with the facility, the facility must convey within thirty days the resident's funds, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate.

(g) The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid, Medicare or the U.S. Department of Veterans Affairs.

(4) Free choice. The resident has the right to:

(a) Choose a personal attending physician;

(b) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(c) Unless adjudged incompetent or otherwise found to be incapacitated under the laws of the state, participate in planning care and treatment or changes in care and treatment.

(5) Privacy and confidentiality. The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.

(a) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups, but this does not require the facility to provide a private room for each resident;

(b) Except as provided in (c) of this subsection, the resident may approve or refuse the release of personal and clinical records to any individual outside the facility;

(c) The resident's right to refuse release of personal and clinical records does not apply when:

(i) The resident is transferred to another health care institution; or

(ii) Record release is required by law.

(6) Grievances. A resident has the right to:

(a) Voice grievance without discrimination or reprisal. Such grievances include those with respect to treatment which has been furnished as well as that which has not been furnished; and

(b) Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(7) Examination of survey results. A resident has the right to:

(a) Examine the results of the most recent survey of the facility conducted by federal or state surveyors and any plan of correction in effect with respect to the facility. The results must be made available for examination by the facility in a place readily accessible to residents; and

(b) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

(8) Work. The resident has the right to:

(a) Refuse to perform services for the facility;

(b) Perform services for the facility, if he or she chooses, when:

(i) The facility has documented the need or desire for work in the plan of care;

(ii) The plan specifies the nature of the services performed and whether the services are voluntary or paid; and

(iii) The resident agrees to the work arrangement described in the plan of care.

(9) Mail. The resident has the right to privacy in written communications, including the right to:

(a) Send and promptly receive mail that is unopened; and

(b) Have access to stationery, postage, and writing implements at the resident's own expense.

(10) Access and visitation rights.

(a) The resident has the right and the facility shall provide immediate access to any resident by the following:

(i) Any representative from the federal or state agency administering Medicaid or U.S. Department of Veterans Affairs health care programs;

(ii) The resident's individual physician;

(iii) The state long term care ombudsman;

(iv) Subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

(v) Subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with consent of the resident.

(b) The facility shall provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(c) The facility shall allow representatives of the state ombudsman, described in (a)(iv) of this subsection, to examine a resident's clinical records with the written permission of the resident or the resident's legal representative, and consistent with state law.

(11) Telephone. The resident has the right to have reasonable access to the use of a telephone where calls can be made without being overheard.

(12) Personal property. The resident has the right to retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

(13) Married couples. The resident has the right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement.

(14) Self-administration of drugs. An individual resident may self-administer drugs if the interdisciplinary care team has determined that this practice is safe.

(15) Refusal of certain transfers.

(a) An individual has the right to refuse a transfer to another room within the facility, if the purpose of the transfer is not supported by health care needs and the facility's ability to provide necessary health care and services.

(b) A resident's exercise of the right to refuse transfer under (a) of this subsection does not affect the individual's eligibility or entitlement to Medicaid benefits.

(16) Transfer and discharge. The facility shall permit each resident to remain in the facility and not transfer or discharge the resident from the facility except under the provisions of WAC 484-20-120.

(17) Restraints. The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.

(18) Abuse. The resident has the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.

(19) Quality of life. The facility shall care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.

(a) Dignity. The facility shall promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.

(b) Self-determination and participation. The resident has the right to:

(i) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care;

(ii) Interact with members of the community both inside and outside the facility; and

(iii) Make choices about aspects of his or her life in the facility that are significant to the resident.

(c) Participation in resident and family groups.

(i) A resident has the right to organize and participate in resident groups in the facility;

(ii) A resident's family has the right to meet in the facility with the families of other residents in the facility.

(d) Participation in other activities. A resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(e) Accommodation of needs. A resident has the right to reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered.

(f) Activities. The facility shall provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well-being of each resident.

(g) Social services. The facility shall provide medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

(h) Environment. The facility shall provide:

(i) A safe, clean, comfortable, and homelike environment, allowing the resident to use his or her personal belongings to the extent possible;

(ii) Housekeeping and maintenance service necessary to maintain a sanitary, orderly, and comfortable interior;

(iii) Clean bed and bath linens that are in good condition;

(iv) Private closet space in each resident room;

(v) Adequate and comfortable lighting levels in all areas;

(vi) Comfortable and safe temperature levels; and

(vii) For the maintenance of comfortable sound levels.

(20) Notice of any administrative action taken pursuant to this section shall be given in accordance with WAC 484-20-103.

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-089 Washington Soldiers⁽²⁾ Home Colony—Rights and responsibilities. (1) Individuals eligible for the colony program, hereinafter called "colony residents," shall have access to the following programs available to ~~((on-grounds))~~ residents of the Washington soldiers⁽²⁾ home and subject to certain restrictions as noted:

(a) Participation in the ~~((home's on-grounds))~~ facility's activities programs. Participation in off-grounds activities ~~((is also permitted except that))~~ may require a co-payment ~~((may be established by the superintendent))~~ to defray a portion of the costs of the activity.

(b) Transportation to medical appointments, provided that such transportation does not exceed those transportation services provided to ~~((on-grounds))~~ residents of the Washington soldiers⁽²⁾ home. ~~((In the event that public transportation becomes available,))~~ The superintendent may require a co-payment for ~~((home))~~ transportation ~~((purposes not to exceed fifty percent of the prevailing public transportation costs))~~ provided by the facility.

(c) Distribution of medications from the ~~((home's))~~ facility's pharmacy to the extent that colony residents cannot obtain such medications through private, state and/or federal medical insurance programs for which the colony ~~((member))~~ resident is eligible. In the event that the colony ~~((member))~~ resident is ineligible for such medical insurance programs, the superintendent may require that a ~~((co-charge))~~ co-payment be paid by the colony ~~((member))~~ resident.

(d) In-patient nursing care when authorized by ~~((home))~~ facility medical staff and when such care is not otherwise available through private, state, or federal government medical insurance programs for which the colony resident is eligible. When admitted to a ~~((home))~~ facility nursing care unit and the in-patient stays exceed fourteen calendar days per year, the superintendent may require that the colony resident make a co-payment for nursing care services. Such co-payments shall be a set per diem amount as determined by ~~((WDVA))~~ department policy except as waived by the director.

(e) Admission to ~~((the soldiers' or))~~ a state veterans⁽²⁾ home as a long-term resident. Colony residents are required to complete a standard application for admission ~~((except that))~~. They shall be placed at the top of any existing waiting list for the type of care they require unless the date of their admission to the colony is later than another applicant on the same waiting list. In such cases, the colony resident's place on the waiting list shall be preceded only by ~~((the application or applications for admission))~~ any applicant(s) whose application was approved on a date preceding the colony ~~((member's))~~ resident's.

(f) Cash stipends for food allowances and clothing, as determined by the director and allocated by the legislature.

(g) Burial in the Washington soldiers⁽²⁾ home cemetery in such a manner as determined prudent by the superintendent and established by department policy.

(2) Colony residents ~~((are required to))~~ shall:

(a) Provide the superintendent with an annual statement reflecting all income and ~~((assets at such a time as determined by department policy and on a form prescribed by the department.~~

~~((b) Report any changes in income or assets within a reasonable period, not to exceed thirty days, after such changes.~~

~~((e))~~;

(i) Annually, at such time as determined by department policy;

(ii) Within five days of any change in income or resources;

(b) Comply with rules of conduct as outlined in WAC 484-20-090 ((except for those which reasonably apply exclusively to on-grounds residents of the soldiers' home)) when participating in programs ((on the grounds of)) sponsored by the Washington soldiers⁽²⁾ home.

(d) Maximize all benefits and entitlements for which they are eligible, utilizing services, and/or obtaining goods available through such local, state, or federal programs prior to utilizing services or obtaining goods through the ~~((soldiers' home))~~ facility.

(e) Failure to comply with any subsection of WAC 484-20-089 may result in denial of benefits received under this section. Notice of such denial will be given in accordance with WAC 484-20-103.

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-090 ((Rules of conduct.)) Facility rules. Residents of the state veterans homes are ~~((required))~~ expected to comply with the following facility rules ~~((of conduct.))~~. The following facility rules ~~((of conduct.))~~ apply to all residents ~~((of the homes.))~~:

(1) Health and safety rules.

(a) Emergency evacuation. Any time a fire or alarm is sounded, domiciliary residents must immediately evacuate the building and report to the designated evacuation area. Residents may not enter the evacuated building until designated staff indicate all is clear. Nursing care unit residents must follow the instructions of the nursing staff.

(b) Community living skills. Resident personal hygiene and community living skills must meet established fire, safety and health-sanitation codes. Each resident shall accomplish and/or assist with maintaining their personal hygiene and living quarters as defined in their ~~((patient))~~ comprehensive care/service plan. Vacated rooms shall be left in a clean condition.

(c) Electrical appliances. Only low wattage household type electrical appliances such as television sets, electric clocks, electric razors, fans of 150 watts or less with acceptable finger guards, radios, audio and/or video recorders (VCRs), and disc playing machines may be used in resident's rooms. Use of any other electric equipment requires the written approval of the superintendent.

(d) Repair of rooms. Residents shall not alter or repair their living quarters or other common use areas. This includes but is not limited to walls (e.g., for hanging pictures), other flat surfaces, electrical systems, television/cable hook-ups, phone hook-ups, heating systems, and plumbing. All such alterations^(#) and/or repairs shall be accomplished by ~~((home))~~ facility staff. Requests for alterations^(#) and/or repairs shall be made through staff designated ~~((by the superintendent or his/her alternate))~~ to the plant manager.

(e) Alcohol - drugs. Possession or use of intoxicating beverages, narcotics, or controlled substances on the grounds of ~~((the Washington))~~ a state veterans ~~((⁽⁻⁾))~~ home ~~((⁽⁺⁾))~~ or during off-grounds activities sponsored by the ~~((home⁽⁺⁾))~~ facility without a physician's written prescription is prohibited. Drugs which were prescribed by a physician but which are no longer used by the resident to whom they were issued, shall be turned in to the ~~((home))~~ facility's pharmacy.

(f) Weapons. Possession of firearms, ammunition, explosive or dangerous weapons is prohibited.

(g) Animals. Possession or feeding of animals on ~~((home grounds))~~ facility property is prohibited except when specifically sanctioned by the superintendent.

(2) General facility rules ~~((of conduct))~~.

(a) Visiting hours. Normal visiting hours for guests are 8:00 a.m. to 10:00 p.m.

(b) Program listening. Radios, TVs, and tape recording-playing devices such as video tape recorders (VCRs) and cassette players may be used in resident's rooms. Volume levels of such equipment must be kept at a level that does not disturb others. Between the hours of 10:00 p.m. and 7:00 a.m., volume on such equipment must be reduced to match reduced noise levels in the general surroundings so that others will not be disturbed. The use of headphones ~~((while not required))~~ is strongly encouraged for those who wish to use such equipment after 10:00 p.m.

(c) Leave. Residents leaving the grounds for any purpose must sign out at designated locations ~~((in such a manner as prescribed by the home administration))~~. Upon returning, the resident must sign in again. After returning from overnight pass ~~((or))~~, furlough or social leave, the resident must ~~((stay in his/her room))~~ remain on the grounds overnight before permission to go on an additional overnight pass ~~((or))~~, furlough or social leave can be granted, except in the case of emergency. Leaving the grounds without proper authorization, or failure to return from overnight pass ~~((or))~~, furlough or social leave at the prescribed time without obtaining permission for an extension, ~~((makes the resident absent without official leave))~~ may result in the resident being discharged in accordance with WAC 484-20-120. Residents being admitted to the ~~((home))~~ facility must remain ~~((in their rooms))~~ on the grounds overnight before overnight pass or leave privileges may be exercised unless an exception is granted by the ~~((administration))~~ superintendent.

(d) Respect for property. No person may deface or destroy walls, buildings, trees, shrubbery, fences, grounds, or any other property or possessions belonging to the state of Washington or to any other person. Appropriation of the property of another person, corporate entity or the state of Washington without permission is also prohibited. Residents are required to reimburse the ~~((home))~~ facility for theft and intentional or negligent injury to state property.

(e) Vehicle registration. Vehicles kept on ~~((home grounds))~~ facility property must be registered at least annually with the facility administration ~~((of the home))~~. Residents who drive on the ~~((home grounds))~~ facility property must: Possess a valid Washington state driver's license; provide proof of ownership and/or registration; and, show proof of at least minimal insurance as required by Washington state financial responsibility law. The requirement to register applies to vehicles owned by residents,

owned by another and registered in the name of the resident, and/or any vehicle regardless of ownership that is regularly in the possession of the resident. Vehicles must have current license tags and they must display the ~~((home))~~ facility identification sticker. All traffic and parking control signs must be obeyed. ~~((Residents must comply with the provisions of the Washington state financial responsibility law.))~~

(f) Personal conduct between residents and ~~((staff))~~ others. Residents will conduct themselves in an orderly, courteous, and cooperative manner at all times. Obscene, sexually or racially demeaning, threatening language, or behavior, or physically assaultive behavior, directed at another person, whether on the grounds or off the grounds during a ~~((home))~~ facility-sponsored activity, will be considered a violation of this rule. ~~((Residents will obey all valid instructions directed at them by staff acting in an official capacity.))~~

~~((g) Attire of home residents. Residents must dress in a manner so as not to reasonably offend the sensitivity of others.))~~

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-095 Supplementary policies and procedures. The superintendent of each ~~((home))~~ facility shall establish supplementary policies and procedures consistent with the substance and intent of the rules in this chapter and existing federal and state statutes and standards. ~~((The resident council shall be afforded the opportunity for input into such supplementary policies and procedures. The superintendent will give due and proper consideration to such input.))~~

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-100 Violation—Investigation. (1) Reports of possible facility rule violations shall be investigated by the superintendent or his/her designee. ~~((The superintendent charging a violation of the rules or other misconduct by a resident shall have the burden of establishing the violation by clear, cogent and convincing evidence.))~~ The investigation shall include a referral to the patient care planning team to rule out health related causes.

(2) The patient care planning team shall document actions taken to review the rules violations with the resident and any resulting modifications to the care plan.

(3) Should the investigation reveal that the resident has violated facility rules on several occasions and has failed to follow through with recommended treatment, counseling, and/or corrective actions, as documented in the clinical record, the investigation shall be forwarded to the superintendent for review and determination of appropriate administrative action. Any administrative action proposed pursuant to this section shall be given in accordance with WAC 484-20-103.

NEW SECTION**WAC 484-20-103 Administrative action, notice of.**

The facility shall provide residents and if known, a family member or legal representative of the resident with appropriate notice of any proposed administrative action, as defined in RCW 34.05.010(3). Such notice shall be in writing at least thirty days before the effective date (or as soon as practicable in the case of discharge under the provisions of WAC 484-20-120(5)) and shall state:

- (1) The reason for the action, to include the RCW and/or WAC authority for the proposed action;
- (2) The effective date of the proposed action;
- (3) (For transfer or discharge actions) - the location to which the resident is to be transferred or discharged;
- (4) A statement that the resident has the right to appeal the proposed action under the provisions of WAC 484-20-105; and
- (5) Information on how to file an appeal.

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-105 ((Penalties.)) Dispute settlement.
~~((The superintendent may impose penalties for the violation of rules of conduct, for gross misconduct or for willful failure to comply with any responsibility placed upon them by WAC 484-20-065; such penalties may include:~~

- ~~(1) Restricting the resident to the home grounds for a maximum of sixty days when determined appropriate by the superintendent, a reasonable requirement for signing in at designated intervals may be imposed during a period of restriction;~~
- ~~(2) An enforced furlough to a maximum of sixty days;~~
- ~~(3) A combination of penalties in subsections (1) and (2) of this section provided the combined total time does not exceed sixty days;~~
- ~~(4) Transfer to another DVA home or colony;~~
- ~~(5) Discharge from a home pursuant to WAC 484-20-120.))~~ Residents have two avenues of redress for administrative actions.

(1) Informal settlement. Informal settlement of matters that may make more elaborate proceedings unnecessary under this chapter is strongly encouraged. Use of the informal settlement process does not preclude a resident from requesting an adjudicative proceeding at any time during the informal settlement process.

(a) An informal settlement to review an administrative action by the department may be requested by forwarding a written request to the assistant superintendent, not later than twenty days following receipt of the written notice of an administrative action by the facility.

(b) Within ten days of receipt of the request for review, the assistant superintendent or his/her designee shall review the administrative action and make a recommendation to the superintendent for resolution.

(c) The superintendent shall inform the resident of his/her decision to uphold, modify or reverse the administrative action. Notification of the superintendent's decision will be given in accordance with WAC 484-20-103 and in all cases (except discharge from the facility), the superintendent's decision shall be final; except in the case of

a request to continue the matter through an adjudicative proceeding.

(d) In the case of discharge from the facility, the superintendent's decision shall be reviewed by the director for final determination of the appropriate resolution. In all cases of discharge from the facility, the director's decision shall be final; except in the case of a request to continue the matter through an adjudicative proceeding.

(2) Adjudicative proceeding. An adjudicative proceeding is the formal avenue of redress which a resident may request to review an administrative action, as defined in RCW 34.05.010(3), taken by the facility.

(a) An adjudicative proceeding may be requested by forwarding a written request to the superintendent, not later than twenty days following receipt of the written notice of an administrative action. All such requests shall:

(i) Include a statement of whether the resident is represented and, if so, the name and address of the representative;

(ii) Be signed by the resident or his/her legal representative; and

(iii) Be forwarded immediately to the office of administrative hearings for scheduling of an administrative hearing pursuant to chapters 34.05 and 34.12 RCW and chapter 10-08 WAC.

(b) Any administrative action (except discharge under WAC 484-20-120(5)) imposed pursuant to this chapter shall be deferred until the outcome of an adjudicative proceeding.

(c) Administrative hearings pursuant to this subsection shall be conducted in the facility in which the client resides; except in cases of discharge under WAC 484-20-120(5), the hearing shall be conducted in a location which is jointly agreed upon by both parties.

(d) Initial orders issued by the administrative law judge shall become final thirty days following issuance, unless the complaining party or the facility appeal the order. In the case of an appeal, the director or his/her designee, serving as the department's reviewing officer, shall conduct a review pursuant to chapter 34.05 RCW and issue a final order in accordance with WAC 484-20-103 in the matter under consideration.

NEW SECTION

WAC 484-20-111 Grievance procedure. (1) Department grievance procedures shall consist of an optional informal discussion process and a formal process.

(a) Any resident, his or her appointed representative, family member or advocate may file a grievance or complaint related in any way to the facility, another resident or a facility staff.

(b) A resident shall not be subject to discipline or retaliation for participating in any manner in the facility's grievance process.

(c) Residents are not prohibited from requesting an adjudicative proceeding or from filing a complaint with any pertinent State client advocacy group such as the state survey and certifications agency or the state ombudsman program at any time during the grievance resolution process.

(2) Informal discussion process. Residents are encouraged to attempt to resolve problems or complaints through an informal discussion with individuals who are involved.

A grievance investigator shall facilitate such a discussion upon request.

(3) Formal grievance process. The formal grievance process shall consist of:

(a) Filing. Residents who have a grievance or complaint may submit a complaint either orally or in writing. Any oral grievance or complaint shall be reduced to writing by the staff receiving the complaint.

(i) Grievances must be filed within fifteen days of the event or discovery of the event being grieved. This deadline may be extended for good cause at the discretion of the assistant superintendent.

(ii) Grievance forms are available and located in easily accessed locations throughout the facility. Completed grievance forms must be signed by the resident or individual filing the grievance on behalf of the resident and forwarded to the assistant superintendent for investigation.

(iii) At any point in the grievance process, a resident may choose to have another individual advocate on his/her behalf and/or accompany him/her to any investigative interviews.

(b) Investigation. The assistant superintendent shall investigate or appoint an appropriate staff to investigate all grievances received.

(i) The grievance investigation shall be completed within five days of receipt of the written grievance by the assistant superintendent.

(ii) The resident and/or person filing the grievance on behalf of the resident shall be informed in writing (in accordance with WAC 484-20-103) of the results of the investigation and the actions that will be taken to correct any identified problems.

(iii) The grievance investigation shall be conducted in such a manner as to maintain the confidentiality of the resident. Should the resident request assistance of an outside resident advocate, access to the resident's clinical or personal files shall be granted only with the written authorization from the resident.

(4) Should the resident not be satisfied with the results of the investigation or the recommended actions, he/she may request a review by the superintendent.

(a) Such a request shall be made in writing and submitted within ten days of receipt of the notice of the results of the grievance investigation.

(b) The superintendent shall consider all available information related to the grievance and issue a written decision (in accordance with WAC 484-20-103) on the matter within fifteen days of receipt of the review request.

(c) The superintendent's decision is final; except when the resident chooses to access the dispute settlement process allowed in WAC 484-20-105.

(5) Upon admission, each resident or his/her appointed representative shall receive oral and written information related to the facility's grievance procedure. Posters informing residents of the facility's grievance procedure and listing names and phone numbers of facility staff and outside resident advocates who are available to assist with complaint resolution shall be placed in locations within each facility where they are easily visible to residents.

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-115 Furlough—Non-Medicaid funded program residents. (1) ~~((Furlough time will be earned by the resident))~~ Residents of non-Medicaid funded programs earn furlough time at the rate of two days per month of ~~((residence))~~ residency.

(2) ~~((The superintendent may grant a))~~ Furlough may be granted ~~((to))~~ at the request of the resident.

~~((The))~~ (3) A furlough may not exceed thirty days at ~~((one))~~ a time except in the case of an emergency or extenuating circumstances.

~~((b))~~ As a disciplinary measure as provided in WAC 484-20-105.

~~((3))~~ (4) Authorized absences of ninety-six hours or less ~~((shall))~~ are not ~~((be))~~ considered furloughs.

~~((4))~~ (5) The superintendent or his designee may authorize furlough in advance of accrual only in the case of an emergency or extenuating circumstances.

NEW SECTION

WAC 484-20-116 Social leave—Medicaid funded program residents. (1) Residents of Medicaid funded programs earn social leave at the rate of one and one-half days per month of residency. Social leave may not exceed a total of eighteen days per year.

(2) All social leave must be approved by the resident's attending physician.

(3) Social leave for Medicaid recipients for:

(a) Periods over twenty-four hours, require notice be given to the appropriate CSO (community service office).

(b) Periods over thirty-six hours, require approval of the resident care plan by the appropriate CSO.

(c) Periods exceeding seven days, require written permission from the appropriate CSO.

(4) The appropriate CSO may approve social leave in excess of eighteen days per year. Approval must be in writing and received prior to departure from the facility.

(5) Facility staff shall assist residents in obtaining CSO approval for social leave.

NEW SECTION

WAC 484-20-117 Rehabilitation leave. Rehabilitation leave is granted for the sole purpose of permitting a resident the opportunity to reestablish residency in a community setting.

(1) Rehabilitation leave is granted in thirty-day increments not to exceed a total of ninety days.

(a) At the conclusion of each thirty-day increment, the resident shall contact the facility and either extend the rehabilitation leave for an additional thirty days or make arrangements to return to the facility.

(b) At the conclusion of the full ninety days, the resident shall request a discharge from the facility.

(2) To be eligible for rehabilitation leave, the resident shall comply with all of the following:

(a) Participate in counseling with social work and/or vocational rehabilitation staff and rehabilitation leave planning.

(b) Participate in counseling with family members if the resident shall be residing with family.

(c) Show proof of having established residency in the community through a rental agreement, a receipt showing prepayment for living quarters or evidence of other appropriate living arrangements.

(d) Demonstrate ability to manage financial resources and meet living expenses.

(e) Sign an agreement stipulating a payment schedule for any existing debts to the facility.

(f) Have written recommendations from the attending physician and social services staff; evaluating the potential success of the rehabilitation leave plan.

(3) A resident on rehabilitation leave may return at any time during the leave period; however immediate return shall be dependent upon the availability of a bed in the appropriate level of care. If a bed is not immediately available, the resident shall be placed at the top of the appropriate waiting list and shall be readmitted as soon as a bed is available.

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-120 Discharge. (1) A ~~((resident may receive an honorable))~~ discharge from ~~((the))~~ a state veterans home ~~((when))~~ or denial of colony program benefits may be issued:

~~((a))~~ (a) ~~At the ((member so requests and has liquidated all outstanding indebtedness to the home))~~ request of a resident; or

(b) ~~When the resident has sufficient financial resources to support community living;~~ or

(c) ~~When the resident's health has improved sufficiently so the resident no longer needs the care and services of the ((home)) facility, regardless of financial ability;~~ or

(d) ~~When the care requirements of the resident cannot be provided by the ((home)) facility;~~ or

~~((2))~~ A resident may receive a disciplinary discharge:

~~((a))~~ (e) For failure to comply with the provisions of WAC 484-20-065~~((Use of resident's income and assets));~~

or

~~((b))~~ (f) For conviction of a felony or gross misdemeanor; or

~~((c))~~ (g) For repeated violation of the ~~((general))~~ facility rules ~~((of conduct, WAC 484-20-090));~~ or

~~((d))~~ (h) For ~~((gross misconduct when such))~~ conduct ~~((poses an immediate danger to the safety of other residents and/or staff~~

~~((e))~~ described in subsection (5) of this section; or

(i) When a resident has been absent without leave for a period in excess of fifteen days; or

~~((f))~~ As the result of the director's final decision following a fair hearing which upholds the original findings and penalties imposed upon a resident in accordance with the provisions of WAC 484-20-100 and 484-20-105.

(3) A provisional honorable discharge may be given by a home superintendent to a resident with outstanding indebtedness to the home who agrees to liquidate the outstanding amount within a mutually agreed upon time period. Such provisionary discharges shall be changed by the superintendent to a disciplinary discharge upon the

resident's failure to fulfill the requirements of the agreement to liquidate indebtedness.

~~((4))~~ Any discharge from the home shall be reduced to writing. If the discharge is disciplinary, it shall state the reasons for the action. All discharges shall be subject to the provisions of WAC 484-20-110.) (j) When an initial order issued pursuant to WAC 484-20-105 becomes final; or

(k) Colony program benefits may be denied for failure to comply with the provisions of WAC 484-20-089.

(4) All discharge notices shall be given in accordance with WAC 484-20-103 and all discharges shall be subject to the provisions of WAC 484-20-105.

(5) Any resident who strikes, threatens another person with bodily harm, is found in possession of a lethal weapon or illegal drugs shall be considered a threat to the health and safety of others. Review of such circumstances may be cause for immediate discharge from the facility in accordance with RCW 34.05.479. In such circumstances, notice pursuant to WAC 484-20-103 shall be given as soon as practicable.

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-135 Transfer. (1) A resident may apply for transfer to either state veterans home or the colony located at Orting. ~~((Transfer shall be approved upon recommendation of the appropriate superintendent(s).))~~

~~((2))~~ A resident may be transferred from one veterans' home to another upon recommendation of the transferring and the receiving superintendents and authorization by the director when such transfer is for medical reasons.) Requests for transfer are to be forwarded to the admissions team.

(2) All such requests shall be reviewed by the admissions team, using the admissions criteria.

(3) In addition, the admission team shall contact the superintendent of each state veterans home to obtain other information which may be pertinent to the transfer request.

(4) The admission team shall make a recommendation to approve or deny the transfer.

(5) The names of residents who are approved for transfer shall be placed on the waiting list for the program or service which the admission team has determined shall be most appropriate for their health care needs. The position on the waiting list shall be determined by the date on which the transfer was approved.

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-140 Readmission. ~~((A former resident who requested voluntary discharge and received an honorable discharge may not apply for readmission until three months after discharge.~~

A former resident who received a disciplinary discharge may not apply for readmission until twelve months after discharge.

The superintendent may approve exceptions on a case-by-case basis, following review of the circumstances of the discharge.) Former residents may apply for readmission to the facility by submitting an application in accordance with WAC 484-20-105.

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-145 Burial. (1) The superintendent may authorize burial in ~~((home cemeteries for))~~ the cemetery operated by the facility when the deceased is:

~~((1))~~ (a) A ~~((deceased))~~ resident for whom other burial arrangements have not been made;

~~((2))~~ (b) The ~~((deceased))~~ spouse of a former resident who is buried in the ~~((home))~~ facility cemetery, unless the spouse ~~((shall have))~~ has remarried~~((, or~~

~~((3))~~ ~~Cremated remains of a spouse, or other family member of a spouse who has not remarried since the death of a resident who is buried in the home cemetery, so long as)).~~ The deceased spouse shall be cremated and burial will be in the same gravesite as the former resident.

~~((All costs of))~~ (2) Funeral arrangements and all burial costs shall be the responsibility of the deceased individual's estate or the next of kin.

AMENDATORY SECTION (Amending WSR 92-17-046, filed 8/14/92, effective 9/14/92)

WAC 484-20-150 Population level. The superintendents shall keep the population of the state veterans homes as close to full capacity as possible provided; such population approximates the population ~~((for which budgeted by the legislature. Residents will be assigned to a level of care consistent with their health care needs))~~ submitted and approved in the department's budget.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 484-20-075 Aid and attendance account.
- WAC 484-20-110 Fair hearing.

WSR 94-09-045
PROPOSED RULES
CODE REVISER'S OFFICE
 [Filed April 19, 1994, 2:35 p.m.]

Original Notice.

Title of Rule: Amending WAC 1-21-010 Preproposal comments and 1-21-170 Official forms.

Purpose: To amend WAC 1-21-010 and 1-21-170 to reflect the new requirements required by section 1, chapter 249, Laws of 1994.

Statutory Authority for Adoption: RCW 1.08.110, 34.05.385, and 34.08.030.

Statute Being Implemented: RCW 34.05.310, as amended by section 1, chapter 249, Laws of 1994.

Summary: Amending WAC 1-21-010 and 1-21-170 to clarify the guidelines of the preproposal statement of intent required by RCW 34.05.310.

Reasons Supporting Proposal: The legislature passed and the governor signed chapter 249, Laws of 1994 (2ESHB 2510) which requires state agencies to prepare and file a statement of intent with the Code Reviser's Office.

Name of Agency Personnel Responsible for Drafting: Gary Reid, Chief Assistant Code Reviser, Legislative

Building, Olympia, 753-1440; Implementation and Enforcement: Code Reviser's Office, Legislative Building, Olympia, 753-1440.

Name of Proponent: Code Reviser's Office, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: RCW 34.05.310, as amended by section 1, chapter 249, Laws of 1994 now requires state agencies to prepare and file a statement of intent before filing the formal notice under RCW 34.05.320. This rule will further clarify the guidelines of the statement of intent required by RCW 34.05.310.

Proposal Changes the Following Existing Rules: WAC 1-21-010, changes the caption and text to reflect the changes required by chapter 249, Laws of 1994 and further clarify the CR-101 form; and WAC 1-21-170, changes the caption of the CR-101 form from Preproposal Comments to Preproposal Statement of Intent.

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

The Code Reviser's Office has determined that the rule is not subject to the Regulatory Fairness Act because the rule is for the purpose of implementing the requirements of RCW 34.05.310 and will not impact businesses.

Hearing Location: House Rules Room, Legislative Building, Southwest Corner, on May 25, 1994, at 9:00 a.m.

Submit Written Comments to: Kerry Radcliff, Code Reviser's Office, P.O. Box 40551, Olympia, WA 98504-0551, FAX (206) 586-6480, by May 24, 1994.

Date of Intended Adoption: May 31, 1994.

April 19, 1994
 Dennis W. Cooper
 Code Reviser

AMENDATORY SECTION (Amending Order 89-1, filed 5/31/89)

WAC 1-21-010 Preproposal ~~((comments))~~ statement of intent. ~~((An agency that wishes))~~ To solicit comments from the public ~~((under))~~ as required by RCW 34.05.310 on a subject of possible rule making, but before a formal notice is filed under RCW 34.05.320, ~~((may))~~ an agency shall complete and file with the code reviser's office a CR-101 form (Preproposal ~~((Comments))~~ Statement of Intent. The text of the new rule is neither required nor recommended at this stage, but if text is submitted for filing, it must meet the form and style requirements of WAC 1-21-110 through 1-21-130. The filing will appear in the Register in accordance with the schedule provided in WAC 1-21-040.

AMENDATORY SECTION (Amending Order 89-1, filed 5/31/89)

WAC 1-21-170 Official forms. Agencies may obtain the following official forms from the code reviser's office upon request:

- (1) Form CR-101 Preproposal ~~((Comments))~~ Statement of Intent
- (2) Form CR-102 Proposed Rule Making
- (3) Form CR-103 Rule-making Order
- (4) Form CR-104 Review of Previously Adopted Rules.

PROPOSED

WSR 94-09-046
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
 [Filed April 19, 1994, 3:57 p.m.]

Cereals	1 1/4 lb.	13.50	9.00	11.50	25.00	21.00
Other crops	4 oz.	13.50	9.00	11.50	25.00	21.00
Mixture (for each additional kind)		10.50		13.00		21.00
Beets		18.00	8.50	17.00	35.00	
Rapeseed		32.00	9.00	16.00	48.00	21.00
Carrot		13.50	9.00	11.50	25.00	36.00

Original Notice.

Title of Rule: Chapter 16-304 WAC, Sampling and testing of seeds, chapter 16-313 WAC, Blending of certified seed, and chapter 16-316 WAC, Seed certification.

Purpose: To increase fees, and to revise seed certification rules as requested by industry and seed branch.

Statutory Authority for Adoption: Chapter 15.49 RCW.
 Statute Being Implemented: Chapter 15.49 RCW.

Summary: A proposal to increase fees and to adopt rule changes affecting seed certification procedures and policies.

Reasons Supporting Proposal: Rising costs of operation of the seed branch to meet industry requirements and to support seed industry requests for revised seed certification rules.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Max G. Long, 2015 South 1st Street, Yakima, WA 98903, (509) 575-2750.

Name of Proponent: Department of Agriculture, governmental.

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

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

Proposal Changes the Following Existing Rules: Fee increases and revision of seed certification rules.

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

Hearing Location: Ag Service Center Conference Room, 2015 South 1st Street, Yakima, WA 98903, on May 24, 1994, at 1:15 p.m.

Submit Written Comments to: Max G. Long, 2015 South 1st Street, Yakima, WA 98903, by May 24, 1994.

Date of Intended Adoption: May 27, 1994.

April 19, 1994
 K. Diane Dolstad
 Assistant Director

AMENDATORY SECTION (Amending WSR 91-21-043, filed 10/11/91, effective 11/11/91)

WAC 16-304-040 Schedule of charges. (1) Testing fees shall be as follows:

SAMPLE SIZE	MIN.	PURITY	NOXIOUS ONLY (a)	GERM (b)	TETRAZOLIUM AND SEEDS	
					GERM (c)	Seeds (d)
Bentgrass	2 oz.	\$30.00	\$15.00	\$16.00	\$46.00	\$21.00
Bluegrass	4 oz.	21.00	13.00	14.00	35.00	21.00
Bromegrass	6 oz.	22.00	13.00	11.50	32.50	21.00
Fescue	4 oz.	21.00	13.00	11.50	32.50	21.00
Orchardgrass	4 oz.	24.00	15.00	13.00	37.00	21.00
Ryegrass	4 oz.	21.00	13.00	10.50	31.50	21.00
Crested Wheatgrass	4 oz.	25.00	15.00	14.00	39.00	21.00
Other Wheatgrasses	6 oz.	36.00	22.00	14.00	50.00	21.00
Other grasses	4 oz.	17.00	10.50	10.50	27.50	21.00
Beans and peas	1 1/4 lb.	13.00	7.50	11.50	24.50	21.00

(a) Purity analysis to determine percent pure, other crop, inert, and weeds based on working sample as prescribed by Federal Seed Act (example: One gram bluegrass; five grams alfalfa; and one hundred grams wheat) and examined for Washington state noxious weeds based on minimum sample size as prescribed by Federal Seed Act (example: Ten grams bluegrass; fifty grams alfalfa; five hundred grams wheat).

(b) Germination test prescribed by Federal Seed Act to determine percent germination of seed sample based on four hundred seeds.

(c) Purity and germination includes both (a) and (b). This combination of tests provides information needed to label seed under state and federal acts.

(d) Tetrazolium test—a chemical test that measures viability and germination potential. (A germination test should also be obtained.))

FIELD CROPS:	MINIMUM SAMPLE SIZE	PURITY	GERMINATION	TZ
alfalfa	4 oz	14.00	12.00	22.00
alkaligrass	4 oz	18.00	11.00	22.00
barley	1.25 lb	14.00	12.00	22.00
bentgrass	2 oz	32.00	17.00	22.00
bermudagrass	4 oz	18.00	11.00	22.00
black medic	4 oz	14.00	12.00	22.00
bluegrass	4 oz	22.00	15.00	22.00
brassica sp.	6 oz	34.00	17.00	22.00
brome-mountain brome-smooth	6 oz	23.00	12.00	22.00
meadow buckwheat	6 oz	23.00	12.00	22.00
buckwheat	1.25 lb	14.00	12.00	22.00
canarygrass	8 oz	18.00	11.00	22.00
clover	4 oz	14.00	12.00	22.00
fescue	4 oz	22.00	12.00	22.00
flax-lewis	4 oz	14.00	12.00	22.00
foxtail	4 oz	14.00	11.00	22.00
garbanzo bean	1.25 lb	13.00	12.00	N/A
indian ricegrass	6 oz	18.00	11.00	22.00
junegrass	6 oz	18.00	11.00	22.00
lentil	1.25 lb	14.00	12.00	N/A
little bluestem	4 oz	21.00/hr	11.00	22.00
lupine	1.25 lb	14.00	12.00	N/A
milkvetch	1.25 lb	14.00	12.00	22.00
millet	1.25 lb	14.00	12.00	N/A
needle & thread	6 oz	18.00	11.00	22.00
needlegrass, green	6 oz	18.00	11.00	22.00
oatgrass	6 oz	18.00	11.00	N/A
oats	1.25 lb	14.00	12.00	22.00
orchardgrass	4 oz	25.00	13.00	22.00
peas	1.25 lb	13.00	12.00	N/A
prairie sandreed	6 oz	18.00	11.00	22.00
primrose	4 oz	14.00	12.00	N/A
redtop	2 oz	32.00	17.00	22.00
rice	1.25 lb	14.00	12.00	N/A
rye	1.25 lb	14.00	12.00	22.00

<u>ryegrass, perennial</u>	4 oz	22.00	11.00	22.00
<u>ryegrass, annual</u>	4 oz	22.00	11.00	22.00
<u>safflower</u>	1.25 lb	14.00	12.00	N/A
<u>sainfoin</u>	1.25 lb	14.00	12.00	N/A
<u>sand dropseed</u>	4 oz	18.00	11.00	22.00
<u>sand lovegrass</u>	4 oz	18.00	11.00	22.00
<u>sideoats grama</u>	4 oz	21.00/hr	11.00	22.00
<u>small burnett</u>	8 oz	14.00	12.00	N/A
<u>sorghum</u>	1.25 lb	14.00	12.00	N/A
<u>sudangrass</u>	8 oz	14.00	12.00	22.00
<u>sunflower</u>	1.25 lb	14.00	12.00	N/A
<u>swiss chard</u>	1.25 lb	34.00	18.00	N/A
<u>switchgrass</u>	4 oz	18.00	11.00	22.00
<u>timothy</u>	4 oz	18.00	11.00	22.00
<u>trefoil</u>	4 oz	14.00	12.00	N/A
<u>triticale</u>	1.25 lb	14.00	12.00	22.00
<u>vetch</u>	1.25 lb	18.00	12.00	22.00
<u>wheat</u>	1.25 lb	14.00	12.00	22.00
<u>wheatgrass, beardless</u>				
<u>slender</u>				
<u>thickspike</u>	6 oz	38.00	15.00	22.00
<u>wheatgrass, bluebunch</u>	6 oz	38.00	15.00	22.00
<u>wheatgrass, crested</u>	4 oz	26.00	15.00	22.00
<u>wheatgrass, tall</u>				
<u>intermediate</u>				
<u>pubescent</u>	6 oz	38.00	15.00	22.00
<u>wheatgrass, western</u>	6 oz	38.00	15.00	22.00
<u>wildrye</u>	6 oz	18.00	11.00	22.00
<u>zoysia</u>	4 oz	18.00	11.00	22.00
VEGETABLES:				
<u>asparagus</u>	1.25 lb	14.00	12.00	N/A
<u>beans</u>	1.25 lb	13.00	12.00	N/A
<u>beets</u>	1.25 lb	19.00	18.00	N/A
<u>cantaloupe</u>	1.25 lb	14.00	12.00	N/A
<u>carrot</u>	4 oz	14.00	12.00	38.00
<u>celery</u>	4 oz	14.00	12.00	N/A
<u>corn</u>	1.25 lb	14.00	12.00	N/A
<u>cucumber</u>	1.25 lb	14.00	12.00	N/A
<u>dill</u>	4 oz	14.00	12.00	N/A
<u>eggplant</u>	4 oz	14.00	12.00	N/A
<u>endive</u>	4 oz	14.00	12.00	N/A
<u>leek</u>	8 oz	14.00	12.00	N/A
<u>lettuce</u>	4 oz	14.00	12.00	N/A
<u>okra</u>	4 oz	14.00	12.00	N/A
<u>onion</u>	8 oz	14.00	12.00	N/A
<u>parsley</u>	4 oz	14.00	12.00	N/A
<u>parsnip</u>	4 oz	14.00	12.00	N/A
<u>pepper</u>	8 oz	14.00	12.00	N/A
<u>pumpkin</u>	1.25 lb	14.00	12.00	N/A
<u>radish</u>	1.00 lb	14.00	12.00	N/A
<u>spinach, New Zealand</u>	8 oz	14.00	12.00	N/A
<u>spinach</u>	8 oz	14.00	12.00	N/A
<u>squash</u>	1.25 lb	14.00	12.00	N/A
<u>tomato</u>	4 oz	14.00	12.00	N/A
<u>turnip</u>	6 oz	14.00	12.00	22.00
<u>watermelon</u>	1.25 lb	14.00	12.00	N/A

(2) Special tests: (Standard noxious exam size unless otherwise specified).

(a) Crop and ~~(/or)~~ weed exam ~~((Noxious only fee plus \$ 3.50))~~

Purity fee minus \$5.00

(or hourly rate when applicable, hourly rate applies when a larger amount is requested)

~~((Required crop exam))~~ Crop and weed exam is required for all foundation and registered class grass seeds.)

All crop seeds and/or all weed seeds are listed as number per pound.

(b) Poa annua check for bentgrass and bluegrass - each five grams ~~(((\$16.00))~~
\$17.00

Poa annua check for other grasses - each 10 grams ~~(((\$16.00))~~
\$17.00

(c) Sod seed analysis - Bluegrass ~~(((\$56.00))~~
\$60.00

Fescue ~~(((\$40.00))~~
\$42.00

Ryegrass ~~(((\$32.00))~~
\$34.00

(A special test of turf grasses - for those who need a detailed examination of seed before purchase and/or use.)

Bluegrass test includes purity, twenty-five gram ~~((all weed/ all))~~ crop ~~((-except))~~ and weed exam, and ten gram Poa annua ~~((exam))~~ check. Ryegrass and Fescue test includes purity ~~((τ))~~ and fifty gram ~~((all weed/all))~~ crop and weed exam. (Fluorescence required on ryegrass; germ and fluorescence test additional fee.)

(d) Fluorescence test - (four hundred seed test) \$13.00

(e) Pest and disease, soil exam or similar ~~(((\$16.00))~~
\$17.00

(Reported on seed analysis certificate.) A visual examination of a representative sample.

(f) Sod analysis check - twenty-five gram exam to evaluate if a lot appears to be sod quality (phone report only) ~~(((\$18.00))~~
\$19.00

(g) Variety separation of Kentucky bluegrass ~~(((\$18.00))~~
\$19.00

If separated at time of purity analysis \$ 9.00

(h) Sodium hydroxide test for presence of red and/or white wheat \$10.00

(i) Brassica seed chemical identification test . \$10.00

(j) Analysis of partially cleaned, uncleaned or field run seed with excessive inert, other crop or weed seeds (per hour) ~~(((\$20.00))~~
\$21.00

(k) Fescue seed fluorescence test - a test required to determine presence of other fine fescue species in hard fescue and sheep fescue ~~((which is))~~ - required on certified samples ~~(((\$14.00))~~
\$15.00

~~((τ))~~ Inventory testing for germination: A service to provide opportunity to have carry-over seed stocks except mixtures tested at lowest possible charge. Not an official germination test.

~~((τ))~~ * Reports may not be mailed until all tests are completed.

~~((τ))~~ * Samples shall be plainly labeled "inventory samples."

~~((τ))~~ * Samples shall be reported according to the sender's designation. The laboratory shall assume no responsibility for correct identification. These samples and tests shall not become a part of our permanent record.

~~((τ))~~ * The fee for this service shall be one-half the regular germination fee.

((e)) * Inventory testing for germination will be run as germination space is available, with the understanding that regular service samples have priority.

((4) Miscellaneous laboratory fees:

- (a) Rush samples (including phone report if requested at time sample is submitted) \$12.00
- (b) Phone reports on test result, per call \$ 3.50
- (c) Preliminary report on germination (phone report only) \$ 8.00
- (d) Morphological test \$ 8.00
- (alfalfa or clover examined under magnification for combine damage.)

(e) Additional mailing of report

- (each destination) \$ 1.50
- (f) Recopies of reports (minimum fee) \$ 2.50
- Revised reports (minimum fee) \$ 5.00

(or hourly fee when applicable)

((g)) (m) Cold (vigor) test for wheat \$50.00

(n) I.S.T.A. rules test	PURITY	GERMINATION
Alfalfa, clover	(\$20.00)	\$14.00)
	\$21.00	\$15.00
Kentucky bluegrass	(\$30.00)	\$14.00)
	\$32.00	\$15.00
Peas, lentils	(\$20.00)	\$14.00)
	\$21.00	\$15.00

((h))

(o) Canadian rules test	PURITY	GERMINATION
Alfalfa, clover	(\$20.00)	\$11.50)
	\$21.00	\$12.00
Kentucky bluegrass	(\$30.00)	\$14.00)
	\$32.00	\$15.00
Peas, lentils	(\$20.00)	\$11.50)
	\$21.00	\$12.00
Bentgrass	(\$44.00)	\$16.00)
	\$47.00	\$17.00

((i)) (p) Seed count ~~(\$16.00)~~
\$17.00

((j)) (q) Extra charge for samples requiring special preparation for germination, i.e., New Zealand spinach, pelleted seeds, spinach, chard, etc. ~~(\$20.00)~~
\$21.00

((k)) (r) Hourly fee for miscellaneous services ~~(\$20.00)~~
\$21.00

((l) Service charge for submitted federal phytosanitary certificates, per certificate \$ 5.00

((m)) (s) All states noxious weed examination \$10.00

((n) Fee for special handling service (i.e., Federal Express, Air Parcel Post, or air freight) for documents or seed samples \$ 3.50

(o) Fee for facsimile transmission of documents, per document \$ 3.50

((p)) (t) Undesirable grass species examination (UGS test) \$12.00

AMENDATORY SECTION (Amending WSR 91-21-043, filed 10/11/91, effective 11/11/91)

WAC 16-304-050 Miscellaneous charges.

(1) ((Sanitary)) Phytosanitary certificate, each ~~(\$20.00)~~
\$21.00

Service charge for submitted federal phytosanitary certificates, per certificate \$ 5.00

(2) Rush samples (including phone or FAX report if requested at time sample is submitted) . . . \$12.00

(3) Phone reports on test result, per call . . . \$ 3.50

(4) Preliminary report on germination (phone report only) . . . \$ 8.00

(5) Additional mailing of report (each destination) . . . \$ 1.50

(6) Recopies of reports (minimum fee) . . . \$ 2.50

(7) Revised reports (minimum fee) . . . \$ 5.00
(or hourly fee when applicable)

(8) Fee for special handling service (i.e., Federal Express, Air Parcel Post, or air freight) for documents or seed samples . . . \$ 3.50

(9) Fee for facsimile transmission of documents, per document . . . \$ 3.50

~~((2) Service)~~

(10) Official sampling or similar service: The fee for each service requested shall be:

(a) Peas, beans, small grains or seeds of similar size per cwt . . . \$ 0.05

(b) For all other kinds - per cwt . . . \$ 0.15

(c) Minimum charge . . . ~~(\$20.00)~~
\$21.00

~~((3) Tagging and sealing or similar service: The fee for each service requested shall be:~~

~~(a) For all kinds of seed - per cwt . . . \$ 0.15~~

~~(b) Minimum fee . . . \$20.00~~

~~(4) Checkweighing, checkloading, or similar service shall be - per hour . . . \$20.00~~

~~Minimum fee . . . \$20.00~~

(5)) (d) If requested to make a special trip to provide a service, the person requesting said service may be charged at the rate of ~~(\$16.00)~~ \$17.00 per hour travel time plus mileage fee set by statute plus the specific fee for said service. All standby time shall be charged at the rate of ~~(\$20.00)~~ \$21.00 per man hour.

~~((6)) (11) Test plot examinations or consultant work in plots, fields, conditioning plants, etc. shall be at the rate of~~ ~~(\$20.00)~~ \$21.00 per hour plus mileage and travel time.

~~((7)) (12) Requests for services not listed - most appropriate fee.~~

AMENDATORY SECTION (Amending Order 2093, filed 6/9/92, effective 7/10/92)

WAC 16-304-110 Annual seed inspection charge.

Each person required to obtain a seed labeling permit, pursuant to RCW 15.49.400, of the Washington State Seed Act, shall also, pursuant to RCW 15.49.310 and 15.49.370, pay a general seed inspection charge annually to the department in the amount of ten cents per one hundred dollars gross annual dollar sales in excess of ten thousand dollars of agricultural and/or vegetable seed distributed in this state

during the preceding fiscal year: *Provided*, That no assessment shall be collected on (1) seed for which the assessment has been previously collected, except when such seed has been relabeled; (2) agricultural or vegetable seed distributed out of state; (3) seed distributed in containers of four ounces or less; (4) stock seed; and (5) seed distributed by governmental agencies, such as but not limited to the United States Department of Agriculture national foundation seed project: *Provided further*, That erroneous and overpayments shall be refunded on request. Requests for refund shall be filed by June 30 of the year following the due date. Agricultural and/or vegetable seeds distributed under bailment contract shall be valued at the producer-conditioner agreement rate in lieu of sale.

The assessment fees for the period beginning July 1, ~~((1994))~~ 1993, through June 30, ~~((1992))~~ 1994, shall be payable by February 1, ~~((1993))~~ 1995. The assessment fees for the period beginning July 1, ~~((1992))~~ 1994, through June 30, ~~((1993))~~ 1995, shall be payable by February 1, ~~((1994))~~ 1996.

The assessment may accompany the annual application for the seed labeling permit. A penalty of ten percent of the assessment fee or minimum of ten dollars, whichever is greater, shall be added to all assessments not paid by February 1. These funds shall only be used for seed control activities. The annual seed labeling permit may not be issued until all assessments and penalties have been satisfied.

AMENDATORY SECTION (Amending Order 2093, filed 6/9/92, effective 7/10/92)

WAC 16-304-130 Seed inspection assessment—
Effective dates. This rule is effective through June 30, ~~((1994))~~ 1996. Between January 1, ~~((1994))~~ 1996, and March 1, ~~((1994))~~ 1996, the assessment program shall be reviewed by the seed branch advisory committee, who will recommend whether to continue the seed assessment program. Such recommendations shall be considered at a public hearing under the authority of chapter 42.30 RCW, the Open Public Meetings Act, and chapter 34.05 RCW, the Administrative Procedure Act. The advisory committee shall also recommend the objectives of the seed quality control activities and shall review expenditures of assessment funds to verify such funds are being used only for seed quality control activities.

AMENDATORY SECTION (Amending Order 1615, filed 4/30/79)

WAC 16-313-015 Field run and remill blends. (1) Upon approval, field run lots may be commingled to facilitate ~~((processing))~~ conditioning. The blend fee shall not apply.

(2) Remill lots may be blended prior to testing to facilitate processing. A blend data sheet shall be filed prior to blending and laboratory analysis completed before tags can be issued.

AMENDATORY SECTION (Amending Order 1246, filed 4/13/72, effective 5/14/72)

WAC 16-313-035 Size of blend. Size of blend permitted shall be dependent on such factors as quality of lots being used and the facilities of the ~~((processing))~~ conditioning plant ~~((with the maximum size allowable based on ear lot rate structure)).~~

AMENDATORY SECTION (Amending Order 1649, filed 8/31/79)

WAC 16-316-0901 Standards for verification of turf seed ingredients. (1) The general rules for seed certification are basic and together with the following specific regulations constitute the rules for certification identity of mixtures of different kinds of certified seed.

(2) A blend data sheet, including proof of certification, verifying the origin and the certifying agency along with the analysis and pounds of each lot must be submitted to the certifying agency for approval.

- (3) Each lot of certified seed shall:
- (a) Meet standards acceptable to the certifying agency.
 - (b) Be sampled under supervision of the certifying agency prior to ~~((blending))~~ mixing. The sample shall be obtained in accordance with official sampling procedures. The sample shall be identified with:
 - (i) The verification of certification, origin, and certifying agency;
 - (ii) The kind/variety;
 - (iii) The analysis and size of lot.
 - (4) The certifying agency reserves the right to:
 - (a) Refuse permission to use individual lots;
 - (b) Approve the equipment to be used and procedure to follow in ~~((blending))~~ mixing;
 - (c) Approve the containers and labeling to be used;
 - (d) Sample the final ~~((blend))~~ mixture.

- (5) The certifying agency will identify each container with an official certification label verifying that the individual lots used were certified seed lots.
- (6) For a mixture to be labeled sod quality each component shall meet sod quality standards.
- (7) Fees for turf seed ~~((blending))~~ mixing shall be ~~((30¢ per 100 pounds based on the pounds of seed packaged, and 2¢ for each label used))~~ the same as the current blend fee.

AMENDATORY SECTION (Amending Order 1452, filed 5/13/76)

WAC 16-316-105 By whom certified. (1) Seed certification in the state of Washington is conducted by the Washington state department of agriculture in cooperation with the Washington State Crop Improvement Association, Inc.; Institute of Agricultural Sciences, Washington State University; and Association of Official Seed Certifying Agencies.

(2) Designation of the Washington State Crop Improvement Association, Inc. to assist in the certification of certain agricultural seeds was initiated in 1953. A revised memorandum of agreement between the Washington state department of agriculture and the Washington State Crop Improvement Association, Inc. designates the Washington State Crop Improvement Association, Inc., to act as the director's duly

authorized agent for the purpose of certifying seed of buckwheat, chickpeas, field peas, lentils, millet, soybeans, small grain, sorghum and forest trees.

(3) Certification of seeds other than buckwheat, chickpeas, field peas, lentils, millet, soybeans, small grain, sorghum and forest trees shall be conducted by the seed branch, state department of agriculture, Yakima.

AMENDATORY SECTION (Amending Order 2005, filed 5/22/89)

WAC 16-316-230 Alfalfa seed certification fees.

(1) Seedling applications: Due within sixty days after planting, however, may be accepted after due date at the discretion of the certifying agency.

(a) Seedling application fee:

Per variety, per grower \$15.00

(b) Late seedling penalty fee: \$30.00

This additional fee shall be charged for each seedling application received more than sixty days after planting.

(c) Seedling producing fee: (per acre) \$ 1.75

(Refundable if acreage is withdrawn before inspection.) Required of seedling fields to be harvested for certification the year of planting. Notification of seedling field to be harvested for certification and required fees are due July 31, however, may be accepted after due date with thirty dollars late penalty fee at the discretion of the certifying agency.

(2) Renewal applications: Due June 15, however, may be accepted after due date at the discretion of the certifying agency.

(a) Renewal application fee:

Per variety, per grower \$15.00

(b) Renewal acreage fee: (per acre) \$ 1.75

(Refundable if acreage is withdrawn before inspection.)

(c) Late renewal penalty fee: \$30.00

This additional fee shall be charged for each renewal application received after June 15.

(3) Reinspection: Other than isolation (each

field) \$40.00

If a field is rejected for certification, the grower may apply for reinspection after the cause for rejection has been corrected. Only two reinspections are permitted for each field each year.

(4) Production fee includes sampling and tagging

per cwt.: \$ 0.50

The sampling and production fees are billed at completion of tests. If none of the seed is tagged, ten cents of the fifty cents cwt. production fee charged is refundable.

(5) Seed shipped out-of-state for conditioning per cwt.

(unclean weight): \$ 0.19

(6) Purity and germination test: Fees as established by the director of agriculture.

~~((6))~~ (7) Fees for retagging, or services not listed in this rule shall be the most applicable fee established by the director of agriculture.

~~((7))~~ (8) Fees for reissue of tags shall be ten cents a tag with a minimum fee of ten dollars.

AMENDATORY SECTION (Amending Order 2093, filed 6/9/92, effective 7/10/92)

WAC 16-316-350 Grass seed certification fees—

Seedling applications. (1) All applications and fees for seedlings shall be due within sixty days of planting: *Provided*, That such applications may be accepted after due date at the discretion of the certifying agency upon payment of the late seedling penalty fee.

(a) Seedling application fee:

Per variety, per field \$15.00

(b) Late seedling penalty fee: (per kind) \$30.00

This additional fee shall be charged for seedling applications received after due date.

(c) Seedling producing application fee:

Per field, per grower \$15.00

Required of seedling fields to be harvested for certification the year of planting. Notification of seedling field to be harvested for certification and required fees shall be due July 31: *Provided*, That such application may be accepted after due date with thirty dollars late penalty fee at the discretion of the certifying agency.

(2) Renewal applications: Due May 1: *Provided*, That such applications may be accepted after due date at the discretion of the certifying agency upon payment of the late renewal penalty fee.

(a) Renewal application fee:

Per variety, per grower \$15.00

(b) Late renewal penalty fee: (per variety) . . \$30.00

This additional fee shall be charged for renewal applications received after May 1.

(c) Inspection fee per field \$30.00

(3) Annual grasses inspection fee: (per acre) . . \$ 1.75

Applications are due within sixty days after planting.

(4) Reinspection: Other than isolation (each

field) \$40.00

If a field is rejected for certification, the grower may apply for reinspection after the cause for rejection is corrected. Only two reinspections are permitted for each field each year.

(5) Inspection and final certification fees: Inspection and final certification fees shall be based on pounds sampled and billed upon completion of required tests (Option A). Those dealers requesting sampling and tagging privileges and/or participation in Option B shall sign a memorandum of agreement that shall expire on June 30 of each year. The memorandum may be terminated by the director if the conditioner violates certification standards or requirements of memorandum.

(a) Option A: When based on pounds sampled, and billed at completion of required laboratory tests, the fees shall be:

(i) Final certification fee \$ 0.80 per one hundred pounds. (If no seed is tagged, twenty cents of the final certification fee is refundable upon request.)

(ii) Seed shipped out-of-state for conditioning per one hundred pounds (unclean weight) \$ 0.30

(iii) Service fee for out-of-state origin \$ 0.30 per one hundred pounds.

~~((iii))~~ (iv) Blend fee shall be as established by blend rule, and in addition to above fees. However, blend fee not applicable to salvage blends.

~~((#))~~ (v) Payment of fees shall be the responsibility of the person signing the application. However, conditioner may assume this responsibility.

(b) Option B: When based on pounds tagged after required laboratory tests are completed, the fees shall be:

- (i) Final certification fee \$ 1.10 per one hundred pounds. (Minimum fee per tagging) \$10.00
- (ii) Service fee for out-of-state origin \$ 0.65 per one hundred pounds.

(iii) Blend fee (in addition to fee established by blend rule) shall be payable upon completion of blend on total weight of blend, and shall be as follows:

(A) Washington origin certified seed used in blend \$ 1.00 per one hundred pounds.

(B) Out-of-state origin certified seed used in blend \$ 0.60 per one hundred pounds: *Provided*, That those fees listed in (a) and (b) above are not applicable to certified seed that is tagged and sealed, and on which final fees have been paid.

(C) A refund or credit shall be issued for the percent of the blend lot not tagged. (For example, if forty percent of the blend is not tagged, forty percent of the fees charged under Option B above is refundable.) Requests for refunds shall be made by June 30 following final disposition of the blend.

(6) Payment of fees shall be the responsibility of the conditioner. A conditioner choosing this program shall handle all certified grasses in his warehouse under this program for the entire crop year. Upon termination or nonrenewal of Option B memorandum of agreement, conditioner shall be responsible for Option A fees on all certified seed not tagged at termination date.

(7) Fees for services such as O.E.C.D. and sod quality, etc., shall be in addition to the fees listed in these standards.

(8) Purity and germination test fees shall be as established by the director of agriculture.

(9) Fees for retagging, or services not listed in this rule shall be the most applicable fee established by the director of agriculture.

(10) Fees for reissue of tags shall be ten cents per tag with a minimum fee of ten dollars.

AMENDATORY SECTION (Amending Order 2005, filed 5/22/89)

WAC 16-316-440 Red clover seed certification fees.

(1) Seedling applications: Due within sixty days after planting, however, may be accepted after due date at the discretion of the certifying agency.

(a) Seedling application fee:
Per variety, per grower \$15.00

(b) Late seedling penalty fee: \$30.00
This additional fee shall be charged for each seedling application received more than sixty days after planting.

(c) Seedling producing fee: (per acre) \$ 1.75 (Refundable if acreage is withdrawn before inspection.) Required of seedling fields to be harvested for certification the year of planting. Notification of seedling field to be harvested for certification and required fees are due July 31,

however, may be accepted after due date with thirty dollars late penalty fee at the discretion of the certifying agency.

(2) Renewal applications: Due June 15, however, may be accepted after due date at the discretion of the certifying agency.

(a) Renewal application fee:
Per variety, per grower \$15.00

(b) Renewal acreage fee: (per acre) \$ 1.75 (Refundable if acreage is withdrawn before inspection.)

(c) Late renewal penalty fee: \$30.00
This additional fee shall be charged for each renewal application received after June 15.

(3) Reinspection: Other than isolation (each field) \$40.00

If a field is rejected for certification, the grower may apply for reinspection after the cause for rejection has been corrected. Only two reinspections are permitted for each field each year.

(4) Production fee: Includes sampling and tagging per cwt.: \$ 0.50

The production fee is billed at completion of tests. If none of the seed is tagged, ten cents of the fifty cents cwt. production fee charged is refundable.

(5) Seed shipped out-of-state for conditioning per cwt. (unclean weight): \$0.19

(6) Purity and germination test: Fees as established by the director of agriculture.

~~((#))~~ (7) Fees for retagging, or services not listed in this rule shall be the most applicable fee established by the director of agriculture.

~~((#))~~ (8) Fees for reissue of tags shall be ten cents a tag with a minimum fee of ten dollars.

AMENDATORY SECTION (Amending Order 5019, filed 11/23/93, effective 12/24/93)

WAC 16-316-474 Buckwheat—Chickpea—Field pea—Lentil—Millet—Soybean—Sorghum—Small grain—Application and fees.

(1) An application for seed certification with application fee, field inspection fee, and late application fee (if due) for each field shall be filed by or for each grower with Washington State Crop Improvement Association, Inc., the certifying agency for seeds of buckwheat, chickpea (garbanzo beans), field pea, lentil, millet, soybean, sorghum and small grains.

(2) Due dates:

- (a) Buckwheat - June 1
- (b) Field pea - June 1
- (c) Chickpea - June 1
- (d) Lentil - June 1
- (e) Millet - June 1
- (f) Soybean - July 1
- (g) Sorghum - July 15
- (h) Small grains - June 1 for both winter varieties and spring varieties.

(i) After due date, an application with late application fee may be accepted for service.

(3) Fees:

(a) Application fee per variety per grower ~~(\$15.00)~~ \$16.00

- (b) Field inspection fee per acre except millet and hybrid sorghum ~~(\$ 2.10)~~ \$ 2.25
- (c) Millet - first acre \$25.00
- each additional acre \$ 5.00
- (d) Hybrid sorghum - first acre \$25.00
- each additional acre \$10.00
- (e) Special field inspection fee per acre \$ 2.00
- (f) Late application fee \$15.00
- (g) Reinspection fee \$30.00

minimum for each field which did not pass field inspection plus \$ 0.40 for each acre over twenty-five. The reinspection fee for isolation requirements only for a field of any size is \$30.00.

- (h) Final certification fee ~~(\$ 0.19)~~ \$ 0.20
per cwt. of clean seed sampled, which shall be charged to conditioning plant, or production fee \$ 0.10
per cwt. of production from fields inspected which is utilized for seed, which shall be charged to the grower or the final

seller prior to brokerage, retail sale, sale to plant not approved for conditioning certified seed, or transshipment out-of-state.

- (i) Sampling fee \$ 0.10
per cwt. of clean seed sampled, with minimum charge of ten dollars per sample, which shall be charged to conditioning plant in lieu of mechanical sampling.

(4) A field may be withdrawn upon notification by the applicant to the certifying agency's office before field inspection. In such case, the field inspection fee shall be refunded upon request until June 30 of the year following harvest.

(5) Harvest before field inspection causes forfeitures of both the application and field inspection fees, and completion of certification.

AMENDATORY SECTION (Amending Order 5019, filed 11/23/93, effective 12/24/93)

WAC 16-316-717 Field pea standards. (1) Field pea - land, isolation, and field standards:

CLASS	LAND	ISOLATION	FIELD	OTHER CROP
	MINIMUM YEARS	MINIMUM FEET	OFF-TYPE MAXIMUM PLANTS/ACRE	MAXIMUM PLANTS/ACRE
Foundation	5*	100**	None found	None found***
Registered	3*	100**	10	None found***
Certified	2*	25**	20	None found***

** Reduce to three feet from fields producing a certified class of the same variety. In addition, each field pea field for certification must be isolated from small grain fields by three feet. To prevent mechanical field mixing of swathed field pea seedcrop, the planting of small grain between field pea fields, except for three feet of isolation, is recommended.

* Also required is minimum number of years the following crop kinds were out of production.

	NUMBER OF YEARS MINIMUM
Foundation	10
Registered	10
Certified	10

*** No Austrian pea or rye is permitted.

(2) Field pea - seed standards:

CLASS	OFF-TYPE MAXIMUM ((SEEDS/LB)) %	PURE SEED MINIMUM %	INERT MAXIMUM %	OTHER CROP MAXIMUM ((SEEDS/LB)) %	WEED MAXIMUM %	GERMINATION MINIMUM %
Foundation	None found	99.00	1.00	None found	None found	85
Registered	None found	99.00	1.00	None found	0.25**	85
Certified	(+) <u>0.03</u>	99.00	1.00	(3) <u>0.10*</u>	0.25**	85

* No Austrian pea or rye is permitted.

** Other tolerance for weed seed:

	OBJECTIONABLE WEED SEED MAXIMUM
Registered	1/lb
Certified	2/lb

AMENDATORY SECTION (Amending Order 5019, filed 11/23/93, effective 12/24/93)

WAC 16-316-727 Chickpea standards. (1) Chickpea - land, isolation, and field standards:

CLASS	LAND	ISOLATION	OFF-TYPE	OTHER CROP	ASCOCHYTA BLIGHT
	MINIMUM YEARS***	MINIMUM FEET	MAXIMUM PLANTS/ACRE	MAXIMUM PLANTS/ACRE	
Foundation	3	100*	None found	None found**	None found
Registered	3	100*	10	10**	None found
Certified	1	25*	20	20**	None found

* Reduce to three feet isolation from fields producing a class of certified seed of the same variety. In addition, field must be isolated from small grain fields by three feet. To prevent mechanical mixing of swathed chickpea seedcrops, the planting of small grains between fields, except for three feet isolation, is recommended.

** Refers to vetch except that no Austrian pea or rye is permitted

*** Field must not have grown Austrian pea for ten years.

(2) Chickpea - seed standards:

CLASS	OFF-TYPE	PURE SEED	INERT	OTHER CROP	WEED	GERMINATION
	MAXIMUM ((SEEDS/LB)) %	MINIMUM %	MAXIMUM %	MAXIMUM ((SEEDS/LB)) %	MAXIMUM %	MINIMUM %
Foundation	None found	99.00	1.00	None found	None found	85.00
Registered	None found	99.00	1.00	None found	0.25**	85.00
Certified	((±)) 0.03	99.00	1.00	((3)) 0.10*	0.25**	85.00

* No vetch, Austrian pea or rye is permitted.

** Other tolerance for weed seed:

OBJECTIONABLE WEED SEED
MAXIMUM

Registered	1/lb
Certified	2/lb

AMENDATORY SECTION (Amending Order 2093, filed 6/9/92, effective 7/10/92)

WAC 16-316-800 Grass varieties eligible. (1)

Following are the grass varieties eligible and the certifying scheme for each:

Bentgrass:
(subject to poa annua
quarantine)

Seaside Creeping***
Putter Creeping*
Emerald Creeping**
Carmen Creeping*
Cobra Creeping**
Tracenta Colonial*

Big Bluegrass:

Sherman**

Canada Bluegrass:
(subject to poa annua
quarantine)

Reubens**

Canby Bluegrass:

Canbar**

Kentucky Bluegrass:
(subject to poa annua
quarantine)

A-34 (Bensun)**
Abbey**
Able 1**
Adelphi**
Alene*
Alpine*
Amason* (Amazon*)
America*
Ampellia*
Apex*pvpV
Argyle**

Aspen*
Asset**
Banff**
Barblue*pvpV
Baron**
Birka*
Bono (Birdie)*
Bronco*
Chateau**
Cheri (Golf)*
Classic**
Cocktail**
Coventry**
Cynthia*
Destiny*
Dawn*
Eclipse*
Enmundi*pvpV
Estate*
Freedom*
Fylking**
Georgetown**
Geronimo*
Glade**
Gnome*
Greenley*
Haga*
Harmony*
Holiday*
Huntsville*
Ikone**
Julia*

Kelly*
 Kenblue*
 Kyosti*
 Leikra*
 Liberty**
 Limosine*
 Majestic**
 Marquis**
 Merion**
 Minstrel**
 Monopoly*
 Mystic*
 Nassau**
 Newport**
 Nugget*
 Nustar*
 Nutop*
 Parade*
 Park**
 Paso*
 Pennstar*
 Plush*
 ((Princeton-104*))
 P-104*
 Ram I*pvpV
 Ronde*
 Rugby*
 Scenic*
 Suffolk*
 Summit*
 Sving*
 Sydsport*
 S-21**
 Tendos*
 Touchdown**
 Trenton*
 Troy**
 Wabash*
 Washington*
 Welcome*
 1757*

Rough Bluegrass:

Meadow Brome:

Mountain Brome:

Smooth Brome:

Colt*
Polder**
 Regar**
 Bromar**
 Baylor*
 Beacon*
 Bravo*
 Cottonwood*
 Jubilee*
 Manchar**
 Rebound*
 Saratoga*
 York*

Fescue:
 (subject to poa annua
 quarantine - except tall
 and meadow fescue)

((Countess Chewings**pvpV
Amigo Tall*
Arid Tall*
Atlanta Chewings*
Avanti Tall**
Barcel Tall**pvpV
Barfalla Chewings**
Baruba Chewings*
Dover Chewings*
Durar Hard**
Finelawn 1 Tall**
Joseph Idaho**
Mary Chewings*
Nezpurs Idaho*pvpV
Logro Red**pvpV
Chesapeake Tall*
Manade Tall*
Mesa Tall
MX-86 Sheep*

Orchardgrass:

Redtop:

Indian Ricegrass:

Perennial Ryegrass:
 (subject to poa annual
 quarantine)

Puccinellia distans:

Rebel Tall*
5-DM Tall*
88001 Red**
Safe Tall*
Southern Cross Tall*
Covar Sheep**
Fawn Tall*
Beaumont Meadow*
First Meadow**
Forager Tall*
Wrangler Tall*
Biljart Hard*
Montauk Tall**
Silvana Hard*pvpV
Adventure Tall**
Atlanta Chewings*
Barfalla Chewings**
Baruba Chewings*
Countess Chewings**pvpV
Dover Chewings*
Mary Chewings*
Biljart Hard*
Durar Hard**
Scaldis Hard*pvpV
Silvana Hard*pvpV
Waldina Hard*
Joseph Idaho**
Nezpurs Idaho*pvpV
Beaumont Meadow*
First Meadow**
88001 Red**
Logro Red**pvpV
Hector Red*
Covar Sheep*
MX-86 Sheep*
5 DM Tall*
Adventure Tall**
Amigo Tall*
Arid Tall*
Avanti Tall**
Barcel Tall**pvpV
Chesapeake Tall*
Fawn Tall*
Finelawn 1 Tall**
Forager Tall*
Manade Tall*
Mesa Tall**
Montauk Tall**
Rebel Tall*
Rebel Jr Tall**
Safe Tall*
Southern Cross Tall*
Vegas Tall**

Hay King*
 Latar**
 Natsumidori
 Paiute**
 Pennlate*
 Potomac*

Streaker*

Nezpar**

Advent*
 All*Star**
 Dandy*
 Delray*
 Friend**pvpV
 Goalie*
 NK 200**
 Pennfine*
 Ranger**
 Target*
 89001*

Fults*

Timothy:

Clair*
Climax*
Hokuo*
Hokusen*
Kempus*
Kunpu*
Nosappu*
Promesse*
Senpoku*

Baker*pvvV
Big Ten*
Blazer*
Break-Thru**
Centurion*
((Challenger*))
Chief**
Cimarron*

Wheatgrass:

Whitmar Beardless**
Secar Bluebunch**
Fairway Crested*
Ruff Crested*
Nordan Crested**
Ephraim Crested**
Greenar
Intermediate**
Oahe Intermediate*
Tegmar Intermediate*
Greenleaf Pubescent*
Luna Pubescent**
Topar Pubescent**
P-27 Siberian**
Sodar Streambank**
Critana Thickspike**
Alkar Tall**

Cimarron VR*
Class*
Classic*
Commandor*
Crown*
Crown II*
Crusader**
DK-125*
DK-133*
DK-135*
((Drummer*))
Elevation*
Empress**
Endure*

Basin Wild Rye:

Magnar**

Excalibur*

Russian Wild Rye:

Bozoisky Select**

((Gladiator*))

(2) Variety restrictions.

NO. OF SEED HARVESTS
Foundation Registered Certified

(a) Kentucky Bluegrass:

	Foundation	Registered	Certified
Asset	5	5	5
Baron	5		5
Birka	2 + 3 Cert.		5
Cocktail	5	5	5
Enmundi	4		5
Georgetown	5		5
Geronimo	6		6
Kenblue	5		7
Majestic	3 + 5 Cert.		5
Minstrel	5	5	5
Parade	5		5
Ram-I	2		6
Rugby	3 + 2 Cert.		5
Sydsport			5
Touchdown	2 + 5 Cert.		5

(b) Orchardgrass:

Pennlate	3		6
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Fortress*
G-2815*
G-7730*
GH-737**
Hi-Phy*
Honeye*pvvV
Incentive*
Iroquois*
Julus*
Legend*
Madera*
Magnum III*
Maricopa*
Mecca*
Mesilla**
Mohawk*
Multiking 1*
Oneida*pvvV
Oneida VR*

AMENDATORY SECTION (Amending Order 2093, filed 6/9/92, effective 7/10/92)

WAC 16-316-820 Alfalfa varieties eligible. (1)

Following are the alfalfa varieties eligible and the certification scheme for each:

Agate*
Anchor*
Anstar*
Answer*
Aquarius*
Apollo II*
Armor*
Armona*
Arrow*
Atlas*
Atra-55*

Peak*
Perry*
((Phytor*))
Polar II*
Preserve*
Primal*))
Promise**
Quest**
Ranger**
Resistar*
Riley*
Royalty**
Saranac*
Saranac AR*pvvV
Shenandoah*
Shield*
Sparta*
Spredor 2*
Summit*

Sure*
 Sutter*
 Sverre*
 SX-217*
 SX-418*
 Thrive**
 ((Trumpetor*))
 Turbo*
 Ultra*
 Vernal*
 Vancor*
 Vernema*
 Viking 1*
 Vista*
 VS-888*
 WAMPR*
 Weevlchek*
 WL-317**
 WL-320**pvpV
 WL-322 HQ**
 WL Southern Special*
 Wrangler*
 Yolo*
 88*
 120*
 123*
 130*
 521*
 520*
 526*
 530*
 531*
 532*
 581*
 5262*
 5432*
 5373*
 5444*
 624*
 629*
 5311*
 5331*
 5333*
 5364*
 5472*
 98*
 G-2841*
 Verta*
 G-2852*
 GH 747*
 G-2833*
 DK-122*
 Bronco*
 2890*
 Precedent*
 Zenith*
 VS-775*

Express*
 Kitawakaba*
 Tachiwakaba*
 Vertus*

(2) Variety restrictions.

	Breeder	NO. OF SEED HARVESTS		Certified
		Foundation	Registered	
Answer		2		5
Apollo II				3
Baker	2	3		6
Blazer		3		
Break-Thru		3	3	5
Challenger	2	3		5
Chief		3	3	5
Crusader		3	3	5
Drummor	2	3		5
Empress		3	3	5
G-7730		3		5
GH 737		3	3	5
Honeoye		3		6
Iroquois		3		6
Oneida		3		6
Peak		3		
Perry	2	3		6
Preserve	2	3		5
Promise		3	3	5
Polar II	2	3		5
Quest		3	3	5
Resistar	2	3		6
Royalty		3	3	5
Saranac		3		6
Saranac AR		3		6
Spredor 2	2	3		5
Thrive		3	3	5
Trumpetor	2	3		5
Vancor	2	3		5
Vernema		4		6
WAMPR	2	3		6
WL-317		3	3	5
WL-322HQ		3	3	5
WL Southern Special				1
WL-320		3	3	5
Wrangler				6
120		3		
123		2		4
130		3		5
526		3		5

AMENDATORY SECTION (Amending Order 2093, filed 6/9/92, effective 7/10/92)

WAC 16-316-830 Bean varieties eligible. Following are the bean varieties eligible and the certification scheme for each:

- Red Mexican: NW-59** NW-63** Rufus**
U of I 42**
- Pinto: Holberg** Fiesta*pvpV NW-410** NW-590**
Nodak** Olathe**pvpV Pindak** U of I 114** Othello**
- Pink: Gloria** Harold** Roza**UI-537**
Victor** Viva**
- Small White: Chief** Bonus** Aurora**
- Kidney: Royal Red**,
Montcalm-Dark Red**,
Isabella-Light Red*, Kardinal**,
Kamiken**
- Snap Bean: Epoch**pvpV
- Navy: Bunsii**, C-20**, Hyden**, Laker**, Norstar**, NW 395**, Seafarer**
Duty (Pulsar)**
- Great Northern: Emerson**, Harris**

Black Turtle: Black Turtle Soup** #39**
Black Beauty** Ebony**pvpV, U of I 906**

April 20, 1994
Bethany Weidner
Deputy Commissioner

WSR 94-09-047
PREPROPOSAL COMMENTS
DEPARTMENT OF
GENERAL ADMINISTRATION
[Filed April 19, 1994, 4:43 p.m.]

Subject of Possible Rule Making: Rules are drafted to establish chapter 236-14 WAC, Parking program for state facilities off the state capitol grounds in Thurston County. These regulations establish equitable and consistent parking programs at state facilities, owned or leased, in Thurston County, and set parking fees.

Persons may Comment on this Subject in Writing: Steve Borchardt, APA Rules Coordinator, P.O. Box 41018, Olympia, WA 98504-1018, by 5 p.m., June 1, 1994.

Other Information or Comments by Agency at this Time, if any: These rules are required by "state capitol vehicle parking account," RCW 46.80.172 as amended which requires the director, general administration to establish equitable and consistent parking fees at state facilities to meet the legislature's intent of reducing state subsidization of parking. Once adopted, these rules will be applied throughout Thurston County at all state-owned/leased facilities.

April 11, 1994
Tim Arnold
Assistant Director

WSR 94-09-048
PREPROPOSAL COMMENTS
INSURANCE COMMISSIONER
[Filed April 20, 1994, 10:08 a.m.]

Subject of Possible Rule Making: Flexibility of benefit triggers — in order to be certain that policies sold today will provide coverage to insureds in the future even though the systems for delivery of health care may change during the term of the policy; standard definitions of "Activities of Daily Living" — including cognitive impairments; rate stabilization; nonforfeiture benefits; automatic policy "upgrades" and "down-grades"; automatic modification of benefits and/or premiums for in-force policies in case of state or federal health care reform measures which result in duplication of existing coverage; special rules for employer groups; limitations on agent compensation; alternate care issues; and amendments to disclosure requirements.

Persons may Comment on this Subject in Writing: Greg Scully or Melodie Bankers, Insurance Commissioner's Office, P.O. Box 40256, Olympia, WA 98504-0256, by May 31, 1994.

Other Information or Comments by Agency at this Time, if any: The Insurance Commissioner is looking for new and innovative approaches to the regulation of long-term care insurance policies and for specific suggestions for new regulations. Comments can be in narrative form or sent in as proposed regulations. This request is for preproposal ideas and suggestions.

WSR 94-09-049
PROPOSED RULES
INSURANCE COMMISSIONER
[Filed April 20, 1994, 10:12 a.m.]

Original Notice.
Title of Rule: Midwifery and birthing center joint underwriting association.

Purpose: Amend limits of liability to conform to 1994 amendment to RCW 48.87.050.

Other Identifying Information: Insurance Commissioner Matter No. R 94-11.

Statutory Authority for Adoption: RCW 48.02.060, 48.87.100.

Statute Being Implemented: RCW 48.87.050.

Summary: These amendments change the limits of liability to conform to the 1994 amendments to chapter 48.87 RCW.

Reasons Supporting Proposal: These amendments are necessary in order to conform chapter 284-87 WAC to the new requirements of the 1994 amendments to chapter 48.87 RCW.

Name of Agency Personnel Responsible for Drafting: Melodie Bankers, P.O. Box 40255, Olympia, WA 98504, (206) 586-3574; Implementation and Enforcement: Deborah Senn, Insurance Building, Olympia, Washington, (206) 753-7300.

Name of Proponent: Insurance Commissioner Deborah Senn, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: These amendments change the limits of liability to conform to the 1994 amendments to chapter 48.87 RCW. These amendments are necessary in order to conform chapter 284-87 WAC to the new requirements of the 1994 amendments to chapter 48.87 RCW.

Proposal Changes the Following Existing Rules: These amendments change the limits of liability to conform to the 1994 amendments to chapter 48.87 RCW. These amendments are necessary in order to conform chapter 284-87 WAC to the new requirements of the 1994 amendments to chapter 48.87 RCW.

Small Business Economic Impact Statement: This rule impacts all insurers engaged in the transaction of casualty insurance in this state, whether large or small. These amendments conform the regulation of the midwifery and birthing center joint underwriting association to 1994 changes in RCW 48.87.050.

Hearing Location: Conference Room, Insurance Commissioner's Office, Insurance Building, Olympia, Washington, on May 26, 1994, at 2:00 p.m.

Submit Written Comments to: Arlo Manley, P.O. Box 40257, Olympia, WA 98504-0257, by May 28, 1994.

Date of Intended Adoption: June 2, 1994.

April 20, 1994
Bethany Weidner
Deputy Commissioner

AMENDATORY SECTION (Amending Order R 93-18, filed 12/30/93, effective 1/30/94)

WAC 284-87-040 Activation of association. (1) If the commissioner finds that any licensee is not reasonably able to obtain midwifery or birthing center malpractice insurance with liability limits of at least one million dollars per ~~((individual))~~ claim and three million dollars per ~~((occurrence))~~ annual aggregate, or such other minimum level of mandated coverage as determined by the department of health, from the voluntary insurance market, the commissioner may notify the association of such finding and direct that its board promptly convene and submit its plan of operation and bylaws to the commissioner for approval. Such plan shall include its evaluation and report relative to the feasibility of a market assistance plan to be conducted by the association as a voluntary program, or a plan to be conducted pursuant to the authority given to the commissioner by RCW 48.22.050. Pursuant to RCW 48.87.030, a MAP shall be used prior to activating a joint underwriting association.

(2) If the use of a MAP is unsuccessful, the commissioner may instruct the board to activate the authority of the association and commence writing midwifery and birthing center malpractice insurance, in accordance with this chapter.

AMENDATORY SECTION (Amending Order R 93-18, filed 12/30/93, effective 1/30/94)

WAC 284-87-090 Eligibility of licensees for coverage. Any licensee that is unable to obtain midwifery or birthing center insurance with liability limits of at least one million dollars per ~~((individual))~~ claim and three million dollars per ~~((occurrence))~~ annual aggregate, or such other minimum level of mandated coverage as determined by the department of health, from the voluntary insurance market or from any market assistance plan organized pursuant to RCW 48.22.050, is eligible to apply for coverage through the association. The association's service insurer shall promptly process such application and, if the licensee is judged to be an acceptable insurable risk, offer coverage to the licensee. In view of the purpose of chapter 48.87 RCW, every licensee will be presumed to be an acceptable insurable risk for the association. To refuse coverage to any licensee meeting the other eligibility requirements of this section, the association must have the prior written approval of the commissioner. The commissioner will grant such approval only if the association demonstrates that extraordinary circumstances justify refusing coverage to such individual licensee.

AMENDATORY SECTION (Amending Order R 93-18, filed 12/30/93, effective 1/30/94)

WAC 284-87-100 Standard policy coverage—Premiums. (1) All policies issued by the association shall have liability limits of at least one million dollars per ~~((individual))~~ claim and three million dollars per ~~((occurrence))~~ annual aggregate, or such other minimum level of mandated

coverage as determined by the department of health, and shall be issued for a term of one year.

(2) Premiums shall be based on the association's rate filings approved by the commissioner in accordance with chapter 48.19 RCW. Such rate filings shall provide for modification of rates for licensees according to the type, size, and past loss experience of each licensee, and any other differences among licensees that can be demonstrated to have a probable effect upon losses.

(3) Consistent with the nonprofit character of the association, rates for policies issued by the association shall be set so that the expected profit (that is, premiums plus investment income minus the sum of expenses and losses) is zero.

(4) The association is exempt from the requirements of WAC 284-24-065.

**WSR 94-09-050
PROPOSED RULES
INSURANCE COMMISSIONER**

[Filed April 20, 1994, 10:15 a.m.]

Original Notice.

Title of Rule: Long-term care.

Purpose: Amend chapter 284-54 WAC.

Other Identifying Information: Insurance Commissioner Matter No. R 94-10.

Statutory Authority for Adoption: RCW 48.02.060(3), 48.84.030, 48.01.030.

Statute Being Implemented: Chapter 48.84 RCW.

Summary: The proposed amendments add a definition of "adult day health care"; amend minimum standards; add a prohibition against preexisting conditions and probationary periods in replacement policies or certificates; add minimum standards for home health care; add a requirement for extension of benefits; and add a requirement to offer certain inflation protection benefits to applicants for long-term care contracts or certificates.

Reasons Supporting Proposal: The amendments are designed to add significant protections to consumers purchasing long-term care contracts and certificates.

Name of Agency Personnel Responsible for Drafting: Melodie Bankers, P.O. Box 40257, Olympia, WA 98504, (206) 586-3574; Implementation and Enforcement: Deborah Senn, Insurance Commissioner, Olympia, (206) 753-7300.

Name of Proponent: Insurance Commissioner Deborah Senn, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed amendments add a definition of "adult day health care"; amend minimum standards; add a prohibition against preexisting conditions and probationary periods in replacement policies or certificates; add minimum standards for home health care; add a requirement for extension of benefits; and add a requirement to offer certain inflation protection benefits to applicants for long-term care contracts or certificates. The amendments are designed to add significant protections to consumers purchasing long-term care contracts and certificates.

Proposal Changes the Following Existing Rules: The proposed amendments add a definition of "adult day health care"; amend minimum standards; add a prohibition against preexisting conditions and probationary periods in replacement policies or certificates; add minimum standards for home health care; add a requirement for extension of benefits; and add a requirement to offer certain inflation protection benefits to applicants for long-term care contracts or certificates.

Small Business Economic Impact Statement: This rule impacts all insurers whether large or small who choose to offer long-term care insurance contracts or certificates to residents of this state. The amendments are designed to protect consumers that purchase long-term care insurance contracts or certificates. The amendments follow closely the model long-term care regulation adopted by the National Association of Insurance Commissioners. Most insurers are already conducting their affairs in accordance with the model regulation so little if any financial impact will be noticed.

Hearing Location: Hearing Room C, John O'Brien Building, State Capitol Complex, Olympia, Washington, on Wednesday, May 25, 1994, at 9:30 a.m.

Submit Written Comments to: Arlo Manley, P.O. Box 40257, Olympia, WA 98504-0257, by May 25, 1994.

Date of Intended Adoption: June 22, 1994.

April 20, 1994
Bethany Weidner
Deputy Commissioner

AMENDATORY SECTION (Amending Order R 87-7, filed 7/9/87)

WAC 284-54-020 Definitions of terms used in this chapter and chapter 48.84 RCW. For purposes of the administration of chapter 48.84 RCW and this chapter:

(1) "Community based care" means services provided outside an institutional setting and includes, but is not limited to, the following: (a) Home delivered nursing services or therapy; (b) custodial or personal care; (c) day care; (d) home and chore aid services; (e) nutritional services, both in-home and in a communal dining setting; and (f) respite care, whether provided at any level from skilled care to custodial or personal care.

(2) "Contract" means a long-term care insurance policy or contract, regardless of the kind of insurer issuing it, unless the context clearly indicates otherwise.

(3) "Direct response insurer" means an insurer who, as to a particular contract, is transacting insurance directly with a potential insured without solicitation by, or the intervention of, a licensed insurance agent.

(4) A "gatekeeper provision" is any provision in a contract establishing a threshold requirement which must be satisfied before a covered person is eligible to receive benefits promised by the contract. Examples of such provisions include, but are not limited to the following: A three-day prior hospitalization requirement, recommendations of the attending physician, and recommendations of a case manager.

(5) "Institutional care" means care provided in a hospital, skilled or intermediate nursing home, congregate care facility, adult family home, or other facility certified or licensed by the state primarily affording diagnostic, preven-

tive, therapeutic, rehabilitative, maintenance or personal care services. Such a facility provides twenty-four-hour nursing services on its premises or in facilities available to the institution on a formal prearranged basis.

(6) "Insured" shall mean any beneficiary or owner of a long-term care contract regardless of the type of insurer.

(7) "Insurer" includes insurance companies, fraternal benefit societies, health care service contractors and health maintenance organizations unless the context clearly indicates otherwise.

(8) "Premium" shall mean all sums charged, received or deposited as consideration for a contract and includes any assessment, membership, contract, survey, inspection, service, or similar fees or charges as paid.

(9) "Terminally ill care" means care for an illness, disease, or injury which has reached a point where recovery can no longer be expected and the attending physician has certified that the patient is facing imminent death; or has a life expectancy of six months or less.

(10) "Adult day health care" means a program of community based social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the individual's home.

AMENDATORY SECTION (Amending Order R 87-7, filed 7/9/87)

WAC 284-54-150 Minimum standards—General. No contract may be advertised, solicited, or issued for delivery in this state as a long-term care contract which does not meet the following standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

(1) No contract shall limit benefits to an unreasonable period of time or an unreasonable dollar amount. For example, a provision that a particular condition will be covered only for one year without regard to the actual amount of the benefits paid or provided, is not acceptable. Policies or contracts may, however, limit in-patient institutional care benefits to a reasonable period of time. Benefits may also be limited to a reasonable maximum dollar amount, and, as for example in the case of home health care visits, to a reasonable number of visits over a stated period of time.

(2) If a fixed-dollar indemnity, fee for services rendered or similar long-term care contract contains a maximum benefit period stated in terms of days for which benefits are paid or services are received by the insured, the days which are counted toward the benefit period must be days for which the insured has actually received one or more contract benefits or services. If benefits or services are not received on a given day, that day may not be counted. Waiver of premium shall not be considered a contract benefit for purposes of accrual of days under this section, and long-term care total disability shall not operate to reduce the benefit.

(3) If a contract of a managed health care plan contains a maximum benefit period it must be stated in terms of the days the insured is in the managed care delivery system. The days which are counted toward the benefit period may include days that the insured is under a care plan established

by the case manager, or days in which the insured actually receives one or more benefits or services.

(4) ~~((Any nursing home or other institutional benefit))~~
A long-term care contract must cover skilled, intermediate, and custodial or personal care, whether benefits are for institutional or community based care.

(5) No contract may restrict or deny benefits because the insured has failed to meet Medicare beneficiary eligibility criteria.

(6) ~~((If an))~~ No insurer may offer(§) a contract form which requires ~~((entrance to an institution at the skilled care level, it must also offer an otherwise identical contract form offering benefits without such a requirement))~~ prior skilled or intermediate care as a condition of coverage for institutional or community based care.

(7) ~~((If an))~~ No insurer may offer(§) a contract form which requires prior hospitalization ~~((, it must also offer an otherwise identical contract form without such a requirement))~~ as a condition of covering institutional or community based care.

(8) No long-term care contract may restrict benefit payments to a requirement that the patient is making a "steady improvement" or limit benefits to "recuperation" of health.

(9) All long-term care contracts shall be issued as individual or family contracts only, unless coverage is provided pursuant to a group contract, issued to a bona fide group, which contract provides continuity of coverage equivalent to that which would be provided under a guaranteed renewable individual contract, and otherwise satisfies the commissioner that it is not contrary to the best interests of the public.

NEW SECTION

WAC 284-54-200 Prohibition against preexisting conditions and probationary periods in replacement policies or certificates. If a long-term care insurance contract or certificate replaces another long-term care insurance contract or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new long-term care insurance contract for similar benefits to the extent that similar exclusions have been satisfied under the original contract.

NEW SECTION

WAC 284-54-210 Minimum standards for home health care and community based benefits in long-term care insurance policies. (1) No long-term care insurance contract or certificate which provides benefits for home health care or community based services may limit or exclude benefits:

(a) By requiring care in a skilled nursing facility before covering home health care or community based services;

(b) By requiring that the insured first or simultaneously receive nursing or therapeutic services in a home, community or institutional setting before home health care or community based services are covered;

(c) By limiting eligible services to services provided by registered nurses or licensed practical nurses;

(d) By requiring that a nurse or therapist provide services covered by the contract or certificate when such

services can be provided by a home health aide or other licensed or certified home care worker acting within the scope of his or her license or certification;

(e) By excluding coverage for personal care services provided by a home health aide;

(f) By requiring that the provision of home health care services be at a level of certification or licensure greater than that required for the eligible service;

(g) By requiring that the insured have an acute condition before home health care or community based services are covered;

(h) By limiting benefits to services provided by Medicare-certified agencies or providers; or

(i) By excluding coverage for adult day care services.

(2) A long-term care insurance contract or certificate, if it provides for home health or community care services, shall provide coverage for total home health care or community based care in a dollar amount equivalent to at least one-half of one year's coverage available for institutional benefits under the contract or certificate at the time covered home health or community care services are being received. This requirement does not apply to contracts or certificates issued to residents of continuing care retirement communities.

(3) Home health care or community based care coverage may be applied to the nonhome health care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.

NEW SECTION

WAC 284-54-260 Extension of benefits. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if such institutionalization began while the long-term care insurance was in force and continues without interruption after termination. Such extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any applicable waiting period, and all other applicable provisions of the contract or certificate.

NEW SECTION

WAC 284-54-270 Requirement to offer inflation protection. (1) No insurer may offer a long-term care insurance contract unless, in addition to any other inflation protection option, the insurer offers to the applicant the option to purchase a contract that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the contract. Insurers must offer to each applicant, at the time of purchase, the option to purchase a contract with an inflation protection feature no less favorable than one of the following:

(a) Increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than five percent;

(b) Guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. The amount

of the additional benefit shall be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least five percent for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or

(c) Covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

(2) Where the contract is issued to a group, the required offer in subsection (1) of this section shall be made to the group policyholder; except, if the policy is issued to an association group (defined in RCW 48.24.045) other than to a continuing care retirement community, the offering shall be made to each proposed certificateholder.

(3) The offer in subsection (1) of this section shall not be required of life insurance policies or riders containing accelerated long-term care benefits.

(4) Insurers shall include the following information in or with the outline of coverage:

(i) A graphic comparison of the benefit levels of a contract that increases benefits over the contract period with a contract that does not increase benefits. The graphic comparison shall show benefit levels over at least a twenty-year period.

(ii) Any expected premium increases or additional premiums to pay for automatic or optional benefit increases.

(b) An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

(c) It is intended that meaningful inflation protection be provided. Meaningful benefit minimums or durations may, for example, include providing increases to attained age, or for a period such as at least twenty years, or for some multiple of the policy's maximum benefit, or throughout the period of coverage.

(5) Inflation protection benefit increases under a contract which contains such benefits shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the contract.

(6) An offer of inflation protection which provides for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. Such offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

(7)(a) Inflation protection as provided in subsection (1)(a) of this section shall be included in a long-term care insurance contract unless an insurer obtains a written rejection of inflation protection signed by the applicant.

(b) The rejection shall be considered a part of the application and shall state:

"I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this contract with and without inflation protection. Specifically, I have reviewed Plans, and I reject inflation protection."

WSR 94-09-052
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed April 20, 1994, 10:17 a.m.]

Original Notice.

Title of Rule: WAC 16-602-027 Grower pollination service fee, collection, remittance.

Purpose: To establish the manner in which these fees are collected and remitted to the department.

Statutory Authority for Adoption: Chapter 15.60 RCW.

Statute Being Implemented: Chapter 15.60 RCW.

Summary: A fee is collected by the apiarist on each set of a hive for pollination and shown as a line item on the apiarist's invoice. A service fee is collected with the pollination fee. Remittance is to be made to the department by the apiarist on a form provided by the department within 30 days of receipt of the service fee. Apiarists shall notify the department of noncompliant growers of pollinated crops.

Reasons Supporting Proposal: Implementation of industry proposed changes to RCW 15.60.040. Creates a funding base for the industry apiary program in the department.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: James C. Bach, 1111 Washington Street, Olympia, WA 98504, (206) 902-2068.

Name of Proponent: Washington State Horticultural Association, George Allen, President, private.

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

Explanation of Rule, its Purpose, and Anticipated Effects: For explanation see summary. Purpose is to provide partial funding for the industry apiary program in the department. Anticipated effects: A cost of \$.0006 per 40-pound box of fruit to the grower. Similar cost impact on other crops. Anticipated compliance level is good.

Proposal does not change existing rules.

The proposal establishes a new rule.

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

Beekeeper collects the fee at the same time as their pollination fee, thus eliminating a separate process. Costs incurred would be approximately \$6.00 in time to remit fees to the department on forms provided.

Hearing Location: Ag Service Center Conference Room, 2015 South First Street, Yakima, WA 98903, on May 24, 1994, at 7:00 p.m.

Submit Written Comments to: James C. Bach, P.O. Box 42560, Olympia, WA 98504-2560, by May 24, 1994.

Date of Intended Adoption: May 27, 1994.

April 20, 1994
K. Diane Dolstad
Assistant Director

NEW SECTION

WAC 16-602-027 Grower pollination service fee, collection, remittance. (1) As required in RCW 15.60.040, resident and nonresident apiarists who own or operate hives in Washington shall charge growers of pollinated crops a pollination service fee of \$.50 per hive each time a hive of bees is set for the pollination of agricultural crops. The fee

shall be shown as a separate line item on the apiarist's invoice to the grower.

(2) The apiarist shall collect the pollination service fee from the grower of agricultural crops upon collection of the pollination fee.

(3) The apiarist shall remit the pollination service fee to the department of agriculture within thirty days of receipt, on forms provided for that purpose.

(4) Apiarists shall notify the department of growers who do not pay the pollination service fee by giving their name, address, phone number, and the number of hives rented, on the remittance form.

WSR 94-09-054

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed April 20, 1994, 10:27 a.m.]

Original Notice.

Title of Rule: Chapter 16-675 WAC, Calibration services.

Purpose: Prescribes fees for weighing and measuring standards calibration services performed by the State Metrology Laboratory.

Statutory Authority for Adoption: Chapter 19.94 RCW.

Statute Being Implemented: RCW 19.94.216(1) and 19.94.325(2).

Summary: Users of metrology services will be required to pay an increase in calibration fees of approximately seven percent through June 30, 1994, and a subsequent increase of approximately six percent effective July 1, 1994.

Reasons Supporting Proposal: Increased fees are needed to improve the severe deficit account condition which resulted in the transition from general fund to fee-supported operations.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bob Arrington, 1111 S.E. Washington, Olympia, WA, (206) 902-1857.

Name of Proponent: Washington State Department of Agriculture, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule will implement new fees for the calibration and weighing and measuring standards. This action is necessary because the current fee structure provides insufficient revenues to offset laboratory expenditures requiring subsidization from program general funds. These increased fees will enhance cost recovery, however will not cover total operating expenditures.

Proposal Changes the Following Existing Rules: Rule change will identify fee increases and update reference to enabling statute.

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

Agency evaluation determined that an SBEIS was not required. Number of businesses required by statute (chapter 19.94 RCW) to submit standards for calibration once every two years = 37 DOR reporting units (SIC 504) = 2,640

$37 \div 2,640 = 1.4\%$: SBEIS not required

Fee Increase Example: Scale-service company (current fees): 1.5 hrs @ \$20; 5.5 hrs @ \$30; 6 hrs @ \$50; 9 sets @ (40 ea. = \$855 (new fees): 1.5 hr @ \$22.60; 5.5 hrs @ \$34; 6 hrs @ \$56.70; 9 sets @ \$45.30 ea. = \$968.80 Increase = \$113.80 or \$56.90/yr minor or negligible threshold = \$288: SBEIS not required

Additional Considerations:

There will be no additional activities required of business above those which are ordinarily undertaken in daily operations.

There is no need for business to require additional professional services to comply with the proposed rule. Services in place and undertaken normally by business are sufficient to accommodate requirements resulting from this rule.

There will be no additional administrative costs, nor increased requirements for equipment, supplies, or labor costs. The new fee schedule will not increase workloads.

Fees are determined both on hourly rates and piece rates. Business is charged based on the quantity and/or category of standards requiring calibration. Relative business costs are based on standard owned/utilized and are therefore deemed proportional assuming a large business would normally have a greater quantity/category of standards than a small business operation.

Two year inspection cycle provides an opportunity to distribute cost of compliance based on the quantity/category of standards owned.

Hearing Location: Natural Resources Building, 2nd Floor, Conference Room 223, 1111 S.E. Washington Street, Olympia, WA 98504, on May 24, 1994, at 10:00 a.m.

Submit Written Comments to: Bob Arrington, P.O. Box 42560, Olympia, WA 98504-2560, by May 24, 1994.

Date of Intended Adoption: May 25, 1994.

April 19, 1994

Julie C. Sandberg
Assistant Director

AMENDATORY SECTION (Amending Order 2063, filed 11/26/90, effective 12/27/90)

WAC 16-675-010 Purpose. The department of agriculture promulgates this chapter to implement the provisions of RCW (~~(19.94.190(6))~~) 19.94.216(1) and 19.94.325(2) which allows the director of the state department of agriculture to establish fees for weighing, measuring, and providing calibration services performed by the weights and measures laboratory.

NEW SECTION

WAC 16-675-029 Condition of submitted weights and measures. (Effective through June 30, 1994.) Weights and measures submitted to the laboratory for tolerance testing or calibration must be in a physical condition that makes them acceptable for the service to be performed. Unacceptable weights and measures may be returned to the sender at the sender's expense or, if repairs can be made, these repairs shall be charged at the rate of \$26.75 an hour. Repair fees shall be charged in addition to any testing or other calibration fees. Repairs will only be done by written

agreement between the department and the owner of the weights or measures to be repaired.

AMENDATORY SECTION (Amending Order 2063, filed 11/26/90, effective 12/27/90)

WAC 16-675-030 Condition of submitted weights and measures. (Effective July 1, 1994.) Weights and measures submitted to the laboratory for tolerance testing or calibration must be in a physical condition that makes them acceptable for the service to be performed. Unacceptable weights and measures may be returned to the sender at the sender's expense or, if repairs can be made, these repairs shall be charged at the rate of (~~(\$25.00)~~) \$28.30 an hour. Repair fees shall be charged in addition to any testing or other calibration fees. Repairs will only be done by written agreement between the department and the owner of the weights or measures to be repaired.

NEW SECTION

WAC 16-675-039 Schedule of laboratory fees. (Effective through June 30, 1994.) The following fees will be charged for services performed by the weights and measures laboratory of the department:

- (1) For the testing or calibration of avoirdupois weights;
 - weighing less than 50 lbs. \$ 21.40 an hour
 - weighing from 50 to 499 lbs. \$ 32.10 an hour
 - weighing 500 lbs. or more \$ 53.50 an hour

For the testing or calibration of metric weights;

- weighing less than 20 kg \$ 21.40 an hour
- weighing from 20 to 24 kg \$ 26.75 an hour
- weighing from 25 to 249 kg \$ 32.10 an hour
- weighing 250 kg or more \$ 53.50 an hour

- (2) For the testing or calibration of class 5, 6, c or f weight sets, as defined in the laboratory weights and precision mass standards adopted by the American Society of Testing and Materials and the American National Standard Institute;
 - sets containing less than 10 weights \$ 21.40 a set
 - sets containing 10 to 24 weights \$ 42.80 a set
 - sets containing 25 to 39 weights \$ 64.20 a set
 - sets containing 40 weights or more \$107.00 a set

There will be an additional charge of \$53.50 a set for any requested declaration of the nominal values or uncertainties of the weights contained in any weight set.

- (3) For the testing or calibration of class 1, 2, 3 or 4 weight sets, as defined in the laboratory weights and precision mass standards adopted by the American Society of Testing and Materials and the American National Standard Institute;
 - sets containing less than 10 weights \$ 80.25 a set
 - sets containing 10 to 24 weights \$160.50 a set
 - sets containing 25 to 39 weights \$240.75 a set
 - sets containing 40 weights or more \$428.00 a set

- (4) For the testing or calibration of liquid measuring standards;
 - (a) measuring less than 5 gallons \$ 10.70 each
 - measuring 5 to 24 gallons \$ 21.40 each
 - measuring 25 to 49 gallons \$ 42.80 each
 - measuring 50 to 99 gallons \$ 85.60 each
 - measuring 100 to 499 gallons \$160.50 each
 - measuring 500 to 999 gallons \$214.00 each
 - measuring 1,000 gallons or more \$267.50 each

- (b) measuring less than 20 liters \$ 10.70 each
- measuring 20 to 99 liters \$ 21.40 each
- measuring 100 to 199 liters \$ 42.80 each
- measuring 200 to 399 liters \$ 85.60 each
- measuring 400 to 1,999 liters \$160.50 each
- measuring 2,000 to 3,999 liters \$214.00 each
- measuring 4,000 liters or more \$267.50 each

There will be an additional charge of \$10.70 per hour for any testing or calibration of any other liquid measuring standards, except that the fee to be charged for flasks, graduates, cylinders and other precision glassware will be \$26.75 for each flask, graduate, cylinder or other precision glassware, regardless of capacity.

- (5) For the testing or calibration of linear measuring devices;
 - rulers \$ 21.40 each
 - measuring tapes less than 25 feet \$ 26.75 each
 - measuring tapes 25 to 99 feet \$ 53.50 each
 - measuring tapes 100 feet or more \$107.00 each
- (6) For the testing or calibration of scales;
 - analytical scales \$ 48.15 each
 - bench scales \$ 21.40 each
 - counter scales \$ 21.40 each
 - grain test scales \$ 26.75 each
 - jeweler's scales \$ 26.75 each
 - platform scales \$ 32.10 each
 - prescription scales \$ 48.15 each
 - any other scale \$ 53.50 each

AMENDATORY SECTION (Amending Order 2063, filed 11/26/90, effective 12/27/90)

WAC 16-675-040 Schedule of laboratory fees. (Effective July 1, 1994.) The following fees will be charged for services performed by the weights and measures laboratory of the department:

- (1) For the testing or calibration of avoirdupois weights;
 - weighing less than 50 lbs. \$ ~~(20.00)~~ 22.60 an hour
 - weighing from 50 to 499 lbs. \$ ~~(30.00)~~ 34.00 an hour
 - weighing 500 lbs. or more \$ ~~(50.00)~~ 56.70 an hour

For the testing or calibration of metric weights;

- weighing less than 20 kg \$ ~~(20.00)~~ 22.60 an hour
- weighing from 20 to 24 kg \$ ~~(25.00)~~ 28.30 an hour
- weighing from 25 to 249 kg \$ ~~(30.00)~~ 34.00 an hour
- weighing 250 kg or more \$ ~~(50.00)~~ 56.70 an hour

- (2) For the testing or calibration of class 5, 6, c or f weight sets, as defined in the laboratory weights and precision mass standards adopted by the American Society of Testing and Materials and the American National Standard Institute;
 - sets containing less than 10 weights \$ ~~(20.00)~~ 22.60 a set
 - sets containing 10 to 24 weights \$ ~~(40.00)~~ 45.30 a set
 - sets containing 25 to 39 weights \$ ~~(60.00)~~ 68.00 a set
 - sets containing 40 weights or more \$ ~~(100.00)~~ 113.40 a set

There will be an additional charge of (~~(\$50.00)~~) \$56.70 a set for any requested declaration of the nominal values or uncertainties of the weights contained in any weight set.

- (3) For the testing or calibration of class 1, 2, 3 or 4 weight sets, as defined in the laboratory weights and precision mass standards adopted by the American Society of Testing and Materials and the American National Standard Institute;
 - sets containing less than 10 weights \$ ~~(75.00)~~ 85.00 a set
 - sets containing 10 to 24 weights \$ ~~(150.00)~~ 170.10 a set
 - sets containing 25 to 39 weights \$ ~~(225.00)~~ 255.20 a set
 - sets containing 40 weights or more \$ ~~(400.00)~~ 453.60 a set

(4) For the testing or calibration of liquid measuring standards;

(a) measuring less than 5 gallons	.....	\$ ((40.00)) <u>11.30</u>	each
measuring 5 to 24 gallons	.....	\$ ((20.00)) <u>22.60</u>	each
measuring 25 to 49 gallons	.....	\$ ((40.00)) <u>45.30</u>	each
measuring 50 to 99 gallons	.....	\$ ((80.00)) <u>90.70</u>	each
measuring 100 to 499 gallons	.....	\$ ((150.00)) <u>170.10</u>	each
measuring 500 to 999 gallons	.....	\$ ((200.00)) <u>226.80</u>	each
measuring 1,000 gallons or more	.....	\$ ((250.00)) <u>283.50</u>	each
(b) measuring less than 20 liters	.....	\$ ((40.00)) <u>11.30</u>	each
measuring 20 to 99 liters	.....	\$ ((20.00)) <u>22.60</u>	each
measuring 100 to 199 liters	.....	\$ ((40.00)) <u>45.30</u>	each
measuring 200 to 399 liters	.....	\$ ((80.00)) <u>90.70</u>	each
measuring 400 to 1,999 liters	.....	\$ ((150.00)) <u>170.10</u>	each
measuring 2,000 to 3,999 liters	.....	\$ ((200.00)) <u>226.80</u>	each
measuring 4,000 liters or more	.....	\$ ((250.00)) <u>283.50</u>	each

There will be an additional charge of ~~((10.00))~~ \$11.30 per hour for any testing or calibration of any other liquid measuring standards, except that the fee to be charged for flasks, graduates, cylinders and other precision glassware will be ~~((25.00))~~ \$28.30 for each flask, graduate, cylinder or other precision glassware, regardless of capacity.

(5) For the testing or calibration of linear measuring devices;

rulers	.....	\$ ((20.00)) <u>22.60</u>	each
measuring tapes less than 25 feet	.....	\$ ((25.00)) <u>28.30</u>	each
measuring tapes 25 to 99 feet	.....	\$ ((50.00)) <u>56.70</u>	each
measuring tapes 100 feet or more	.....	\$ ((100.00)) <u>113.40</u>	each

(6) For the testing or calibration of scales;

analytical scales	.....	\$ ((45.00)) <u>51.00</u>	each
bench scales	.....	\$ ((20.00)) <u>22.60</u>	each
counter scales	.....	\$ ((20.00)) <u>22.60</u>	each
grain test scales	.....	\$ ((25.00)) <u>28.30</u>	each
jeweler's scales	.....	\$ ((25.00)) <u>28.30</u>	each
platform scales	.....	\$ ((30.00)) <u>34.00</u>	each
prescription scales	.....	\$ ((45.00)) <u>51.00</u>	each
any other scale	.....	\$ ((50.00)) <u>56.70</u>	each

WSR 94-09-055
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
 [Filed April 20, 1994, 10:29 a.m.]

Original Notice.

Title of Rule: Chapter 16-694 WAC, Agricultural products—Commission merchants, dealers, brokers, buyers, agents—License fees.

Purpose: Sets license fees in categories of commission merchant, dealer, limited dealer, broker, cash buyer and agent.

Statutory Authority for Adoption: Chapter 20.01 RCW. Statute Being Implemented: RCW 20.01.040.

Summary: Beginning June 26, 1994, each category of licensee will be required to pay an increase of approximately seven percent of the current fee, and beginning July 1, 1994, a license fee of approximately six percent.

Reasons Supporting Proposal: In 1993 a fund shift for administrative costs from the general fund to agricultural local funds was made by the legislature. The increased fees are necessary to support the loss of interest on agriculture local funds and higher operating costs as well as the fund shift.

Name of Agency Personnel Responsible for Drafting and Implementation: Julie Sandberg, 1111 S.E. Washington, Olympia, WA, (206) 902-1851; and Enforcement: George

Boozer, 1111 S.E. Washington, Olympia, WA, (206) 902-1858.

Name of Proponent: Washington State Department of Agriculture, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: This rule provides for a seven percent fee increase to commission merchant, dealer, limited dealer, broker, cash buyer and agent licenses effective June 26, 1994, and a six percent increase to those same categories effective July 1, 1994. The purpose is to provide for effective cost recovery of expenses incurred in managing and enforcing the statute's licensing and bonding requirements. Legislative changes in 1991 removing interest accrual on this local fund and the agency administrative fund shift in 1993 as well as overall cost increases necessitate these fee increases.

Proposal Changes the Following Existing Rules: Changes are only for specific fee increases.

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

An evaluation of the Regulatory Fairness Act guidelines for minor and negligible impacts, Appendix A, reflects a \$50.00 exemption for this SIC code. The largest increase is in the commission merchant and dealer categories and amounts to \$42.00.

Hearing Location: Hal Holmes Community Center, 201 North Ruby Street, Ellensburg, WA 98926, on May 24, 1994, at 10:00 a.m.

Submit Written Comments to: Julie C. Sandberg, P.O. Box 42560, Olympia, WA 98504-2560, by May 24, 1994.

Date of Intended Adoption: May 25, 1994.

April 20, 1994
 Julie C. Sandberg
 Assistant Director

AMENDATORY SECTION (Amending Order 2062, filed 11/26/90, effective 12/27/90)

WAC 16-694-001 License fees. (1) Effective June 25, 1994, the license fee for any person who wishes to act as a commission merchant, dealer, broker, cash buyer, or agent shall be as follows:

- ~~((1))~~ (a) Commission merchant, three hundred ~~((fifteen))~~ thirty-seven dollars;
- ~~((2))~~ (b) Dealer, three hundred ~~((fifteen))~~ thirty-seven dollars;
- ~~((3))~~ (c) Limited dealer, one hundred ~~((seventy-five))~~ eighty-seven dollars;
- ~~((4))~~ (d) Broker, two hundred ~~((twenty))~~ thirty-five dollars;
- ~~((5))~~ (e) Cash buyer, ~~((seventy))~~ seventy-five dollars;
- ~~((6))~~ (f) Agent, ~~((twenty-five))~~ twenty-six dollars.

(2) Effective July 1, 1994, the license fee for any person who wishes to act as a commission merchant, dealer, broker, cash buyer, or agent shall be as follows:

- (a) Commission merchant, three hundred fifty-seven dollars;
- (b) Dealer, three hundred fifty-seven dollars;
- (c) Limited dealer, one hundred ninety-eight dollars;
- (d) Broker, two hundred forty-nine dollars;
- (e) Cash buyer, seventy-nine dollars;

(f) Agent, twenty-eight dollars.

WSR 94-09-057
PREPROPOSAL COMMENTS
DEPARTMENT OF REVENUE
[Filed April 20, 1994, 10:43 a.m.]

Subject of Possible Rule Making: The Department of Revenue establishes stumpage values as WAC rules under RCW 84.33.091. The department is considering changing how it collects and analyzes data used to establish stumpage values.

Persons may comment on this subject by written or oral presentation. Written presentations may be submitted prior to the meeting. The meeting will be committee format with free and open discussion of all proposals. Mailing Address: Department of Revenue, Special Programs Division, P.O. Box 47472, Olympia, WA 98504-7472. Where: Olympia, Target Place Plaza, 2735 Harrison Avenue N.W., Department of Revenue Conference Room, at 10:00 a.m. on May 16, 1994.

Other Information or Comments by Agency at this Time, if any: The Department of Revenue is seeking public input on stumpage values for the second half of 1994.

April 19, 1994
Gary K. O'Neil
Assistant Director
Special Programs Division

WSR 94-09-058
PROPOSED RULES
HIGHER EDUCATION
COORDINATING BOARD
[Filed April 20, 1994, 10:47 a.m.]

Original Notice.

Title of Rule: State work study program.

Purpose: Update rules to reflect recent statutory and policy changes.

Statutory Authority for Adoption: RCW 28B.12.020 through 28B.12.070.

Statute Being Implemented: RCW 28B.12.020 through 28B.12.070.

Summary: The proposed changes to rules are meant to further explain how the state work study program will be administered based on recent statutory and policy revisions.

Reasons Supporting Proposal: The changes are submitted to update and clarify public understanding of program administration.

Name of Agency Personnel Responsible for Drafting and Implementation: Betty Gebhardt, 917 Lakeridge Way, Olympia, WA, 753-4592; and Enforcement: Shirley A. 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: The rules changes represent recent revisions to the statute regarding students from middle income families;

composition and development of the advisory committee; priorities for placement, including Washington residents, academically related placements, and off-campus community service placements; and emphasis for placements that meet Washington economic goals. Also included: An update to the maximum reimbursement rate for off-campus community service placements and a revision to maximum hours reimbursed for on-campus graduate assistants.

Proposal Changes the Following Existing Rules: Provides guidance to institutions on current program direction and policy.

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

Hearing Location: Third Floor Conference Room, Higher Education Coordinating Board, 917 Lakeridge Way, Olympia, WA, on May 25, 1994, at 9:00 a.m.

Submit Written Comments to: Betty Gebhardt, Higher Education Coordinating Board, 917 Lakeridge Way, P.O. Box 43430, Olympia, WA 98504-3430, by May 25, 1994.

Date of Intended Adoption: June 17, 1994.

April 20, 1994
Elson S. Floyd
Executive Director

Chapter 250-40 WAC
((COLLEGE)) STATE WORK-STUDY PROGRAM

AMENDATORY SECTION (Amending Order 6-74, filed 9/17/74)

WAC 250-40-020 Purpose. The purpose of this act is to provide financial assistance to needy students attending eligible postsecondary institutions in the state of Washington by stimulating and promoting their employment; and to provide such needy students, wherever possible, with employment related to their academic or vocational pursuits.

Further, it is the intent of the work study program to assist those needy students from middle income family backgrounds whose total applicant resources are insufficient to cover the total budgetary costs of education; and who, but for this program, would normally be forced to rely heavily on loans.

AMENDATORY SECTION (Amending WSR 93-20-044, filed 9/29/93, effective 10/30/93)

WAC 250-40-040 Student eligibility and selection.

(1) Eligibility criteria. In order to be eligible for employment under this program the student must:

- (a) Demonstrate financial need.
- (b) Be enrolled or accepted for enrollment as at least a half-time undergraduate, graduate or professional student or be a student under an established program designed to qualify him or her for enrollment as at least a half-time student at an eligible institution of postsecondary education.
- (c) Be capable, in the opinion of the institution, of maintaining good standing in a course of study while employed under the program, and demonstrate satisfactory progress toward degree or certificate completion.
- (d) Not be pursuing a degree in theology.
- (e) Not owe a refund or repayment on a state or federal financial aid grant program and not be in default on a loan

made, insured, or guaranteed under federal and state financial aid loan programs.

(2) Criteria for institutional determination of financial need and the making of awards.

(a) Standard budgetary costs will be determined by the institution subject to approval by the higher education coordinating board.

(b) Total applicant resources shall be determined in accordance with the federal methodology system of need analysis. Institutional financial aid officers may make reasonable adjustments to the computed total applicant resources if individual circumstances warrant such adjustments. Any adjustments must be documented and placed in the student's financial aid records.

(c) The work-study award shall be designed in such a manner that the sum total of financial aid awarded any one student will not exceed the difference between the total applicant's resources and the budgetary cost of education.

(d) Each institution must have a policy relating to the continuance of aid for students who enroll in but do not complete the number of credit or clock hours required to maintain satisfactory progress toward completion of his or her degree or program objective. The institution must submit its policy to the board annually for approval.

(3) Priorities in placing students.

~~(a) ((The institution must, wherever possible, place students in positions which are related to their educational goals or career interests. At the time of job placement, the student who is able to obtain course or career objective-related employment shall be awarded in favor of one who is not able to obtain such employment.~~

~~(b) At the time of job placement, and after consideration of (a) above, no eligible Washington resident shall be excluded in favor of a nonresident.~~

~~(c) It is the intent of the work study program to assist those students from moderate income family backgrounds whose total applicant resources are insufficient to cover the total budgetary costs of education; and who, but for this program, would normally be forced to rely heavily on loans;)) Provide work opportunities for students who are defined to be residents of the state;~~

~~(b) After consideration of (a) of this subsection, then provide job placements in fields related to each student's academic or vocational pursuits, with an emphasis on off-campus job placements wherever appropriate; and~~

~~(c) Whenever appropriate, provide opportunities for off-campus community service placements.~~

~~(4) Job placements are encouraged in occupations that meet Washington's economic development goals especially those in international trade and international relations.~~

AMENDATORY SECTION (Amending WSR 93-20-044, filed 9/29/93, effective 10/30/93)

WAC 250-40-050 Restrictions on student placement and compensation. (1) Displacement of employees. Employment of state work-study students may not result in displacement of employed workers or impair existing contracts for services.

(a) State work-study students employed by public institutions of postsecondary education may not fill positions currently or formerly occupied by classified employees.

(b) In cases of governmental employment, state work-study students may fill positions which have been previously occupied but were vacated as a result of implementing previously adopted reduction in force policies in response to employment limitations imposed by federal, state or local governments.

(c) In all other cases, state work-study students may not fill positions which have been occupied by regular employees during the current or prior calendar or fiscal year.

(2) Rate of compensation. All work-study positions shall receive compensation equal to the entry level salary of comparable nonwork-study positions.

Students employed by public postsecondary educational institutions who are filling positions which are comparable to Washington personnel resources board classified positions must be paid entry level Washington personnel resources board wages for the position unless the overall scope and responsibilities of the position indicate a higher level.

Determination of comparability must be made in accordance with state work-study program operational guidelines.

Documentation must be on file at the institution for each position filled by a state work-study student which is deemed by the institution as not comparable to a higher education personnel board position.

(3) Maximum total compensation. Earnings beyond the student's state work-study eligibility must be reported to the financial aid officer, and resulting adjustments made in the financial aid package in accordance with federal methodology. In the event that a student earns more money from state work-study employment than the institution anticipated when it awarded student financial aid, the excess is to be treated in accordance with the method specified in the state work-study operational guidelines.

(4) State share of student compensation. With the exception of board-approved off campus community service placements, the state share of compensation paid students shall not exceed 80 percent of the student's gross compensation. In the following cases the state share may be established at 80 percent: (a) When employed by state supported institutions of postsecondary education at which they are enrolled; (b) when employed as tutors by the state's common school districts; ~~((and))~~ (c) when employed in tutorial or other support staff positions by nonprofit adult literacy service providers in the state of Washington who meet guideline criteria for participation; and (d) when employed in an off-campus community service placement. The state share of compensation paid students employed by all other employers shall not exceed 65 percent of the student's gross compensation.

(5) Employer share of student compensation. The employer shall pay a minimum of 20 percent or 35 percent of the student's gross compensation as specified in subsection (4) above, plus the costs of any employee benefits including all payments due as an employer's contribution under the state workman's compensation laws, federal Social Security laws, and other applicable laws. The federal work-study program cannot be used to provide employer share of student compensation except when used for placement of students in tutorial or other support staff positions with adult literacy service providers in the state of Washington who meet guideline criteria for participation.

(6) Academic credit for state work-study employment. Students may receive academic credit for experience gained through state work-study employment.

(7) Maximum hours reimbursed. Employment of a student in excess of an average of 19 hours per week, or in the case of on-campus graduate assistants an average of 20 hours per week, over the period of enrollment for which the student has received an award or a maximum of 40 hours per week during vacation periods will not be eligible for reimbursement from state funds.

A student may not be concurrently employed in the same position by the state work-study program and the federal work-study program and exceed the 19 hours per week average.

~~((Further, the student cannot accept other on-campus employment which results in a waiver of the nonresident tuition and fees differential under RCW 28B.15.014.))~~

(8) Types of work prohibited. Work performed by a student under the state work-study program shall not be sectarian related and shall not involve any partisan or nonpartisan political activity.

(9) Relationship to formula staffing percentage. Placement of state work-study students in on-campus positions at public postsecondary educational institutions may not result in a level of employment in any budget program in excess of a formula staffing percentage specifically mandated by the legislature.

AMENDATORY SECTION (Amending WSR 93-20-044, filed 9/29/93, effective 10/30/93)

WAC 250-40-070 Administration. With the assistance of an advisory committee, the higher education coordinating board shall administer the work-study program. The staff of the higher education coordinating board under the direction of the executive director will manage the administrative functions relative to the program and shall be authorized to enter into agreement with:

Eligible public institutions for the placement of students and the reimbursement of employers for the state share of the student's compensation.

Eligible private institutions for the placement of students.

Employers of students attending eligible private institutions for the reimbursement of the state share of the student's compensation. Such agreements shall be written to ensure employer compliance with the rules and regulations governing the work-study program.

(1) Responsibility of eligible public institutions. The institution will:

(a) Assist the board in contracting with eligible employers or, enter into contracts with eligible organizations for employment of students under the work-study program. Such agreements shall be written to ensure employer compliance with the rules and regulations governing the work-study program.

(b) Determine student eligibility and arrange for placement.

(c) Arrange for payment of the state share of the student's compensation.

(2) Responsibility of eligible private institutions. The institution will:

(a) Assist the board in contracting with eligible employers.

(b) Determine student eligibility, arrange for placement with employers, and notify the board of such placement.

(c) Submit student time sheets to the board in the prescribed manner and time frame outlined in guidelines.

(3) Employer responsibilities:

(a) Before it may participate in the program, an eligible employer must enter into agreement with the higher education coordinating board or a public institution acting as its agent, thereby certifying its eligibility to participate and its willingness to comply with all program requirements.

(b) Certification of payment to students by the eligible organization shall be made under oath in accordance with RCW 9A.72.085.

(c) Submit student time sheets to the institution in a timely manner.

(4) Advisory committee. The board will appoint an advisory committee ~~((composed of representatives of eligible institutions, employee organizations having membership in the classified service of the state's institutions of postsecondary education, a student and persons))~~ which may include, but need not be limited to, representatives of public and private community colleges, technical colleges, and four-year institutions of higher education; vocational schools; students; community service organizations; public schools; business; and labor. When selecting members of the committee, the board will consult with institutions of higher education, the state board for community and technical colleges, the work force training and education coordinating board, and appropriate associations and organizations. The committee will be consulted as may be necessary to advise the board staff on matters pertaining to the administration of the work-study program. In addition, representatives from postsecondary educational advisory and governing bodies will be invited to participate in advisory committee meetings when annual institutional allocations are being determined.

(5) Institutional administrative allowance. Contingent upon funds being made available to the higher education coordinating board for the operation of the work-study program, the public institutions will be provided an administrative expense allowance. In order to qualify for the allowance, the institution must demonstrate that financial support for student financial aid administration, exclusive of the administrative allowance, is at least equal to the level of support provided during the previous fiscal year.

(6) Institutional maintenance of effort. State funds provided under this program are not to be used to replace institutional funds which would otherwise be used to support student employment.

(7) Reports. The higher education coordinating board will obtain periodic reports on the balance of each institution's work-study funds to ensure a proper distribution of funds among institutions. In addition, information will be gathered subsequent to the end of the academic year, describing the population served and the modes of packaging used.

(8) Agreement to participate. In order to participate in the program, each institution must file an agreement to participate indicating agreement to abide by all program rules, regulations, and guidelines and to maintain and

provide all pertinent information, records, and reports requested by the board.

(9) Appeals. If the board is notified of any possible violations of these rules and regulations, satisfactory resolution shall be attempted by board staff. If satisfactory resolution cannot be achieved by board staff, the advisory committee authorized by WAC 250-40-070(5) shall review the appeal and make a recommendation to board staff. If satisfactory resolution still cannot be achieved, the person or institution initiating the appeal may request a hearing with the board, which shall take action on the appeal.

(10) Program reviews. The higher education coordinating board will review institutional administrative practices to determine institutional compliance with rules and regulations and program guidelines. If such a review determines that an institution has failed to comply with program rules and regulations and guidelines the board may suspend, terminate, or place conditions upon the institution's participation in the program and require the institution to reimburse the students affected or the program in the appropriate amount.

WSR 94-09-060
PROPOSED RULES
HIGHER EDUCATION
COORDINATING BOARD
 [Filed April 20, 1994, 10:53 a.m.]

Original Notice.

Title of Rule: Washington state scholars program, WAC 250-66-030.

Purpose: Revises the selection procedure to take into account the legislative district in which the student resides when reviewing nomination forms for the Washington scholar candidates.

Statutory Authority for Adoption: Chapter 28B.80 RCW.

Statute Being Implemented: RCW 28A.600.110 as amended by ESSHB 2605, Laws of 1994.

Summary: Requires that three graduating high school seniors be selected as Washington scholars based upon the legislative district in which the student resides, rather than the legislative district to which the high school is located.

Reasons Supporting Proposal: To provide accurate identification of the legislative district from which a Washington scholar is selected and prevent an imbalance of selections which allows more than three scholars from any one legislative district.

Name of Agency Personnel Responsible for Drafting and Implementation: Ann McLendon and John Klacik, 917 Lakeridge Way, Olympia, WA 98504, (206) 586-5505; and Enforcement: Shirley Ort, 917 Lakeridge Way, Olympia, WA 98504-3430, (206) 753-3571.

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: The current rules provide that three graduating seniors be selected from high schools in each legislative district to be awarded as Washington state scholars. The revised rules will change the selection procedure to require

that the legislative district designation of each candidate be based upon the legislative district in which the student resides rather than the legislative district in which the high school is located. This will ensure that the three scholars for each legislative district will actually reside within the district for which they receive Washington scholar recognition.

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: Higher Education Coordinating Board, 917 Lakeridge Way, Third Floor Conference Room, P.O. Box 43430, Olympia, WA 98054-3430, on May 25, 1994, at 9:00 a.m.

Submit Written Comments to: Elson S. Floyd, Executive Director, by May 25, 1994.

Date of Intended Adoption: June 17, 1994.

April 19, 1994

Elson S. Floyd

Executive Director

AMENDATORY SECTION (Amending WSR 92-16-038, filed 7/30/92)

WAC 250-66-030 Nomination and selection of Washington state scholars. (1) Number of students to be nominated. Each principal of a public or private approved Washington high school is encouraged to nominate one percent of the senior class (twelfth grade) based on the October 1 enrollment count of the previous year.

(2) Selection committee. Following the receipt of all nomination forms, the higher education coordinating board shall convene a selection committee which shall have members representing public and private secondary and postsecondary education institutions, state agencies, and private sector associations. This selection committee shall review all nominations based upon selection criteria which shall include, but not be limited to, academic excellence, leadership ability, and community contributions.

(3) Selection. The Washington state scholar selection committee will then select the top three (~~graduating~~) seniors residing in each legislative district who are graduating from high schools (~~in each legislative district~~) in the state to be designated as Washington state scholars.

(4) Notification. After the final selections have been made, the higher education coordinating board shall notify the students so designated, their high school principals, the legislators of their respective districts, and the governor.

(5) Certificates and awards ceremony. The board, in conjunction with the governor's office, shall prepare appropriate certificates of recognition to be presented to the Washington state scholars recipients. An awards ceremony at an appropriate time and place shall be planned by the board in cooperation with the Washington association of secondary school principals.

(6) Receipt of award. Washington state scholars shall be deemed to have received their awards effective the date of notification. This is in contrast to the receipt of award benefits which may accrue to Washington state scholars recipients in the form of tuition and fee waivers and grants, and which shall be deemed to be received by the individual

recipients on a term-by-term basis at the time the award benefit is used for undergraduate coursework.

WSR 94-09-061
PROPOSED RULES
HIGHER EDUCATION
COORDINATING BOARD
 [Filed April 20, 1994, 10:56 a.m.]

Original Notice.

Title of Rule: Washington award for excellence in education academic grant, WAC 250-78-010 through 250-78-060.

Purpose: To establish procedures for payment of the recognition award benefit and provide academic grant recipients with the option to convert the remaining value of their grant into a recognition award.

Statutory Authority for Adoption: Chapters 28B.80 and 28A.625 RCW.

Statute Being Implemented: Chapter 28B.80 RCW as amended by SB 6074, Laws of 1994.

Summary: SB 6074, Laws of 1994, establishes the recognition award, a cash award, to replace all other award options for program recipients selected after January 1, 1994, and provides academic grant recipients selected prior to that date with the option to convert their award to the recognition award, at their discretion, and subject to funds availability.

Reasons Supporting Proposal: Provides fiscal predictability to the program; provides current academic grant recipients with an opportunity for immediate cash out of their award benefits.

Name of Agency Personnel Responsible for Drafting and Implementation: Ann McLendon and John Klacik, 917 Lakeridge Way, Olympia, WA 98504, (206) 586-5505; and **Enforcement:** Shirley Ort, 917 Lakeridge Way, Olympia, WA 98504-3430, (206) 753-3571.

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: The rule sets procedures for payment of the newly authorized recognition award, which replaces the three award options for recipients of the Washington award for excellence in education program named by the Office of the Superintendent of Public Instruction after January 1, 1994. The rules also set procedures for the conversion of the academic grant to the recognition award for academic grant recipients named before January 1, 1994, who wish to do so, contingent upon availability of funds. The Higher Education Coordinating Board currently disburses funds for the academic grant, as authorized in statute.

Proposal Changes the Following Existing Rules: Existing rules allow the Higher Education Coordinating Board to make disbursements for academic grant and related stipend expenses. It does not address the newly authorized recognition award nor the conversion of the academic grant to the recognition award for eligible recipients who may be interested in doing so.

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

Hearing Location: Higher Education Coordinating Board, 917 Lakeridge Way, Third Floor Conference Room, P.O. Box 43430, Olympia, WA 98504-3430, on May 25, 1994, at 9:00 a.m.

Submit Written Comments to: Elson S. Floyd, Executive Director, by May 25, 1994.

Date of Intended Adoption: June 17, 1994.

April 19, 1994
 Elson S. Floyd
 Executive Director

AMENDATORY SECTION (Amending WSR 92-16-037, filed 7/30/92)

WAC 250-78-010 Purpose. The Washington award for excellence in education program, also known as the Washington state Christa McAuliffe award program, was established to recognize teachers, principals, administrators, classified employees, school district superintendents, and school boards for their leadership, contributions, and commitment to education. The purpose of this chapter is to establish administrative procedures for disbursing academic grants (~~awarded~~) and recognition awards provided to recipients through this program (~~to teachers, classified employees, principals, and administrators~~).

AMENDATORY SECTION (Amending WSR 92-16-037, filed 7/30/92)

WAC 250-78-020 Authority to administer. The authority for this chapter is 28B.80 RCW which authorizes the higher education coordinating board to adopt rules relating to the administration of programs assigned to the board, and 28A.625 RCW, which assigns to the board the administration of the academic grants awarded through the Washington award for excellence in education (Christa McAuliffe) academic grant award program. The 1991 legislation (~~corrects~~) corrected inequities inherent in the related preceding tuition waiver program by creating an academic cash grant in lieu of a tuition and fee waiver. Not all institutions awarded the waiver, thus some recipients received a benefit while others did not. Legislation enacted in 1994 created the recognition award to replace all other award options available under this program for recipients of the Washington award for excellence in education named by the office of the superintendent of public instruction after January 1, 1994. For academic grant recipients named by the office of the superintendent of public instruction prior to January 1, 1994, the 1994 legislation further provides for the conversion of the academic grant benefit to the recognition award, at the discretion of the recipient and contingent upon funds availability. These regulations are intended not only to implement the new legislative changes but also to provide continued benefits to those previously granted the award.

AMENDATORY SECTION (Amending WSR 92-16-037, filed 7/30/92)

WAC 250-78-030 Definitions. (1) "Institution of higher education" or "institution" shall mean:

(a) Any public university, college, community college, or technical college operated by the state of Washington or any 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 the northwest association of schools and colleges; and providing 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 the northwest association of schools and colleges or another regional accrediting association.

(b) Any other university, college, school, or institute located in another state offering instruction beyond the high school level which is a member institution of a regional accrediting association or otherwise approved by the board in accordance with WAC 250-78-050 (6)(a) or (b); or

(c) Any other university, college, school, or institute located in another country outside of the United States of America offering instruction beyond the high school level which in the judgment of the board meets academic standards comparable to those established by a regional accrediting association.

(2) "Academic grant" shall mean the monetary award which shall be used to take courses at an institution of higher education. The academic grant shall be used to pay for actual costs incurred for tuition and fees only, up to the maximum value of the award as defined in WAC 250-78-050. The academic grant award option is available only to individuals named by the office of the superintendent of public instruction as recipients of the Washington award for excellence in education prior to January 1, 1994.

(3) "Board" means the higher education coordinating board. When a duty or responsibility of the board is referenced in these regulations, the authority needed to discharge that responsibility lies with the executive director or his or her designee.

(4) "Recipient" means ~~((a teacher, classified employee, principal, or administrator))~~ an individual who has been designated to receive the Washington award for excellence in education by the superintendent of public instruction ~~((r))~~ prior to January 1, 1994 and who has elected to receive his or her award in the form of the academic grant, or an individual or school board designated by the office of the superintendent of public instruction after January 1, 1994 to receive the recognition award.

(5) "Academic year" shall mean two semesters or three quarters of full-time graduate coursework.

(6) "Stipend" shall mean an amount not to exceed one thousand dollars, payable only to cover costs incurred in taking courses for which a tuition and fee waiver was authorized under pre-existing law (RCW 28A.625.020 (3)(a)). Award recipients named after May 17, 1991 shall be entitled to receive a stipend for costs incurred in taking courses covered by the academic grant only if funds are specifically appropriated for stipends under this program.

(7) "Recognition award" shall mean the cash award provided to teachers, classified employees, principals, administrators, school district superintendents, and school boards named by the office of the superintendent of public instruction as recipients of the Washington award for excellence in education after January 1, 1994. An academic grant recipient named prior to January 1, 1994 may receive

the recognition award by electing to convert the remaining value of his or her academic grant and related stipend benefit, if any, to the recognition award according to rules defined under WAC 250-78-050.

AMENDATORY SECTION (Amending WSR 91-20-070, filed 9/26/91)

WAC 250-78-040 Eligibility to participate. (1) Each year, the higher education coordinating board shall receive from the superintendent of public instruction, or his or her designee, an official list of the names of the ~~((current year))~~ Washington award for excellence in education (Christa McAuliffe) recipients ~~((who have elected to receive the academic grant))~~ who have been designated for the current year.

(2) The superintendent of public instruction, or his or her designee, shall provide the higher education coordinating board with an official list of the names of Washington award for excellence in education (Christa McAuliffe) recipients who were awarded the waiver of forty-five quarter or thirty semester credits of tuition and fees under RCW 28B.15.547 prior to May 17, 1991.

(3) Academic grant recipients ~~((Recipients))~~ may not use the academic grant for any courses that include any religious worship or exercise, or for any degree in religious, seminarian, or theological academic studies.

(4) On and after May 17, 1991, individual benefits under this program for the academic grant and related stipend, if applicable, must be fully utilized and courses completed within four years of the date of official notification of the award recipient's selection and receipt of the academic grant, as provided by the superintendent of public instruction, or his or her designee, to the higher education coordinating board.

(5) Recipients must agree to comply with all conditions of the award and provide documentation to the board as necessary for proper administration of the ~~((academic grant))~~ program.

AMENDATORY SECTION (Amending WSR 93-19-015, filed 9/2/93)

WAC 250-78-050 Award amount. (1) Recipients of the Washington award for excellence in education named by the office of the superintendent of public instruction prior to January 1, 1994 may elect to receive their award in the form of the academic grant. The academic grant shall be used to reimburse recipients for actual costs of tuition and fees up to a maximum of forty-five quarter or thirty semester credit hours. The rate of reimbursement per credit hour shall not exceed the resident, graduate, part-time cost per credit hour at the University of Washington in the year the recipient takes the credit.

(2) Recipients who were awarded the tuition/fee waiver benefit for forty-five quarter or thirty semester credits prior to May 17, 1991 shall receive the remaining value of the tuition/fee waiver in the form of the academic grant. Conversion of the tuition/fee waiver to the value of individual recipient academic grants shall be calculated as a ratio of available (unused) credits remaining in the tuition/fee waiver benefit to the total credits originally awarded.

(3) Consistent with terms of prior law, academic grant recipients who received notification of their award by the office of the superintendent of public instruction prior to May 17, 1991 may be eligible to receive a stipend not to exceed one thousand dollars for costs incurred in taking courses covered by the academic grant.

(4) ~~((Recipients))~~ Academic grant recipients who received notification of their award by the office of the superintendent of public instruction after May 17, 1991 may be eligible to receive a stipend not to exceed one thousand dollars for costs incurred in taking courses covered by the academic grant only if funds are specifically appropriated for stipends under this program.

(5) Washington private colleges and universities may elect to participate in the program.

(a) ~~((Award))~~ Academic grant recipients attending Washington private colleges and universities may receive ~~((an academic))~~ the grant, provided the following additional criteria are met~~((s))~~:

(i) The institution elects to participate in the program; and

(ii) The institution matches the amount of the academic grant received by the recipient from the state on at least a dollar-for-dollar basis, either with actual money or by waiver of fees. If the institution chooses to match the academic grant with actual cash rather than by waiver of tuition/fees, the institutional match shall consist of dollars derived from institutional grant aid funds.

(b) The maximum reimbursement payable per credit by the state to a recipient attending a Washington private institution under the academic grant shall be calculated as the lesser of one of the following amounts:

(i) One-half of the recipient's cost of tuition/fees for that academic term; or,

(ii) The resident, graduate, part-time cost per credit hour for tuition/fees at the University of Washington for an equivalent number of allowable credits in the year the recipient takes the credit; and,

(iii) Not to exceed the maximum value of credits remaining in the recipient's academic grant award; and,

(iv) Not to exceed the dollar value provided by the institution to match the state portion of the academic grant.

(c) Any academic grant recipient who received notification of his or her award by the office of the superintendent of public instruction prior to May 17, 1991 has a vested right to the one thousand dollar stipend, including those recipients who elect to attend a private institution. ~~((Award))~~ Academic grant recipients named by the office of the superintendent of public instruction after May 17, 1991 shall be entitled to receive payment of the stipend only if funds are specifically appropriated for stipends under this program. However, private institutions are not required to match the amount of the stipend.

(6) ~~((Award))~~ Academic grant recipients who elect to use the ~~((academic))~~ grant for courses at a public or private higher education institution in another state or country may receive ~~((an academic))~~ the grant, provided the following additional criteria are met:

(a) The institution has an exchange program with a public or private higher education institution in Washington and the exchange program is approved or recognized by the higher education coordinating board; or

(b) The institution is approved or recognized by the higher education coordinating board; and

(c) The recipient of the Washington award for excellence in education (Christa McAuliffe) academic grant has submitted in writing to the higher education coordinating board an explanation of why the preferred course or courses are not available at a public or private institution in Washington.

(7) Teachers, principals, administrators, superintendents employed by second class school districts, and classified employees who are designated to receive the Washington award for excellence in education by the office of the superintendent of public instruction after January 1, 1994 shall receive a recognition award with a value of at least two thousand five hundred dollars.

(8) Superintendents employed by first class school districts who are designated to receive the Washington award for excellence in education by the office of the superintendent of public instruction after January 1, 1994 shall receive a recognition award with a value of at least one thousand dollars.

(9) School boards which are designated to receive a Washington award for excellence in education by the office of the superintendent of public instruction after January 1, 1994 shall receive a recognition award not to exceed two thousand five hundred dollars. The school board must use its recognition award for an educational purpose.

(10) Recipients of the Washington award for excellence in education named by the office of the superintendent of public instruction prior to January 1, 1994, who elected to receive the award in the form of the academic grant, may convert the remaining value of the academic grant to the recognition award, at their discretion and contingent upon funds availability. In addition, recipients named prior to May 17, 1991 may have the remaining value of the stipend for related educational expenses added to their converted academic grant.

(a) At a minimum, conversion of the academic grant to the recognition award shall be calculated as a ratio of available (unused) credits remaining in the academic grant benefit to the maximum number of credit hours originally awarded in the academic grant (forty-five quarter or thirty semester credit hours). This ratio shall be multiplied by the full value of the recognition award in the fiscal year the conversion option is exercised to determine the dollar value of the recipient's converted academic grant award.

(b) The converted award value of the academic grant shall not exceed the value of the current year's recognition award plus the converted value of any remaining stipend for related educational expenses that the recipient is eligible to receive.

(c) Stipend benefits for related educational expenses may be converted only in conjunction with the academic grant, unless the recipient's remaining award value resides solely in the stipend benefit. In that event, the stipend value may be separately converted to the recognition award.

(d) Academic grant recipients who have fully utilized the value of the academic grant (forty-five quarter or thirty semester credits) and the related stipend, if applicable, or whose four year eligibility period for use of the academic grant as defined in WAC 250-78-040(4) has expired, are not

eligible to retroactively convert the academic grant to a recognition award.

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 WSR 93-19-015, filed 9/2/93)

WAC 250-78-060 Management of funds. (1) Disbursements of all academic grant, ((grant and)) stipend, and recognition award funds are contingent upon appropriations. In the event that funds are insufficient to pay all eligible ((reimbursement)) claims submitted, disbursements will be issued to recipients on the following basis:

(a) ~~((Claims for reimbursement of eligible educational costs shall be paid, in order of receipt by the board, up to the value remaining in the recipient's academic grant or stipend benefit, and to the extent of available funds.))~~ Claims for payment of the recognition award, or reimbursement of eligible educational costs through the academic grant or stipend, shall be paid in order of receipt by the board and to the extent of available funds, up to the value remaining in the recipient's award benefit.

(b) Claims for payment of a recipient's eligible award benefits ((reimbursement of eligible educational costs)) which have not been paid in full shall become first priority for payment, in order of receipt by the board, up to the value remaining in the recipient's ((academic grant or stipend)) award benefit, as funds become available to the program through:

- (i) Supplemental moneys appropriated to the program for the current fiscal year; or,
- (ii) Funds appropriated to the program for the next fiscal year; or,
- (iii) Funds appropriated to the program for subsequent biennia.

(2) At the option of the board, the academic grant may be disbursed as a lump sum award or in incremental amounts on a term by term basis.

(3) Recipients who have not fully utilized their academic grant award benefit (and related stipend benefit, if any) within the four year eligibility period shall forfeit the remaining value of their academic grant and stipend award.

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 94-09-062
PROPOSED RULES
DEPARTMENT OF
NATURAL RESOURCES**

[Order 620—Filed April 20, 1994, 11:01 a.m.]

Original Notice.

Title of Rule: Chapter 332-18 WAC, Surface mining.

Purpose: Establishes administrative procedures and procedural definitions that the department will use to

implement revisions to the Surface Mining Act, chapter 78.44 RCW.

Statutory Authority for Adoption: Mainly RCW 78.44.040 also RCW 34.05.220, 43.21C.135, 78.44.250.

Statute Being Implemented: Chapter 78.44 RCW as amended in 1993.

Summary: Provides procedures for delegation to counties; county fees; regulation of operations; permit issuing, denials, and transfers; bonding including bank letters of credit; and real property; enforcement including fines; and definitions.

Reasons Supporting Proposal: Department of Natural Resources' current rules do not reflect the requirements of the 1993 amendments to the Surface Mining Act, chapter 78.44 RCW.

Name of Agency Personnel Responsible for Drafting: William S. Lingley, Jr., Olympia, (206) 902-1440; Implementation: Raymand Lasmanis, Division Manager, Olympia, (206) 902-1442; and Enforcement: James A. Stearns, Deputy Superintendent, Olympia, (206) 902-1006.

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: These amendments establish procedures for implementing the revised Surface Mining Act. They define the ways in which the department deals with performance security, county governments, enforcement, reclamation permits, appeals, and awards. Those sections that conflict with the revised Surface Mining Act are repealed. We anticipate that these rules will streamline and clarify mine compliance and resolve possible ambiguities. The enforcement procedures should protect the rights of the regulated community and establish reasonable and progressive sanctions for operators who fail to comply with the act.

Proposal Changes the Following Existing Rules: Amends WAC 332-18-010, 332-18-120, 332-18-130, and 332-18-050 as described above; and repeals WAC 332-18-015, 332-18-020, 332-18-030, 332-18-040, 332-18-060, 332-18-070, 332-18-080, 332-18-090, 332-18-100, and 332-18-110 as described above, to conform with amendments to chapter 78.44 RCW.

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

These proposed amendments to chapter 332-18 WAC are procedural in nature [nature] and compliance with these proposed amendments would not have an economic impact on small business or industry in general.

Hearing Location: Department of Natural Resources, 1111 Washington Street S.E., Room 172, Olympia, WA 98504, on May 26, 1994, at 7:00 p.m.

Submit Written Comments to: William S. Lingley, Jr., Department of Natural Resources, Geology, Box 47007, Olympia, WA 98504-7007, by May 31, 1994.

Date of Intended Adoption: June 4, 1994.

April 1, 1994

Kaleen Cottingham
Supervisor

**Chapter 332-18 WAC
SURFACE ((MINED LAND)) MINE RECLAMATION**

AMENDATORY SECTION (Amending Order 86, filed 10/27/70, effective 11/28/70)

WAC 332-18-010 Definitions. The following definitions shall be applicable to these rules ~~((and regulations))~~:

(1) "The act" ~~((wherever referred to in these rules and regulations, shall))~~ means the Washington Surface ~~((Mined Land Reclamation))~~ Mining Act, chapter 78.44 RCW.

(2) ~~(("Stagnant water" shall mean any nonflowing body of water which is, or is likely to become, noxious, odious, or foul.~~

~~((3) "Remote area" as contained in section 4(1) of the act, shall mean a rural area on which the operating area of a surface mining site is not visible from any state highway, county road, or any public street or highway, or, if visible, it is more than one mile away from the point on such road from which it is visible.))~~ "Buffers" shall be synonymous with screening as used in the act.

(3) "Completed application" means receipt and approval by the department of all information required in the act, including:

- (a) A reclamation plan;
- (b) Performance security;
- (c) The application fee; and
- (d) Evidence that SEPA review has been completed.

(4) "Completed reclamation" as referred to in the act means final reclamation that has been approved by the department. Prior to approval, the department shall assure that the vegetative cover, soil stability, and water conditions of the reclaimed segment are appropriate to the approved subsequent use of the site. Approval may be withheld for a period of eighteen months. After July 1, 1995, final approval shall be given in writing by the department.

(5) "Land use plan" and "land use designation" shall refer to approval of the site for mining and for the use after mining by the appropriate city, town, or county government.

(6) "Simple and accurate legal description" in the act means the Government Land Office grid location (quarter section(s), section, Township, Range, and Meridian). Alternatively, the applicant or reclamation permit holder may provide a certified land survey. Metes and bounds descriptions will not be accepted for permits issued or revised after July 1, 1994.

Other terms used in these rules are defined in the act.

NEW SECTION

WAC 332-18-01001 Delegation of enforcement to counties. (1) The department may delegate enforcement of surface mine reclamation to a county: *Provided*, That the county agrees to:

- (a) Enforce all provisions of the act, these rules, and the approved reclamation plan;
- (b) Continuously employ enough qualified mine regulatory personnel to achieve the purposes of the act and these rules;
- (c) Assume full responsibility for all aspects of enforcement of mine reclamation;
- (d) Provide the department with copies of all documents related to enforcement; and

(e) Comply with all related written policies of the department.

(2) Such delegation shall be through a written contract with the county.

(3) The department shall audit the performance of the county to assure that there is compliance with the enforcement provisions of the act and these rules. If the department determines that the county has failed to adequately and fairly enforce the act and these rules to the department's satisfaction, then the county shall be given written notice describing the deficiencies. If the county is unable to correct the deficiencies within the following six months, then the department may revoke the delegation.

(4) The department shall maintain sole authority to approve reclamation plans, to issue reclamation permits, to issue declarations of abandonment, to cancel reclamation permits, and to develop reclamation regulations and standards.

NEW SECTION

WAC 332-18-01002 Land use approval and regulation of operations. (1) For reclamation permits issued after July 1, 1994, approval of mining and of the subsequent use of the mine site shall be verified with a Form SM-6; except that such approval may not be required for mines on state or federal lands. The Form SM-6 shall be signed by a responsible official from the appropriate city, town, or county.

(2) The department will not accept a Form SM-6 that obligates the department to regulate any "operation" as defined in the act, except as necessary to assure timely reclamation.

(3) Conditions on any state surface mine operating permit issued prior to July 1, 1993, that regulate "operations," as defined in the act, not directly related to reclamation are invalid, except those that were properly adopted pursuant to the department's SEPA substantive authority.

(4) After July 1, 1995, the department will attempt to notify the appropriate local government or state agency of surface mines affected by subsection (3) of this section.

NEW SECTION

WAC 332-18-01003 Issuing reclamation permits. (1) After July 1, 1994, the department shall not issue a reclamation permit until the applicant has:

- (a) Met all requirements of these rules and the act;
- (b) Received a final SEPA declaration for the project;
- (c) Received the following approvals if required by state or local governments:
 - (i) Approvals under local zoning and land use regulations;
 - (ii) A shoreline permit;
 - (iii) A hydraulic project approval; and/or
 - (iv) All solid waste permits.

(2) When an applicant has met all provisions of subsection (1) of this section, these rules, and the act, the department shall issue a reclamation permit within thirty days. Appeals of any existing permits listed in subsection (1) of this section shall not stay the timely issuance of a reclamation permit.

NEW SECTION

WAC 332-18-01004 Denial of an application for a reclamation permit. The department may refuse to issue a reclamation permit or revised reclamation permit only if the applicant:

- (1) Fails to provide a complete application;
- (2) Provides a proposal that the department determines should be denied pursuant to RCW 43.21C.060 and WAC 332-41-665; or
- (3) Is not in compliance with an order or notice of the department.

NEW SECTION

WAC 332-18-01005 Annual permit fees for county governments. For reclamation permits held by a county, the county shall pay annual fees for each permit as follows:

- (1) For each surface mine having a permitted area greater than seven acres, the counties shall pay six hundred fifty dollars annually, whether or not the surface mine is active.
- (2) For mines that are less than or equal to seven acres and are used exclusively for public works projects and from which minerals will be extracted during the next calendar year, the county shall also pay:
 - (a) Six hundred fifty dollars for one such mine;
 - (b) Three hundred fifty dollars for two such mines; and
 - (c) No additional annual fee for all other mines meeting the criteria of this subsection.
- (3) Counties shall pay permit application fees but no annual fees for mines that are less than seven acres from which minerals will not be extracted during the next calendar year.

AMENDATORY SECTION (Amending Order 86, filed 10/27/70, effective 11/28/70)

WAC 332-18-050 Inspections and cancellations of permits. The department shall have the right to ~~((make inspections of))~~ inspect any property at any ~~((reasonable))~~ time as ~~((deemed))~~ it determines is necessary to ~~((determine))~~ ensure there is compliance with the act, these rules, and the reclamation plan. Inspections shall be limited to those lands and ~~((such of))~~ the ~~((operator's))~~ permit holder's records ~~((as))~~ that pertain to surface ~~((mining and))~~ mine reclamation ~~((of such lands))~~. ~~((The department shall notify, as deemed necessary, any operator of a proposed inspection. However, lack of such notification shall not be cause for denying the right to inspect. The operator shall have the option of accompanying the inspector.~~

~~Periodic inspections shall be made during the permit year by reclamation inspectors to insure compliance with the operating permit, reclamation plan, and the plan of surface mining. Any and) All deficiencies shall be ((immediately)) brought to the attention of the ((operator, and written notice specifying deficiencies shall be given to the operator. The operator shall commence action within thirty days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected. Provided, That deficiencies that also violate other laws that require earlier rectification shall be corrected in accordance with the applicable time provisions of such laws, or shall immediately commence action to~~

~~rectify deficiencies that involve health, safety, and water pollution if those deficiencies are not regulated by such laws.~~

~~The department shall have grounds to terminate and cancel the operating permit if the operator does not commence action to rectify any and all deficiencies as specified above, or as specified in the act. The operator and his surety shall be notified of such termination and cancellation, said notice to be mailed to the last known address of the operator and surety))~~ miner or permit holder.

The department ~~((shall not)),~~ at its option, may refuse to issue another permit to a ~~((deficient operator))~~ miner or permit holder who has not met all requirements of the act until ((any and)) all deficiencies ((on a specific site)) are corrected to the satisfaction of the department((: Provided, That if the department's determination is under appeal a provisional permit may be issued, but an additional cash bond may be required if the department determines it necessary to assure rectification of the deficiencies)).

NEW SECTION

WAC 332-18-05001 Orders and notices of the department. (1) The department may issue orders and notices as described in the act and these rules. Before issuing the initial order related to a specific violation, the department shall attempt to hold a conference with the miner or permit holder. The purpose of the conference is to determine if a violation has occurred and, if so, to develop a plan to correct the violation and mitigate its impacts insofar as practicable.

- (2) Orders and notices of the department shall set forth:
 - (a) The nature and extent, and if known, the time of the violation(s);
 - (b) The rights of the miner or permit holder to appeal; and
 - (c) Applicable time frames for corrective action and appeal.
- (3) Orders and notices of the department shall be in writing and delivered to the (miner or permit holder by mail or personal service.

NEW SECTION

WAC 332-18-05002 Time extensions and additional performance security. The department may grant an extension of the applicable compliance timetables if failure to comply with the permit, rules, or the act resulted from circumstances clearly beyond the control of the miner or permit holder. The extension may be granted for up to eighteen months. However, the extension may be revoked if the miner or permit holder is not, in the opinion of the department, making every reasonable effort to comply.

Additional performance security in a form acceptable to the department may be required if it is determined to be necessary to assure that the deficiencies are rectified.

NEW SECTION

WAC 332-18-05003 Civil penalties—Procedures. (1) If a miner or permit holder fails to comply with the act, these rules, the permit, the reclamation plan, or any order or emergency order of the department, he/she may be subject to a civil penalty for each violation based upon the schedule

of fines set forth in WAC 332-18-05004 and calculated according to WAC 332-18-05005.

(2) The penalty shall be imposed by a notice of penalties delivered by certified mail with return receipt requested or by personal service.

(3) The notice of penalties shall explain the base penalty and penalty calculation as outlined in WAC 332-18-05004 and 332-18-05005.

(4) If the penalty and interest is not paid to the department after it is due and payable, the attorney general, at the request of the department, may bring an action in accordance with RCW 78.44.250.

NEW SECTION

WAC 332-18-05004 Fines, base penalties schedule.

In setting the amount of a civil penalty imposed under RCW 78.44.087, the department shall consider the following base penalty schedule:

(1) Category I. Fines of two hundred fifty dollars may be levied for each violation of the following:

(a) Failure to post the reclamation plan at the mine site if directed to do so by the department;

(b) Failure to install or maintain monuments;

(c) Failure to provide a new reclamation plan upon request;

(d) Failure to provide requisite solid waste permits to the department;

(e) Failure to route or provide drainage so that reclaimed surfaces are protected from erosion or mass wasting; and/or

(f) Excavation within the reclamation setbacks.

(2) Category II. Fines of five hundred dollars may be levied once for each violation of the following:

(a) Failure to pay annual fees;

(b) Unauthorized sale of, or backfilling with, topsoil needed for reclamation;

(c) Failure to revegetate a segment within the first appropriate growing season;

(d) Surface mining outside the reclamation permit area;

(e) Failure to protect adjacent properties from erosion or slope failure;

(f) Failure to compact fill used for reclamation if such failure results in slope failure; and/or

(g) Any violation of an order of the department.

(3) Category III. Fines of one thousand dollars per day may be assessed, with a maximum of ten thousand dollars per day. Category III penalties may be levied as many as seven days a week for each violation of the following:

(a) Surface mining without a reclamation permit;

(b) Failure to provide performance security upon request;

(c) Failure to remove noxious, combustible, or compactible materials from the mine site;

(d) Failure to complete reclamation of a segment within two years after cessation of operations;

(e) Failure to comply with an emergency order of the department; and/or

(f) Failure to comply when more than one order of the department has been issued for the same violation.

NEW SECTION

WAC 332-18-05005 Calculation of penalty. Fines shall be calculated using the following steps:

(1) The base penalty shall be the minimum fine in each category as set forth in WAC 332-18-05004, unless mitigated pursuant to WAC 332-18-05007.

(2) The department may adjust the fine by multiplying the Category II and III base penalties by factors specific to the incident, miner or permit holder, and/or site. The following factors shall not be imposed unless the department explains in writing how each factor was determined:

(a) Severity: The department shall adjust the penalty to reflect the extent or magnitude and difficulty of repairing the damage to lands, waters, and neighboring properties. This factor shall increase the base penalty by not more than 5.0 times the base penalty.

(b) Previous violation(s): The department shall consider whether the violator has had previous significant violations of the act, rules, permit, or reclamation plan as documented by an enforcement action. This factor shall increase the base penalty by not more than 3.0 times the base penalty.

NEW SECTION

WAC 332-18-05006 Penalties due. (1) Penalties imposed under this section shall become due and payable thirty days after receipt of a notice imposing the fine unless the miner or permit holder applies for mitigation or files an appeal.

(2) Thirty days after the miner or permit holder is notified that administrative review of penalties is complete, the penalty shall become due and payable.

(3) Thirty days after a penalty becomes due and payable, interest shall accrue at the maximum rate allowed by RCW 19.52.020 until the penalty is paid to the department.

NEW SECTION

WAC 332-18-05007 Civil penalties—Mitigation, appeals. (1) Within fifteen days after receiving a notice of penalties, the miner or permit holder may request the department to mitigate the penalty. The application must be in writing and delivered to the department at the following address:

Manager
Division of Geology and Earth Resources
Department of Natural Resources
P.O. Box 47007
Olympia, WA 98504-7007

(2) Upon receipt of the application for mitigation, the penalty may be reduced, dismissed, or left unaltered at the discretion of the department.

(3) The department shall give the miner or permit holder written notice of its decision within thirty days.

(4) If the department refuses to dismiss the penalty, a miner or permit holder may appeal the penalty to the pollution control hearings board as follows:

(a) Any such appeal must be received by the pollution control hearings board within thirty days after the miner or

permit holder receives the written notice in response to the application for mitigation of the penalty;

(b) A copy of the appeal must be delivered to the department at the address given in subsection (1) of this section within the same thirty-day period; and

(c) The rules for appeals to the pollution control hearings board are set out in chapter 371-08 WAC.

NEW SECTION

WAC 332-18-05008 Enforcement of penalties. If the penalty and/or applicable interest are not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the department, may bring an action in superior court to recover the penalty or interest. In all such actions, the procedures and rules of evidence shall be the same as in an ordinary civil action except as otherwise provided in the act.

NEW SECTION

WAC 332-18-05009 Adjudicative proceedings—Standing. A person has standing to obtain review of a department action concerning surface mining under chapter 78.44 RCW only if that person is aggrieved by the department's action. A person is aggrieved only when all three of the following conditions are present:

- (1) The department's action has prejudiced or is likely to prejudice that person;
- (2) That person's asserted interests are among those that the department was required to consider when it took the action being challenged; and
- (3) A decision in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the department's action.

AMENDATORY SECTION (Amending Order 605, filed 10/2/92, effective 11/2/92)

WAC 332-18-120 ((Bonds.)) Performance security.

(1) The performance security required by RCW 78.44.087 may be in the form of a corporate surety bond executed in favor of the department by a corporation authorized to do business in the state of Washington under Title 48 RCW.

(2) After July 1, 1995, performance bonds required by RCW ((78.44.120)) 78.44.087 shall be substantially in the following form, unless ((the department)), in considering any reclamation permit, the department determines that a different form is desirable or required.

SURFACE MINING RECLAMATION BOND

Permit No.

KNOW ALL ((MEN)) PEOPLE BY THESE PRESENTS, That we,, as Principal, and, a corporation organized and existing under the laws of the State of[,] and authorized to transact business in the State of Washington, as Surety, are held and firmly bound unto the State of Washington, acting through the Department of Natural Resources, in the sum of (\$) U.S. DOLLARS, for the payment of which sum we bind ourselves, and each of our legal representatives, executors, administra-

tors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, The Principal has received from the Department of Natural Resources, State of Washington, ((#)) an operating or reclamation permit to conduct surface mining on the Premises whose legal description is in the portion of:

Sec(s), T, N, R. (E)(W) W.M. (circle one):
Sec(s), T, N, R. (E)(W) W.M. (circle one):
Sec(s), T, N, R. (E)(W) W.M. (circle one):
Sec(s), T, N, R. (E)(W) W.M. (circle one):
. (counties)

NOW, THEREFORE, The conditions of this obligation are such that if the Principal, in conducting such surface mining operations, faithfully performs the requirements of the permit (~~and chapter 78.44 RCW, relating to mining and the reclamation of surface mined land[,] and the Rules and Regulations adopted thereunder~~), these rules, and the act, then this obligation shall be (~~exonerated and discharged and become null and~~) void; otherwise ((#)) the obligation shall remain in full force and effect. In accordance with ((~~section 78.44.120 of the Revised Code of Washington~~)) RCW 78.44.087, this bond secures completion of reclamation for the area to be surface mined and related costs after the signature date of this bond and any previously ((~~surface mined~~)) disturbed areas on the Premises on which reclamation has not been satisfactorily completed and approved.

PROVIDED, However, the Surety shall not be liable under this bond for an amount greater in the aggregate than the sum designated in the first paragraph hereof and any reasonable legal fees that the department may incur to recover the security under RCW 78.44.240. The Surety shall not be liable for surface mining performed on the Premises after a date sixty days after the Surety mails a cancellation notice to the Principal and the Department of Natural Resources, Olympia, Washington. The bond shall remain in full force and effect as respects obligations related to surface mining performed on the Premises before that date unless the Principal files a substitute bond or other performance security, approved by the Department of Natural Resources, or unless the Department of Natural Resources otherwise releases the Surety in writing.

Signed, sealed and dated this day of

((2)) (3) Bonds submitted under RCW ((78.44.120)) 78.44.087 shall contain a legal description of the area for which a ((surface mine operating)) reclamation permit has been issued. An acceptable legal description for bonds takes this form: "a portion of ((the NE1/4 of)) sec. 15 T2N R3E." After July 1, 1994, the department will generally not accept metes and bounds descriptions.

AMENDATORY SECTION (Amending Order 605, filed 10/2/92, effective 11/2/92)

WAC 332-18-130 Bank letters of credit. ~~((The department may accept a bank letter of credit in lieu of the performance bond required by RCW 78.44.120.))~~ The performance security required by RCW 78.44.087 may be in the form of a bank letter of credit.

(1) The department will accept a bank letter of credit under RCW ~~((78.44.120))~~ 78.44.087 only if the letter of credit is established in an amount equal to the estimated cost of completing reclamation according to the approved reclamation plan or minimum reclamation standards and related administrative overhead for the area to be surface mined during the next ~~((twelve-month))~~ thirty-six month period and any previously ~~((surface-mined))~~ disturbed areas for which a reclamation permit has been issued and on which the reclamation has not been satisfactorily completed and approved.

(2) If the letter of credit is issued by a bank that has an office within the state of Washington, the department ~~((will))~~ may accept the letter of credit if it:

- (a) Is issued by a bank that is financially sound and is authorized to do business in the state of Washington;
- (b) Does not state that it is subject to the uniform customs and practice for documentary credits; and
- (c) Is in the form described in subsection (4) of this section.

(3) If the letter of credit is issued by a bank that does not have an office within the state of Washington, the department ~~((will))~~ may accept the letter of credit if it:

- (a) Is in the form described in subsection (4) of this section; and
- (b) Is accompanied by a letter of confirmation that:
 - (i) Is issued by a bank that is financially sound, that is authorized to do business in the state of Washington, and that has an office within the state of Washington;
 - (ii) States that the confirming bank will honor the letter of credit; and
 - (iii) States that the letter of confirmation is subject to the Uniform Customs and Practice for Documentary Credits, 1983 revision, ICC Publication No. 400.

(4) Unless the department determines that a different form is desirable or required, any letter of credit filed with the department under RCW ~~((78.44.120))~~ 78.44.087 shall:

- (a) Be in writing;
- (b) Be signed by the issuer;
- (c) Conspicuously state that it is a letter of credit and is issued on behalf of the person whose performance it is intended to secure;
- (d) Identify the reclamation permit number to which it pertains;
- (e) Identify the department of natural resources, state of Washington, as the sole beneficiary;
- ~~((e))~~ (f) State that it is irrevocable;
- ~~((f))~~ (g) State the date upon which it will expire and provide that the expiration date will be automatically extended for one year from that date or any future expiration date unless, no later than sixty days before any expiration date, the issuing bank notifies the department in writing by registered mail of the bank's election not to renew; and shall

~~((g))~~ (h) Expressly provide that any draft or demand for payment must be accompanied by the department's signed statement that the person whose performance the credit is intended to secure is in default of the obligations imposed by chapter 78.44 RCW.

NEW SECTION

WAC 332-18-140 Interest in real property in lieu of other performance security. (1) The department may, at its discretion, accept a security interest in real property instead of other performance security if the reclamation permit holder or applicant provides the following if required by the department:

- (a) An opinion of value by a land appraiser licensed by Washington state indicating that the real property exceeds the amount of the performance security by at least one hundred percent;
- (b) Suitable access, as determined by the department, for possible public entrance onto the property;
- (c) A title insurance policy in favor of the department verifying clear title and indicating that the property is free of liens or other encumbrances; and
- (d) Any other materials requested by the department, such as insurance to protect the department's interest in the real property or an environmental hazard assessment.

(2) The department may require additional opinions of value by a land appraiser licensed by Washington state to assure that the real property exceeds the amount of the performance security by at least one hundred percent.

NEW SECTION

WAC 332-18-150 Permit transfers. (1) The department may approve permit transfers under the provisions of RCW 78.44.171 if the new permit holder provides the following documents:

- (a) A revised reclamation plan together with:
 - (i) Written approval of all persons having a possessory interest in the land;
 - (ii) A revised Form SM-6 approved by the local government if a new subsequent use of the permit area is proposed;
 - (iii) A SEPA checklist. This checklist shall address only those impacts relating to the revised reclamation plan.
- (b) Acceptable performance security as determined by the department pursuant to RCW 78.44.120.
- (c) Written approval of the permit transfer signed by the former permit holder. The department may transfer the reclamation permit without the permission of the former permit holder if a declaration of abandonment has been issued according to RCW 78.44.220.
- (d) Written notification from the new permit holder that they assume all duties of the former permit holder to reclaim the surface mine.

(2) The department may waive the requirement for a revised reclamation plan when it finds that the existing reclamation plan meets the minimum reclamation requirements.

(3) The department shall not transfer the reclamation permit until this permit and all others held by both the former and the new permit holders are in compliance with the act, these rules, the reclamation permit, and any orders

of the department. This requirement may be waived upon approval of a plan and schedule that will result in compliance within eighteen months of the permit transfer date. This plan and schedule shall be considered as part of the reclamation plan, and failure to comply with the plan and schedule shall constitute violations of this chapter.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 332-18-015	Compliance with local regulations.
WAC 332-18-020	Provisional permit.
WAC 332-18-030	Combined operating permits.
WAC 332-18-040	Multiple operations at one site.
WAC 332-18-060	Confidential material.
WAC 332-18-070	Time extensions.
WAC 332-18-080	Preplanning.
WAC 332-18-090	Revegetation.
WAC 332-18-100	Water control.
WAC 332-18-110	Water impoundment.

WSR 94-09-065

PROPOSED RULES

DEPARTMENT OF PERSONNEL

[Filed April 20, 1994, 11:48 a.m.]

Original Notice.

Title of Rule: Amending WAC 356-56-015 Phase in agencies—Application of rules, 356-56-021 Washington management service—Transition of career executive program, 356-56-035 Definitions, 356-56-050 Transition, 356-56-105 Position evaluation—Assignment to management bands, 356-56-115 Salary adjustments, 356-56-120 Other pay practices, 356-56-205 Movement within Washington management service, 356-56-210 Movement between Washington management service and Washington general service positions, 356-56-220 Review period—Attaining permanent status, and 356-56-550 Reduction in force—Agency procedure—Bump options.

Purpose: Revisions address and clarify Washington management service issues to decrease [decrease] confusion and enhance the successful outcomes of this program.

Statutory Authority for Adoption: Chapter 41.06 RCW.
Statute Being Implemented: RCW 41.06.500.

Summary: Revisions address and clarify issues and help prevent circumstances which may otherwise negatively impact employees and/or agencies.

Name of Agency Personnel Responsible for Drafting: Sharon Whitehead, 521 Capitol Way South, Olympia, WA, 753-0468; Implementation and Enforcement: Department of Personnel.

Name of Proponent: Department of Personnel, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 356-56-015 Phase in agencies—Application of rules, establishes implementation date for all agencies; WAC 356-56-021 Washington management service—Transi-

tion of career executive program, proposes September 1, 1994, as latest date for career executive positions and specifies agencies where these positions exist; WAC 356-56-035 Definitions, proposes new definitions for evaluation points and transfer for clarification; WAC 356-56-050 Transition, proposed revisions add clarification of transitioned employees' salaries; WAC 356-56-105 Position evaluation—Assignment to management bands, proposed revision for clarification; WAC 356-56-115 Salary adjustments, proposed revisions simplify administration and add clarification; WAC 356-56-210 Movement between Washington management service and Washington general service positions, proposed revisions add clarification; WAC 356-56-120 Other pay practices, proposed revisions simplify administration and add clarification; WAC 356-56-205 Movement within Washington management service, proposed revisions add clarification; WAC 356-56-210 Movement between Washington management service and Washington general service positions, proposed revisions add clarification; WAC 356-56-220 Review period—Attaining permanent status, proposed revisions add clarification; and WAC 356-56-550 Reduction in force—Agency procedure—Bump options, proposed revisions simplify administration and add clarification.

Proposal Changes the Following Existing Rules: See explanation above.

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

Hearing Location: Department of Personnel, 2nd Floor, Board Room, 521 Capitol Way South, Olympia, WA, on May 24, 1994, at 2:30 p.m.

Submit Written Comments to: Sharon Whitehead, Department of Personnel, P.O. Box 47500, Olympia, WA 98504-7500, by May 20, 1994.

Date of Intended Adoption: May 25, 1994.

April 20, 1994

Dennis Karras

Director

AMENDATORY SECTION (Amending WSR 94-09-012, filed 4/12/94, effective 5/14/94)

WAC 356-56-015 ((Phase in agencies—))Application of rules. Chapter 356-56 WAC adopted by the director of personnel and effective ((January 1994 will apply only to the department of personnel, department of revenue, and office of minority and women's business enterprises. Chapter 356-56 WAC will apply to the department of transportation effective March 15, 1994. After the phase in period, the director will adopt rules)) July 1, 1994 ((that apply)) applies to all agencies except the department of fish and wildlife and the department of community, trade, and economic development. Chapter 356-56 WAC will apply to the department of fish and wildlife and the department of community, trade, and economic development effective September 1, 1994.

AMENDATORY SECTION (Amending WSR 94-01-126, filed 12/17/93, effective 1/18/94)

WAC 356-56-021 Washington management service—Transition of career executive program. (1) The provisions of this section apply only to managerial employees in the department of fish and wildlife and department of

community, trade, and economic development who were appointed to career executive program positions in probationary, trial service or permanent status as of June 30, 1993. ((The provisions of WAC 356-56-021 do not apply to managerial employees in these positions in agencies listed in WAC 356-56-015.)) The provisions of this section shall apply to such employees only until September 1, 1994 or until they leave the position, whichever occurs first.

~~(2) ((Individuals who leave the above positions, all other managerial employees, and all vacant managerial positions are subject to the provisions of the remaining chapters of WAC 356, until such time as the director adopts rules in WAC 356-56 which pertain to those employees and positions.~~

~~(3) Managerial employees referenced in sub-section (1) of this section who successfully complete a twelve-month probationary or trial service period shall attain permanent status in the classification to which their position is allocated.~~

~~(4) Permanent managerial employees referenced in sub-section (1) of this section shall retain permanent status in the classification to which their position is allocated.~~

~~(5))~~ Managerial employees referenced in sub-section (1) of this section who have been in the same job class and position for four consecutive years from career executive appointment date shall be removed from coverage of the provisions of this section, UNLESS an extension is approved by the director or designee.

~~((6))~~ (3) An agency director may remove a managerial employee from coverage of the provisions of this section, provided that the employee was informed of a limitation of less than four consecutive years on career executive program participation upon appointment to the program.

~~((7))~~ (4) Permanent managerial employees who voluntarily leave career executive transition status or leave in accordance with sub-sections ~~((5))~~ (2) and ~~((6))~~ (3) of this section, shall remain in their position and retain permanent status. Agencies shall notify the director of personnel, or designee of these vacancies.

~~((8) Managerial employees who have not successfully completed a probationary or trial service period into positions referred in sub-section (1) of this section, or where the position is subsequently abolished, shall be entitled to return to the position or class previously held with permanent status. If such position is not available, the managerial employee shall return to a position similar in nature and salary to the position previously held. Employees appointed into these positions via the open competitive process shall not have return rights under the provisions of this section.~~

~~(9))~~ (5) Employees shall not be offered reduction-in-force options or trial service reversion rights to filled positions that were in the career executive program on June 30, 1993. Agencies may elect to return entitled exempt employees to these positions.

~~((10) Except for the agencies named in WAC 356-56-015, this section providing for career executive transition into the Washington management service shall be in effect until the director of personnel adopts rules in WAC 356-56 replacing this section and encompassing all classified managerial employees subject to the provisions of RCW 41.06-))~~

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 WSR 94-01-126, filed 12/17/93, effective 1/18/94)

WAC 356-56-035 Definitions. (1) Anchor positions. Generic anchor positions are those which are found in many agencies; they are commonly understood and similarly used from agency to agency. Agency-specific anchor positions are those anchor positions in each agency which are commonly understood and similarly used throughout the agency.

(2) Appointing authority. A person or group of persons designated by the agency head to make appointments, impose formal discipline or otherwise regulate personnel matters.

(3) Evaluation points. The points resulting from an evaluation of a position using the managerial job value assessment chart.

(4) Management bands. A series of management levels included in the Washington management service. Placement in a band reflects the nature of management, decision-making environment and policy impact, and scope of management accountability and control assigned to the position.

~~((4) Salary level. A range of ten percent higher and lower than the salary assigned to the position.))~~

(5) Transfer. Movement from one position to a different position with the same evaluation points.

(6) Washington general service. The system of personnel administration that applies to classified employees or positions under the jurisdiction of chapter 41.06 RCW and exclusively under those chapters of Title 356 WAC that are adopted by the Washington personnel resources board.

~~((6))~~ (7) Washington management service. The system of personnel administration that applies to classified managerial employees or positions under the jurisdiction of RCW 41.06.022 and 41.06.500 and those chapters of Title 356 WAC that are adopted by the director of personnel.

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

AMENDATORY SECTION (Amending WSR 94-01-126, filed 12/17/93, effective 1/18/94)

WAC 356-56-050 Transition. (1) Until such time that an agency completes the initial evaluation of the position (as described in WAC 356-56-105) or changes the position, the incumbent and position when initially placed in the Washington management service will:

(a) Retain current salary;

~~((b) Continue to receive periodic increments as specified in WAC 356-14-110 within the forty five thousand dollar salary limit set by the 1993 legislature;~~

~~((c))~~ Immediately assume permanent status in the Washington management service for permanent status employees;

~~((d))~~ (c) Obtain permanent status upon completion of the probationary or trial service time period for employees

in trial service or probationary status at the time of transition; and,

~~((e))~~ (d) Continue in the current work period designation until changed by the agency.

(2) Until all positions in an agency are evaluated in accordance with WAC 356-56-105, employees shall be treated in accordance with WAC 356-30-330 should a reduction-in-force occur.

(3) Incumbents in positions transitioned into Washington management service will continue to receive periodic increments as specified in WAC 356-14-110 within the forty-five thousand dollars salary limit set by the 1993 legislature.

(4) Permanent status employees who are in project positions at the time their regular positions are placed in the Washington management service, have return rights to the same or similar Washington management service positions.

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 WSR 94-01-126, filed 12/17/93, effective 1/18/94)

WAC 356-56-105 Position evaluation - assignment to management bands. Management bands are a series of management levels included in the Washington management service. Placement in a band reflects the nature of management, decision-making environment and policy impact, and scope of management accountability and control assigned to the position. Each agency will evaluate its positions using a managerial ~~((point factor system))~~ job value assessment chart developed by the department of personnel. The number of points resulting from the evaluation will determine to which management band a position is assigned.

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 WSR 94-09-012, filed 4/12/94, effective 5/14/94)

WAC 356-56-115 Salary adjustments. (1) Adjustments to the compensation for a position with no change in point factor evaluation shall not exceed the maximum or fall below the minimum amount set by the director of personnel for the management band. ~~((Normally,))~~ After the initial transition evaluation, salary adjustments initiated by the agency, other than for promotion or demotion, will not normally exceed a total of ten percent for a single fiscal year. Requests for exception may be granted only by the director of personnel. Salary adjustments may be made under the following conditions:

- (a) Legislatively directed general and/or special increase;
- (b) Documented recruitment and/or retention problems as approved by the agency director or designee;
- (c) Documented agency and/or state internal salary relationship problems, as approved by the agency director or designee; or

(d) Progression adjustments may be granted in recognition of the employee's demonstrated growth and development following initial transition, hire, or a promotion by up to five percent annually, for a maximum total of twenty percent ~~((in recognition of the employee's demonstrated growth and development))~~. Progression adjustments must be within the forty-five thousand dollar salary limit established by the 1993 legislature until such time as the limit is changed or removed.

(2) Voluntary movement to a position of a lesser point factor evaluation may result in a salary decrease which exceeds ten percent but does not fall below the minimum amount of the band.

(3) A promotion is the assignment of additional responsibilities which results in a higher point factor evaluation in the same position, or movement to a different position that has a higher point factor evaluation. Promotional ~~(())~~ increases ~~((in salary made to meet the new point factor evaluation))~~ may exceed ten percent.

(4) A disciplinary demotion is the assignment of responsibilities which results in a lower point factor evaluation in the same position, or movement to a different position that has a lower point factor evaluation. The resulting salary decrease may exceed ten percent and must be in conformance with the provisions of the Fair Labor Standards Act. ~~((A disciplinary reduction in salary in conformance with the Fair Labor Standards Act may also exceed ten percent.))~~

(5) Involuntary downward movement based on a non-disciplinary reassignment of duties that results in a lower point factor evaluation of an employee's present position shall not cause a decrease in the employee's current salary. The employee's current salary will be retained until such time as it is exceeded by the Washington management service salary structure or the employee leaves the position.

(6) An agency may provide a lump sum recognition payment within guidelines established by the department of personnel in recognition of documented exceptional work and performance results. Such ~~((recognition))~~ compensation shall not become a permanent salary increase but is considered to be income for ~~((the))~~ recognizing documented exceptional work and performance results. A payment made as a lump sum for recognition purposes shall be included within the ten percent annual adjustment limitation in the fiscal year in which it is paid.

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 WSR 94-01-126, filed 12/17/93, effective 1/18/94)

WAC 356-56-120 Other pay practices. (1) Each agency shall be responsible for determining the work period designation for each of its positions in accordance with the federal Fair Labor Standards Act. For positions covered by the overtime provisions of the Fair Labor Standards Act, pay shall be administered as prescribed by chapter 356-15 WAC.

(2) Leave accrual and use and holiday time will be administered as prescribed in chapter 356-18 WAC.

(3) Each agency will determine policy and practices for additional compensation such as shift differential, call back pay, and standby pay.

AMENDATORY SECTION (Amending WSR 94-01-126, filed 12/17/93, effective 1/18/94)

WAC 356-56-205 Movement within Washington management service. (1) A promotion within the Washington management service occurs when an employee's salary is adjusted upward as a result of WAC 356-56-115(3). A review period may be required as specified in WAC 356-56-220.

(2) There is no required promotional preference when recruiting and selecting for Washington management service positions. However, an agency may determine, on an individual position basis, if it is in the organization's best interest to limit the candidate pool to those eligible for agency or service-wide promotion.

(3) A transfer is the movement of an employee from one position to a different position or movement of a position from one section, department, or geographical location to another(~~(--The salary of the employee or the position remains))~~ at the same evaluation points (~~(salary level)~~).

(a) An employee and the affected agency or agencies may agree to a transfer within Washington management service, within an agency, or between agencies.

(b) An agency or agencies may transfer an employee or a position with an incumbent to meet client or organizational needs if the new location is within a reasonable commute as defined by the agency.

(c) An agency may transfer a position at any time. However, if the transfer results in an unreasonable commute for the incumbent, and the incumbent does not agree to transfer with the position, the rules on reduction in force as provided in WAC 356-56-550 shall apply.

AMENDATORY SECTION (Amending WSR 94-01-126, filed 12/17/93, effective 1/18/94)

WAC 356-56-210 Movement between Washington management service and Washington general service positions. (1) Employees who have attained permanent status, or who have completed six months of the review period in the Washington management service are eligible to compete under promotional recruitments for general service positions.

(2) Permanent employees may transfer from the Washington management service to Washington general service positions if their salary is within the salary range of the general service position.

(3) Permanent employees may transfer from Washington general service to Washington management service positions if their salary is within the (~~(salary level)~~) management band of the Washington management service position.

(4) Permanent employees may voluntarily demote between Washington management service and Washington general service positions at a lower pay level than their current permanent position.

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 WSR 94-01-126, filed 12/17/93, effective 1/18/94)

WAC 356-56-220 Review period—Attaining permanent status. (1) The review period for an appointee to a position within the Washington management service is a period of time to allow the employer to ensure the appointee meets the performance and other requirements of the position.

(2) Based on the nature of the job and the skills of the appointee, the review period will be between twelve and eighteen months as determined by the appointing authority. The appointing authority will inform the appointee in writing at the time of appointment of the length of the review period.

(3) Appointees from outside state service and promotional appointees will attain permanent status in the position upon successful completion of the review period.

(4) An appointing authority may require an an (~~(permanent)~~) employee who transfers or voluntarily demotes to serve a review period.

(5) An employee who is promoted to a different Washington management service position during the review period, will begin a new review period for the new position. The employee will concurrently serve both the original and the new review period and will attain permanent status as a state employee in the original position when the original review period elapses.

(6) An employee who is appointed to a Washington management service position from a Washington general service position while serving a probationary or trial service period in the same or similar occupational field will serve the trial service or probationary period concurrently with the review period. The employee will attain permanent status in the previous job classification once the original probationary or trial service period elapses.

(7) The agency may require a review period when the employee remains in the same position and receives a promotion.

AMENDATORY SECTION (Amending WSR 94-01-126, filed 12/17/93, effective 1/18/94)

WAC 356-56-550 Reduction in force—Agency procedure—Bump options. (1) Washington management service employees may be separated due to reduction in force in accordance with (~~(WAC 356-30-330, except that WAC 356-30-330 (3)(d through f) and (7) shall not apply. Seniority shall be defined as provided in WAC 356-05-390))~~ the statutes and the agency's reduction in force procedures after at least fifteen calendar days' notice in writing, without prejudice, because of lack of funds or curtailment of work, or good faith reorganization for efficiency purposes, ineligibility to continue in a position which has been reallocated, or when there are fewer positions than there are employees entitled to such positions either by statute or within other provisions of these rules.

(2) When Washington management service employees have statutory rights to return to the classified service, such employees first shall be returned to the position selected. If

such return causes the total number of employees to exceed the total number of positions to be filled, the least senior person in the position shall have the reduction in force rights prescribed in this section.

(3) Each agency shall develop a reduction in force procedure that is consistent with the following:

(a) For purposes of reduction in force, seniority shall be determined by the definition in WAC 356-05-390. Ties in seniority will be broken by first measuring the employees last continuous time within their current Washington management service position; if the tie still exists, by measuring the employees last continuous time in their current agency; and if the tie still exists, by lot.

(b) Layoff units will be clearly defined, either geographically or by administrative units or both, so as to limit the disruption of an agency's total operation; but not to unduly restrict the options available to employees with greater seniority. The definition of layoff units may be a series of progressively larger units within an agency when a valid option in lieu of separation cannot be offered to respective employees within a smaller unit.

(c) Options in lieu of separation by reduction in force may be offered by an agency only when such options are in accordance with the agency's reduction in force procedure.

(d) Appointment to vacancies and "bumping" shall occur in accordance with ~~((the agency reduction in force plan and))~~ the following:

~~((a))~~ (i) Appointing authorities will seek within the agency a funded vacant Washington management service position for which the employee has the required job skills that is at the same evaluation points ~~((salary within the Washington management service))~~. If no funded vacancies exist, then the appointing authority shall seek a funded position within the agency at the same or lower ~~((salary))~~ evaluation points for which the separated employee has greater seniority, applicable personal work history, and the required job skills ~~((as outlined in the agency reduction in force plan))~~. The appointing authority will first look within the current management band for equivalent funded positions at the same ~~((salary))~~ evaluation points, and if none are found, then progressively to positions with lower ~~((salaries))~~ evaluation points. The appointing authority may consider vacant positions within the agency at ~~((a))~~ higher ~~((salary))~~ evaluation points. ~~((Lower salary positions are positions where the mid-point salary is lower than the mid-point salary of the current position. Mid-point salary is the resultant salary of the point factor evaluation plus any prevailing rate factor.~~

~~((b))~~ (ii) Appointing authorities will consider appropriate Washington general service positions within the agency in the same occupational field with the same or similar salary for which the employee is qualified and has held permanent status, prior to considering appropriate Washington management service positions within the agency which have lower evaluation points and salary.

~~((c))~~ (iii) Permanent Washington management service employees who have no options for the same or similar positions in the Washington management service, and who have held permanent status in the Washington general service, will be afforded reduction in force rights as provided in chapter 356-30 WAC.

(e) The right to actually "bump" shall be exercised only after the employee to be "bumped" has received at least fifteen calendar days' notice of the scheduled action.

(f) Options of full-time positions will be offered first to full-time employees before part-time positions are offered. For the purpose of these offers, employees who previously accepted part-time positions due to a reduction in force action or to lessen the impact of a reduction in force shall be considered full-time employees.

(g) Seniority for part-time employees will be computed on a basic payroll hour basis within the same provision and restrictions of the general definition of seniority. When part-time employees become full-time employees, their payroll hours will be integrated on a comparable time basis as full-time employees.

(h) No permanent employee shall be separated through reduction in force without being offered acting positions for which the agency determines the employee is qualified.

(i) The salary of an employee who accepts a lower position shall be determined by the agency.

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 94-09-069
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed April 20, 1994, 11:58 a.m.]

Original Notice.

Title of Rule: WAC 232-28-61950 1994-95 Washington game fish seasons and catch limits—Nooksack River, Skagit River, Sauk River, Suiattle River, Cascade River, Lake Washington, Cedar River, Grays River, Skamokawa Creek, Elochoman River, Coweeman River, Toutle River (North Fork), Green River (Cowlitz County), Kalama River, Lewis River (North Fork), Salmon Creek (Clark County), Washougal River, Skokomish River, Quilcene River and Dungeness River.

Purpose: Closes selected sections of rivers on the Columbia River, Washington coast and Puget Sound to the sport fishing of summer steelhead, dolly varden/bull trout, resident trout and searun cutthroat.

Statutory Authority for Adoption: RCW 77.12.040.

Statute Being Implemented: RCW 77.12.040.

Summary: Eliminates impacts on depressed salmon stocks caused by the summer steelhead, dolly varden/bull trout, resident trout and searun cutthroat sport fishing seasons during critical salmon spawning periods.

Reasons Supporting Proposal: Salmon stocks are at depressed levels throughout Washington. The regulation proposals will assist in reducing summer steelhead, dolly varden/bull trout, resident trout and searun cutthroat sport fishing impacts on nontarget salmon stocks by eliminating hooking mortality on nontarget species, reducing poaching and making enforcement less complicated. Closures are designed to minimize loss of recreational opportunity for

steelhead anglers while maximizing protection for depressed salmon stocks.

Resource Impacts: The average three-year harvest of summer steelhead for the affected waters is 3417 fish. The harvest of dolly varden/bull trout, resident trout and searun cutthroat is unknown. These fish should be available for harvest outside closed sections or later in the season when the sections reopen.

Financial Impacts: Some impacts to professional guides may occur through cancellations of guided steelhead trips.

Statement of Finding: An effective date of June 1, 1994, which is earlier than the thirty-one days after filing, is necessary because the time requirements would be contrary to the public interest. Depressed salmon stocks will be entering Washington streams in early June. Waiting thirty-one days to implement this regulation will make these depressed salmon stocks vulnerable to hooking mortality, poaching and harvest due to misidentification during summer steelhead, dolly varden/bull trout, resident trout and searun cutthroat sport fishing seasons.

Name of Agency Personnel Responsible for Drafting and Implementation: Bruce Crawford, A.D. Fisheries Management, Olympia, (206) 902-2737; and Enforcement: Dayna Matthews, A.D. Patrol, Olympia, (206) 902-2927.

Name of Proponent: Washington Fish and Wildlife Commission, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: See 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: Department of Natural Resources Building, 1111 Washington S.E., Room 630, Olympia, WA 98504, on May 26, 1994, at 12:00 noon.

Submit Written Comments to: Richard J. Poelker, 600 Capitol Way North, Olympia, WA 98501-1091, by May 25, 1994.

Date of Intended Adoption: May 26, 1994.

April 20, 1994

Richard J. Poelker

Administrative Regulations Officer

NEW SECTION

WAC 232-28-61950 1994-1995 Washington game fish seasons and catch limits—Nooksack River, Skagit River, Sauk River, Suiattle River, Cascade River, Lake Washington, Cedar River, Grays River, Skamokawa Creek, Elochoman River, Coweeman River, Toutle River (North Fork), Green River (Cowlitz County), Cowlitz River, Kalama River, Lewis River (North Fork), Salmon Creek (Clark County), Washougal River, Skokomish River, Quilcene River and Dungeness River. Notwithstanding the provisions of WAC 232-28-619, effective June 1, 1994, the following regulations apply:

Item 1: Nooksack River: Mouth to Forks, Middle Fork to Dam, North Fork to Nooksack Falls: Closed to fishing for steelhead June 1, 1994, to August 31, 1994.

South Fork, from its mouth to Skookum Creek: Closed to fishing for all game fish June 1, 1994, to September 30, 1994.

Item 2: Skagit River: Mouth to Gilligan Creek (RM.28.8): Closed to fishing for steelhead, dolly varden/Bull Trout June 1, 1994, to October 15, 1994.

Gilligan Creek (RM.28.8) upstream to Gorge Powerhouse at Newhalem: Closed to fishing for steelhead, dolly varden/Bull Trout September 1, 1994, to October 31, 1994.

Dalles Bridge to 200 feet upstream of mouth of the Baker River: Closed to fishing for steelhead, dolly varden/Bull Trout June 1, 1994, to October 15, 1994.

Item 3: Sauk River Mouth to headwaters, including North and South Forks: Closed to fishing for steelhead, dolly varden/Bull Trout September 1, 1994, to October 31, 1994.

Item 4: Suiattle River: Mouth to headwaters: Closed to fishing for steelhead, dolly varden/Bull Trout September 1, 1994, to October 31, 1994.

Item 5: Cascade River: Mouth to headwaters: Closed to fishing for steelhead, dolly varden/Bull Trout September 1, 1994, to October 31, 1994.

Item 6: Lake Washington: Lake Washington including that portion of Sammamish River from 68th Avenue NE Bridge downstream: Closed to fishing for steelhead year around.

Item 7: Cedar River: Mouth to Landsburg diversion dam: Closed to fishing for steelhead June 1, 1994, to September 1, 1994.

Item 8: Grays River: Mouth to South Fork: Closed to fishing for steelhead September 1, 1994, to October 31, 1994.

Item 9: Skamokawa Creek: Mouth to forks below Oatfield and Middle Valley Road: Closed to fishing for

- Item 10: Elochoman River: steelhead August 16, 1994, to October 15, 1994. From Beaver Creek hatchery intake upstream to upper rack at Elokomin salmon hatchery: Closed to fishing for steelhead August 16, 1994, to October 15, 1994.
- Item 11: Coweeman River: Mouth to Mulholland Creek: Closed to fishing for steelhead August 16, 1994, to October 15, 1994.
- Item 12: Toutle River (NF): From 19 Mile Bridge to fish collection facility: Closed to fishing for steelhead August 16, 1994, to October 15, 1994.
- Item 13: Green River (Cowlitz Co.): Mouth to salmon hatchery rack: Closed to fishing for steelhead August 16, 1994, to October 15, 1994.
- Item 14: Cowlitz River: Trout hatchery intake (or pumphouse) upstream to barrier dam: Closed to fishing for steelhead August 16, 1994, to October 15, 1994.
- Item 15: Kalama River: Mouth upstream to 200 feet upstream of temporary rack: Closed to fishing for steelhead August 16, 1994, to October 15, 1994.
- Item 16: Lewis River (NF): From lower Cedar Creek concrete boat ramp to Colvin Creek: Closed to fishing for steelhead August 16, 1994, to October 15, 1994.
- Item 17: Salmon Creek (Clark Co.): Mouth to N.E. 72nd Avenue: Closed to fishing for steelhead August 16, 1994, to October 15, 1994.
- Item 18: Washougal River: Mouth to 3rd Avenue bridge: Closed to fishing for steelhead August 16, 1994, to October 15, 1994.
- Item 19: Skokomish River: Mouth to forks: Closed to fishing for steelhead September 1, 1994, to October 31, 1994.
- Item 20: Quilcene River: Mouth to upper boundary of Falls View Campground: Closed to fishing for steelhead August 15, 1994, to October 31, 1994.

- Item 21: Dungeness River: Mouth to Gray Wolf River: Closed to fishing for all game fish September 1, 1994, to October 31, 1994. Mouth of Gray Wolf River upstream: Closed to fishing for all game fish September 1, 1994 to October 31, 1994.

WSR 94-09-070
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed April 20, 1994, 11:59 a.m.]

Original Notice.

Title of Rule: Commercial fishing rules.

Purpose: Amend coastal harbor salmon seasons.

Statutory Authority for Adoption: RCW 75.08.080.

Statute Being Implemented: RCW 75.08.080.

Summary: Close Grays Harbor and Willapa Bay summer seasons and Grays Harbor fall season; adjust Willapa Bay fall season.

Reasons Supporting Proposal: Expected returns of coho salmon will not reach escapement.

Name of Agency Personnel Responsible for Drafting: Evan Jacoby, 1100 Washington Street, Olympia, 902-2930; Implementation: Gene DiDonato, 1100 Washington Street, Olympia, 902-2625; and Enforcement: Dayna Matthews, 1100 Washington Street, Olympia, 902-2927.

Name of Proponent: Washington State Department of Fish and Wildlife, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 220-36-021 and 220-40-021, closed to protect Columbia River origin chinook; WAC 220-36-023, closed because of insufficient coho salmon to meet escapement needs for reproduction; and WAC 220-40-027, season adjustments to harvest available hatchery chinook and provide coho salmon update. Directed coho and chum salmon fisheries closed to provide escapement for reproduction.

Proposal Changes the Following Existing Rules: As above.

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

The total number of commercial fishing licenses for 1993 was 7,082. The Grays Harbor and Willapa Bay fishers represent 512 licensees, which is less than 10% of the businesses is [in] any one three-digit industrial classification, or 20% of all small businesses.

Hearing Location: Woodworkers Local Lodge, 201 East Ellis, Raymond, WA, on May 24, 1994, at 7:00 p.m.

Submit Written Comments to: Hearings Officer, Washington State Department of Fish and Wildlife, 600 Capitol Way, Olympia, 98501, by May 23, 1994.

Date of Intended Adoption: May 31, 1994.

April 20, 1994
Loren J. Stern
for Robert Turner
Director

AMENDATORY SECTION (Amending Order 90-77, filed 8/24/90, effective 9/24/90)

WAC 220-36-021 Salmon—Grays Harbor—Summer fishery. From July 5 through August 15 of ~~((each year))~~ 1994, it is unlawful to fish for salmon in Grays Harbor for commercial purposes or to possess salmon taken from those waters for commercial purposes ~~((, except that:~~

Fishing period

(1) Gill net gear may be used to fish for salmon from 6:00 p.m. July 5 to 6:00 p.m. August 15 in (a) SMCRA 2B; (b) that portion of SMCRA 2C south of a line true east-west through the northernmost tip of Goose Island, and west of a line true north-south through the southernmost tip of Goose Island; and (c) that portion of SMCRA 2D south of a line true east-west through light "35" (flashing green) near Moon Island, and west of a line from light "35" to the mouth of O'Leary Creek.

Gear

(2) Gill net gear shall be used as provided in WAC 220-36-015, except there is no maximum mesh size.

General

(3) Notwithstanding WAC 220-36-031, from 6:00 p.m. July 5 to 11:59 p.m. July 31 all white sturgeon must be released immediately and returned to the water).

AMENDATORY SECTION (Amending Order 93-54, filed 6/29/93, effective 7/30/93)

WAC 220-36-023 Grays Harbor salmon—Fall fishery. From August 16 through December 31 of ~~((each year))~~ 1994, it is unlawful to fish for salmon in Grays Harbor for commercial purposes ~~((or to possess salmon taken from those waters for commercial purposes, except that:~~

Fishing period

(1) Gill net gear may be used to fish for salmon from:
(a) 6:00 p.m. September 7 to 6:00 p.m. September 9, 6:00 p.m. September 12 to 6:00 p.m. September 16, and 6:00 p.m. September 19 to 6:00 p.m. September 23, 1993, in SMCRA 2C;
(b) 6:00 p.m. October 4 to 6:00 p.m. October 6, 1993, in SMCRA 2B, 2C and 2D.

Gear

(2) Gill net gear shall be used as provided in WAC 220-36-015 except: August 9 through September 23, 9 inch maximum mesh).

AMENDATORY SECTION (Amending Order 90-77, filed 8/24/90, effective 9/24/90)

WAC 220-40-021 Willapa Bay salmon—Summer fishery. From July 5 through August 15 of ~~((each year))~~

1994, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes ~~((, except that:~~

Fishing period

(1) Gill net gear may be used to fish for salmon from 6:00 p.m. July 5 to 6:00 p.m. August 15 in: (a) That portion of SMCRA 2G east of a line drawn true north-south through Willapa Channel Entrance Buoy 10; and (b) that portion of SMCRA 2H west of Willapa Channel Marker 35.

Gear

(2) Gill net gear shall be used as provided in WAC 220-40-015, except there is no maximum mesh size.

General

(3) Notwithstanding WAC 220-40-031, from 6:00 p.m. July 5 to 11:59 p.m. July 31 all white sturgeon must be released immediately and returned to the water).

AMENDATORY SECTION (Amending Order 93-54, filed 6/29/93, effective 7/30/93)

WAC 220-40-027 Salmon—Willapa Bay fall fishery. From August 16 through December 31 of each year, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing period

(1) Gill net gear may be used to fish for salmon from:
(a) 6:00 p.m. August ~~((18))~~ 22 to 6:00 p.m. August ~~((19))~~ 23, 6:00 p.m. August ~~((25))~~ 29 to 6:00 p.m. August ~~((26))~~ 31, 6:00 p.m. September ~~((4))~~ 6 to 6:00 p.m. September ~~((2))~~ 8, and 6:00 p.m. September ~~((7))~~ 13 to 6:00 p.m. September ~~((9))~~ 15, ~~((1993))~~ 1994, in SMCRA 2J, 2K, 2M and that portion of SMCRA 2G east of a line drawn true north-south through Willapa Channel Entrance Buoy ~~((43))~~ 12, and that portion of SMCRA 2H west of Willapa Channel Marker 35;
(b) 6:00 p.m. September ~~((43))~~ 19 to 6:00 p.m. ~~((September 16, 1993))~~ October 5, 1994, in SMCRA 2H, 2M and that portion of SMCRA 2G east of a line drawn true north-south through Willapa Channel Entrance Buoy ~~((43))~~ 10 and that part of SMCRA 2J north of an east-west line through the north entrance marker to the Nahcotta basin (red flasher no. 2);
(c) ~~((6:00 p.m. September 19 to 6:00 p.m. October 14 in SMCRA 2H, 2M and that portion of 2G east of a line drawn true north-south through Willapa Channel Entrance Buoy 10;~~
~~((d))~~ 6:00 p.m. September ~~((43))~~ 19 to 6:00 p.m. September ~~((14, 1993))~~ 20, 6:00 p.m. September ~~((20))~~ 22 to 6:00 p.m. September ~~((21, 1993))~~ 23, 6:00 p.m. September ~~((23))~~ 26 to 6:00 p.m. September ~~((24, 1993))~~ 27, 6:00 p.m. September ~~((27))~~ 29 to 6:00 p.m. September ~~((28, 1993, 6:00 p.m. September 30 to 6:00 p.m. October 1, 1993))~~ 30, and 6:00 p.m. October ~~((4))~~ 3 to 6:00 p.m. October ~~((5, 1993, 6:00 p.m. October 7 to 6:00 p.m. October 8, 1993, 6:00 p.m. October 11 to 6:00 p.m. October 12, 1993))~~ 4, 1994, in SMCRA ~~((2J and))~~ 2K, ~~((except that 6:00 p.m. September 12 to 6:00 p.m. September 17, 1993, and 6:00 p.m. September~~

PROPOSED

19 to 6:00 p.m. October 1, 1993,)) and that part of SMCRA 2J north of an east-west line through the north entrance marker to the Nahcotta basin (red flasher no. 2) ((is open continuously;

(e) 6:00 p.m. October 14 to 6:00 p.m. November 1, 1993, in SMCRA 2H and that portion of SMCRA 2G east of Willapa River Channel Marker 24;

(f) 6:00 p.m. November 1 to 6:00 p.m. November 30, 1993, in SMCRA 2G, 2H, 2J, 2K and 2M and that portion of SMCRA 2 east of a line from Shoalwater Light to Leadbetter Point)).

(2) The Tokeland Boat basin is closed to commercial fishing during the openings in SMCRA 2G described in this section. The Tokeland Boat basin means that portion of SMCRA 2G bounded on the south by the shoreline of the boat basin, on the west by the seawall and on the north and east by a line from the Tokeland Channel Marker "3" (flashing green, 4-second) to Tokeland Channel Marker "4" to the tip of the seawall.

Gear

((2)) (3) Gill net gear shall be used as provided in WAC 220-40-015 except((
(a)) that before September 14, the maximum mesh size is 8-1/2 inches((
(b) After November 19, the minimum mesh size is 7-1/2 inches)).

**WSR 94-09-071
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Filed April 20, 1994, 12:00 noon]**

Original Notice.

Title of Rule: Commercial fishing rules.

Purpose: Amend Puget Sound commercial salmon seasons and areas.

Statutory Authority for Adoption: RCW 75.08.080.

Statute Being Implemented: RCW 75.08.080.

Summary: WAC 220-22-030, change Area 9A boundary; WAC 220-47-412, change minimum mesh size; WAC 220-47-304, 220-47-311, 220-47-401 and 220-47-411, change management seasons and open periods; and WAC 220-47-307, change closed area in Hood Canal.

Reasons Supporting Proposal: Provide for continuing tribal fishery; protect chinook and coho salmon stocks while allowing harvest.

Agency Personnel Responsible for Drafting: Evan Jacoby, 600 Capitol Way, Olympia, 902-2930; Implementation: Gene DiDonato, 600 Capitol Way, Olympia, 902-2625; and Enforcement: Dayna Matthews, 600 Capitol Way, Olympia, 902-2927.

Name of Proponent: Washington State Department of Fish and Wildlife, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 220-22-030, includes area immediately north of Port Gamble in Area 9A which allows for management independent of Area 9 and provides fishing opportunity for

the Port Gamble S' Klallam Tribe; WAC 220-47-412, increase the minimum chum net size to 6 1/4 inches to protect coho; WAC 220-47-304, 220-47-311, 220-47-401 and 220-47-411, adjust seasons and open periods to reflect 1994 harvest expectations and management periods; and WAC 220-47-307, close waters within 1,000 feet of east shore of Hood Canal to protect coho salmon.

Proposal Changes the Following Existing Rules: As above.

Small Business Economic Impact Statement: WAC 220-22-030, no economic impact and no effect on industry; WAC 220-47-412, this rule effects Puget Sound gill net fishers, who comprise more than 10% of the commercial fleet. The change from a minimum 6 inch to 6 1/4 inch was done at the request of industry. The effective date of January 1, 1995, gives the fleet a full season to retire their old gear and put on new nets. The areas that will require 6 1/4 inch mesh during 1994 are the result of Pacific Fisheries Management Council recommendations (see below); WAC 220-47-304, 220-47-311, 220-47-401 and 220-47-411, seasons and open periods affect the gill net, purse seine and reef net fishers in Puget Sound, who comprise more than 10% of the commercial fleet. Although seasonal changes will have an effect on the fleet, the proposals are made at the recommendation of the Pacific Fisheries Management Council, a federal regulatory body. There are insufficient stocks to allow any mitigation by an effort shift. The alternative to lessening the fishing effort would be a closure to protect coho salmon stocks that are expected to return in numbers below minimum escapement for reproduction; and WAC 220-47-307, this rule effects the purse seine and gill net fishers who comprise more than 10% of the commercial fleet. Although this will affect fishing effort, the alternative is closure for coho protection.

Hearing Location: Miller Hall, Room 104, Western Washington State College, Bellingham, Washington, on May 25, 1994, at 1:00 p.m.

Submit Written Comments to: Hearings Officer, Washington State Department of Fish and Wildlife, 600 Capitol Way, Olympia, WA 98501, by May 24, 1994.

Date of Intended Adoption: June 8, 1994.

April 20, 1994

Loren J. Stern
for Robert Turner
Director

AMENDATORY SECTION (Amending Order 90-49, filed 6/11/90, effective 7/12/90)

WAC 220-22-030 Puget Sound salmon management and catch reporting areas. (1) **Area 4B** shall include those waters of Puget Sound easterly of a line projected from the Bonilla Point light on Vancouver Island to the Tatoosh Island light, thence to the most westerly point on Cape Flattery and westerly of a line projected true north from the fishing boundary marker at the mouth of the Sekiu River.

(2) **Area 5** shall include those waters of Puget Sound easterly of a line projected true north from the fishing boundary marker at the mouth of the Sekiu River and westerly of a line projected true north from Low Point.

(3) **Area 6** shall include those waters of Puget Sound easterly of a line projected from the Angeles Point Monu-

ment to the William Head light on Vancouver Island, northerly of a line projected from the Dungeness Spit light to the Partridge Point light, westerly of a line projected from the Partridge Point light to the Smith Island light, and southerly of a line projected from the Smith Island light to vessel traffic lane buoy R to the Trial Island light.

(4) **Area 6A** shall include those waters of Puget Sound easterly of a line projected from the Partridge Point light to the Smith Island light to the most northeasterly of the Lawson Reef lighted buoys (RB 1 Qk Fl Bell) to Northwest Island to the Initiative 77 marker on Fidalgo Island and westerly of a line projected from Reservation Head on Fidalgo Island to West Point on Whidbey Island.

(5) **Area 6B** shall include those waters of Puget Sound southerly of a line projected from the Dungeness Spit light to the Partridge Point light, westerly of a line projected from the Partridge Point light to the Point Wilson light and easterly of a line projected 155° true from Dungeness Spit light to Kulo Kala Point.

(6) **Area 6C** shall include those waters of Puget Sound easterly of a line projected true north from Low Point and westerly of a line projected from the Angeles Point Monument to the William Head light on Vancouver Island.

(7) **Area 6D** shall include those waters of Puget Sound westerly of a line projected 155° true from Dungeness Spit light to Kulo Kala Point.

(8) **Area 7** shall include those waters of Puget Sound southerly of a line projected true east-west through Sandy Point Light No. 2 (48 degrees, 47.2 minutes north latitude, 122 degrees, 42.7 minutes west longitude as per U.S. Coast Guard Light List No. 19880), northerly of a line projected from the Trial Island light to vessel traffic lane buoy R to the Smith Island light to the most northeasterly of the Lawson Reef lighted buoys (RB 1 Qk Fl Bell) to Northwest Island to the Initiative 77 marker on Fidalgo Island, and westerly of a line projected from Sandy Point Light No. 2 to Point Migley, thence along the eastern shore-line of Lummi Island to Carter Point, thence to the most northerly tip of Vendovi Island, thence to Clark Point on Guemes Island following the shoreline to Southeast Point on Guemes Island, thence to March Point on Fidalgo Island, excluding those waters of East Sound northerly of a line projected due west from Rosario Point on Orcas Island.

(9) **Area 7A** shall include those waters of Puget Sound northerly of a line projected true east-west through Sandy Point Light No. 2 (48 degrees, 47.2 minutes north latitude, 122 degrees, 42.7 minutes west longitude as per U.S. Coast Guard Light List No. 19880), terminating on the west at the international boundary and on the east at the landfall on Sandy Point.

(10) **Area 7B** shall include those waters of Puget Sound westerly of a line projected 154 degrees true from Sandy Point Light No. 2 (48 degrees, 47.2 minutes north latitude, 122 degrees, 42.7 minutes west longitude as per U.S. Coast Guard Light List No. 19880) to the landfall on Gooseberry Point, easterly of a line projected from Sandy Point Light No. 2 to Point Migley, thence along the eastern shoreline of Lummi Island to Carter Point, thence to the most northerly tip of Vendovi Island, thence to Clark Point on Guemes Island following the shoreline to Southeast Point on Guemes Island, thence to March Point on Fidalgo Island, northerly of the Burlington Northern railroad bridges at the north entranc-

es to Swinomish Channel and westerly of a line projected from William Point light on Samish Island 28° true to the range light near Whiskey Rock on the north shore of Samish Bay and southwesterly of the mouth of Whatcom Creek, defined as a line projected approximately 14 degrees true from the flashing light at the southwest end of the Port of Bellingham North Terminal to the southernmost point of the dike surrounding the Georgia Pacific treatment pond.

(11) **Area 7C** shall include those waters of Puget Sound easterly of a line projected from William Point light on Samish Island 28° true to the range light near Whiskey Rock on the north shore of Samish Bay.

(12) **Area 7D** shall include those waters of Puget Sound easterly of a line projected 154 degrees true from Sandy Point Light No. 2 (48 degrees, 47.2 minutes north latitude, 122 degrees, 42.7 minutes west longitude as per U.S. Coast Guard Light List No. 19880) to the landfall on Gooseberry Point and south of a line projected true east from Sandy Point Light No. 2 to the landfall on Sandy Point.

(13) **Area 7E** shall include those waters of Puget Sound within East Sound northerly of a line projected due west from Rosario Point on Orcas Island.

(14) **Area 8** shall include those waters of Puget Sound easterly of a line projected from West Point on Whidbey Island to Reservation Head on Fidalgo Island, westerly of a line projected from the light on East Point 340° true to the light on Camano Island (Saratoga Pass light #2, Fl Red 4 Sec) southerly of the Burlington Northern railroad bridges at the north entrances to Swinomish Channel and northerly of the state highway 532 bridges between Camano Island and the mainland.

(15) **Area 8A** shall include those waters of Puget Sound easterly of a line projected from the East Point light on Whidbey Island 340° true to the light on Camano Island (Saratoga Pass light #2, Fl Red 4 Sec), northerly of a line projected from the southern tip of Possession Point 110° true to the shipwreck on the opposite shore, southerly of the State Highway 532 bridges between Camano Island and the mainland excluding those waters of Area 8D.

(16) **Area 8D** shall include those waters of Puget Sound inside and easterly of a line projected 225 degrees from the pilings at old Bower's Resort to a point 2,000 feet offshore, thence northwesterly to a point 2,000 feet off Mission Point, thence across the mouth of Tulalip Bay to a point 2,000 feet off Hermosa Point, thence northwesterly following a line 2,000 feet offshore to the intersection with a line projected 233 degrees from the fishing boundary marker on the shore at the slide north of Tulalip Bay.

(17) **Area 9** shall include those waters of Puget Sound southerly and easterly of a line projected from the Partridge Point light to the Point Wilson light, northerly of the site of the Hood Canal Floating Bridge, northerly of a line projected true west from the shoreward end of the Port Gamble tribal dock on Point Julia to the mainland in the community of Port Gamble, and those waters westerly of a line projected northerly from the shoreward end of the Port Gamble tribal dock on Point Julia through the Port Gamble Inner Light "3," thence northerly to the Port Gamble Light "1," thence true north to the transect of a line projected true west from the marker at the north end of the Port Gamble Indian Reservation, thence due east to the marker at the north end of the Port Gamble Indian Reservation, southerly of a line project-

ed from the southern tip of Possession Point 110° true to the shipwreck on the opposite shore and northerly of a line projected from the Apple Cove Point light to the light at the south end of the Edmond's breakwater at Edwards Point.

(18) **Area 9A** shall include those waters of Puget Sound known as Port Gamble Bay southerly of a line projected true west from the shoreward end of the Port Gamble tribal dock on Point Julia to the mainland in the community of Port Gamble and those waters easterly of a line projected northerly from the shoreward end of the Port Gamble tribal dock on Point Julia through the Port Gamble Inner Light "3," thence northerly to the Port Gamble Light "1," thence true north to the transect of a line projected true west from the marker at the north end of the Port Gamble Indian Reservation, thence due east to the marker at the north end of the Port Gamble Indian Reservation.

(19) **Area 10** shall include those waters of Puget Sound southerly of a line projected from the Apple Cove Point light to the light at the south end of the Edmond's breakwater at Edwards Point, westerly of a line projected 233° true from the Azteca Restaurant near Shilshole Marina through entrance piling No. 8 to the southern shore of the entrance to the Lake Washington Ship Canal, westerly of a line projected 185° true from the southwest corner of Pier 91 through the Duwamish Head light to Duwamish Head, northerly of a true east-west line passing through the Point Vashon light, easterly of a line projected from Orchard Point to Beans Point on Bainbridge Island, and northerly and easterly of a line projected true west from Agate Point on Bainbridge Island to the mainland.

(20) **Area 10A** shall include those waters of Puget Sound easterly of a line projected 185° true from the southwest corner of Pier 91 through the Duwamish Head light to Duwamish Head.

(21) **Area 10C** shall include those waters of Lake Washington southerly of the Evergreen Point Floating Bridge.

(22) **Area 10D** shall include those waters of the Sammamish River south of the State Highway 908 Bridge and Lake Sammamish.

(23) **Area 10E** shall include those waters of Puget Sound westerly of a line projected from Orchard Point to Beans Point on Bainbridge Island and southerly and westerly of a line projected true west from Agate Point on Bainbridge Island to the mainland.

(24) **Area 10F** shall include those waters of Puget Sound easterly of a line projected 233° true from the Azteca Restaurant near Shilshole Marina through entrance piling Number 8 to the southern shore of the entrance to the Lake Washington Ship Canal and those waters of the Lake Washington Ship Canal westerly of a line projected from Webster Point true south to the Evergreen Point Floating Bridge including the waters of Salmon Bay, the Lake Washington Ship Canal, Lake Union and Portage Bay.

(25) **Area 10G** shall include those waters of Lake Washington northerly of the Evergreen Point Floating Bridge, easterly of a line projected from Webster Point true south to the Evergreen Point Floating Bridge and those waters of the Sammamish River north of the State Highway 908 Bridge.

(26) **Area 11** shall include those waters of Puget Sound southerly of a true east-west line passing through the Point

Vashon light, northerly of a line projected 259 degrees true from Browns Point to the land fall in line with the site of Asarco smelter stack on the opposite shore of Commencement Bay, and northerly of the Tacoma Narrows Bridge.

(27) **Area 11A** shall include those waters of Puget Sound southerly of a line projected 259 degrees true from Browns Point to the land fall in line with the site of Asarco smelter stack on the opposite shore of Commencement Bay.

(28) **Area 12** shall include those waters of Puget Sound southerly of the site of the Hood Canal Floating Bridge and northerly and easterly of a line projected from the Tskutsko Point light to Misery Point.

(29) **Area 12A** shall include those waters of Puget Sound northerly of a line projected from Pulali Point true east to the mainland.

(30) **Area 12B** shall include those waters of Puget Sound southerly of a line projected from Pulali Point true east to the mainland, northerly of a line projected from Ayock Point true east to the mainland, and westerly of a line projected from the Tskutsko Point light to Misery Point.

(31) **Area 12C** shall include those waters of Puget Sound southerly of a line projected from Ayock Point true east to the mainland and northerly and westerly of a line projected from Ayres Point to the public boat ramp at Union.

(32) **Area 12D** shall include those waters of Puget Sound easterly of a line projected from Ayres Point to the public boat ramp at Union.

(33) **Area 13** shall include those waters of Puget Sound southerly of the Tacoma Narrows Bridge and a line projected from Green Point to Penrose Point and northerly and easterly of a line projected from the Devil's Head light to Treble Point, thence through lighted buoy No. 3 to the mainland and westerly of the railroad trestle at the mouth of Chambers Bay.

(34) **Area 13A** shall include those waters of Puget Sound northerly of a line projected from Green Point to Penrose Point.

(35) **Area 13C** shall include those waters of Puget Sound easterly of the railroad trestle at the mouth of Chambers Bay.

(36) **Area 13D** shall include those waters of Puget Sound westerly of a line projected from the Devil's Head light to Treble Point, thence through lighted buoy Number 3 to the mainland, northerly of a line projected from Johnson Point to Dickenson Point, northerly of a line projected from the light at Dofflemeyer Point to Cooper Point, easterly of a line projected from Cooper Point to the southeastern shore of Sanderson Harbor, easterly of a line projected from the northern tip of Steamboat Island to the light at Arcadia to Hungerford Point and southerly of a line projected true east-west through the southern tip of Stretch Island.

(37) **Area 13E** shall include those waters of Puget Sound southerly of a line projected from Johnson Point to Dickenson Point.

(38) **Area 13F** shall include those waters of Puget Sound southerly of a line projected from the light at Dofflemeyer Point to Cooper Point.

(39) **Area 13G** shall include those waters of Puget Sound southerly of a line projected from Cooper Point to the southeastern shore of Sanderson Harbor.

(40) **Area 13H** shall include those waters of Puget Sound southwesterly of a line projected from the northern tip

of Steamboat Island to the light at Arcadia and those waters easterly of a line projected 64° true from Kamilche Point to the opposite shore.

(41) **Area 13I** shall include those waters of Puget Sound southwesterly of a line projected 64° true from Kamilche Point to the opposite shore.

(42) **Area 13J** shall include those waters of Puget Sound northwesterly of a line projected from the light at Arcadia to Hungerford Point.

(43) **Area 13K** shall include those waters of Puget Sound northerly of a line projected true east-west through the southern tip of Stretch Island.

AMENDATORY SECTION (Amending Order 93-55, filed 6/29/93, effective 7/30/93)

WAC 220-47-304 Puget Sound—All citizen salmon species seasons. The following are Puget Sound all citizens salmon species seasons listed by area and species:

AREA	SPECIES	DATE	RANGE
((6D:	COHO	9/19	10/23))
7.7A:	((COHO	9/5	10/2))
	CHUM	((10/3	11/27))
		<u>10/9</u>	<u>11/26</u>
7B:	CHINOOK	((7/11	9/4))
		<u>8/7</u>	<u>9/10</u>
	COHO	((9/5	10/23))
		<u>9/11</u>	<u>10/29</u>
	CHUM	((10/24	12/11))
		<u>10/30</u>	<u>12/17</u>
7C:	CHINOOK	((7/11	10/9))
		<u>8/7</u>	<u>10/15</u>
((7E:	CHINOOK	8/1	9/11))
8:	((PINK	8/22	9/11))
	CHUM	((10/24	11/27))
		<u>10/23</u>	<u>11/26</u>
8A:	((CHINOOK	7/25	9/4))
	COHO	9/5	10/23))
	CHUM	((10/24	11/27))
		<u>10/23</u>	<u>12/3</u>
8D:	((CHINOOK	7/18	9/18))
	COHO	((9/19	11/13))
		<u>9/25</u>	<u>11/12</u>
	CHUM	((11/14	12/11))
		<u>11/13</u>	<u>12/3</u>
9A:	COHO	<u>9/18</u>	<u>11/5</u>
10,11:	((COHO	9/5	10/9))
	CHUM	((10/10	11/27))
		<u>10/16</u>	<u>11/19</u>
12:	((COHO	9/5	10/16))
	CHUM	((10/17	11/20))
		<u>10/16</u>	<u>11/19</u>
((12A:	COHO	9/5	10/9))
	CHUM	10/10	12/18))
12B:	((CHINOOK	7/11	9/4))
	COHO	9/5	10/16))
	CHUM	((10/17	11/20))
		<u>10/23</u>	<u>11/19</u>
12C:	((CHINOOK	7/18	9/4))
	CHUM	((10/31	11/27))
		<u>11/06</u>	<u>11/26</u>

AMENDATORY SECTION (Amending Order 92-47, filed 7/20/92, effective 8/20/92)

WAC 220-47-307 Closed areas—Puget Sound salmon. It is unlawful at any time, unless otherwise provided, to take, fish for, or possess salmon taken for commercial purposes with any type of gear from the following portions of Puget Sound Salmon Management and Catch Reporting Areas:

Areas 4B, 5, 6, 6B, and 6C - The Strait of Juan de Fuca Preserve as defined in WAC 220-47-266.

Area 6D - That portion within 1,000 feet of each mouth of the Dungeness River.

Area 7 - The San Juan Island Preserve as defined in WAC 220-47-262.

Area 7A - The Drayton Harbor Preserve as defined in WAC 220-47-252.

Area 7B - That portion south and east of a line from William Point on Samish Island to Saddlebag Island to the southeastern tip of Guemes Island, and that portion northerly of the railroad trestle in Chuckanut Bay.

Area 7C - That portion southeasterly of a line projected from the mouth of Oyster Creek 237° true to a fishing boundary marker on Samish Island.

Area 8 - That portion of Skagit Bay easterly of a line projected from Brown Point on Camano Island to a white monument on the easterly point of Ika Island, thence across the Skagit River to the terminus of the jetty with McGlinn Island.

Area 8A - Those waters easterly of a line projected from Mission Point to Buoy C1, excluding the waters of Area 8D, thence through the green light at the entrance jetty of the Snohomish River and across the mouth of the Snohomish River to landfall on the eastern shore, and those waters northerly of a line from Camano Head to the northern boundary of Area 8D.

Area 9 - Those waters lying inside and westerly of a line projected from the Point No Point light to Sierra Echo buoy thence to Forbes Landing wharf, east of Hansville.

Area 10 - (1) Those waters easterly of a line projected from Meadow Point to West Point.

(2) Those waters of Port Madison northwest of a line from the Agate Pass entrance light to the light on the end of the Indianola dock.

(3) Additional coho seasonal closure: Those waters of Elliott Bay east of a line from Alki Point to the light at Fourmile Rock and those waters northerly of a line projected from Point Wells to "SF" Buoy then west to President's Point.

Area 10E - Those waters of Liberty Bay north of a line projected due east from the southernmost Keyport dock, those waters of Dyes Inlet north of the Manette Bridge, and those waters of Sinclair Inlet southwest of a line projected true east from the Bremerton ferry terminal.

Area 11 - Those waters northerly of a line projected true west from the light at the mouth of Gig Harbor and those waters south of a line from Browns Point to the northernmost point of land on Point Defiance.

Area 12 - Those waters inside and easterly of a line projected from Lone Rock to the navigation light off Big Beef Creek, thence southerly to the tip of the outermost northern headland of Little Beef Creek.

Area 12A - Those waters north of a line projected from Fisherman's Point on the Bolton Peninsula to the boat haven at Quilcene and those waters north of a line projected due east from Broad Spit.

Area 12B - Those waters within 1/4 mile of the mouths of the Dosewallips, Duckabush, and Hamma Hamma rivers and Anderson Creek.

Areas 12, 12A, and 12B - Additional chinook seasonal closure: Those waters north and east of a line projected from Tekiu Point to Triton Head.

Areas 12, 12B and 12C - Additional chum seasonal closure: During 1994 those waters within 1,000 feet of the eastern shore.

Area 12C - (1) Those waters within 1,000 feet of the western shore between the dock at Glen Ayr R.V. Park and the Hoodspoint marina dock.

(2) Those waters south of a line projected from the Cushman Powerhouse to the public boat ramp at Union.

(3) Those waters within 1/4 mile of the mouth of the Dewatto River.

Areas 12, 12B, 12C, and 12D - Additional coho and chum seasonal closure: Those waters of Area 12 south and west of a line projected 94 degrees true from Hazel Point to the light on the opposite shore, bounded on the west by the Area 12/12B boundary line, and those waters of Areas 12B, 12C, and 12D south of a line projected from Tekiu Point to Triton Head.

Area 13A - Those waters of Burley Lagoon north of State Route 302, those waters within 1,000 feet of the outer oyster stakes off Minter Creek Bay including all waters of Minter Creek Bay, those waters westerly of a line drawn due north from Thompson Spit at the mouth of Glen Cove, and those waters within 1/4 mile of Green Point.

AMENDATORY SECTION (Amending Order 93-55, filed 6/29/93, effective 7/30/93)

WAC 220-47-311 Purse seine—Open periods. During ~~((1993))~~ 1994, it is unlawful to take, fish for or possess salmon taken with purse seine gear for commercial purposes from Puget Sound except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided for hereinafter in each respective Management and Catch Reporting Area:

AREA	TIME	DATE	TIME	DATE
7, 7A:	6AM	-	5PM	11/01, 11/02
7B:	6AM	((9/13))	4PM	((10/22))
		9/12		11/12
	((6AM	10/25	4PM	10/29
	6AM	11/1	4PM	11/5))
8:	6AM	-	5PM	11/01, 11/07
				11/08
	7AM	-	5PM	11/15, 11/16
8A, 8D:	((7AM		6PM	10/26))
	6AM	-	5PM	11/1, ((11/2;
				11/9, 11/10))
				11/07, 11/08
10, 11:	((6AM		8PM	9/21, 9/27
	7AM		7PM	10/5, 10/6,
				10/18))

	7AM	-	6PM	((10/26))
				10/24
	6AM	-	5PM	11/1, ((11/9))
				11/07
12, 12B:	((7AM		7PM	10/18, 10/19
	7AM		6PM	10/26, 10/27))
	6AM	-	5PM	11/1, 11/07,
				11/08

All other saltwater and freshwater areas - closed.

AMENDATORY SECTION (Amending Order 93-55, filed 6/29/93, effective 7/30/93)

WAC 220-47-401 Reef net open periods. During ~~((1993))~~ 1994, it is unlawful to take, fish for or possess salmon taken with reef net gear for commercial purposes in Puget Sound except in the following designated Puget Sound Salmon Management and Catch Reporting Area, during the periods provided for hereinafter in each respective area:

AREA	TIME	DATE(S)
7, 7A	7AM - 7PM	Daily ((10/10 - 10/16
	7AM - 7PM	Daily 10/22 - 10/30))
		10/09 - 10/22

It is unlawful to retain coho salmon taken with reef net gear. All other saltwater and freshwater areas - closed.

AMENDATORY SECTION (Amending Order 93-55, filed 6/29/93, effective 7/30/93)

WAC 220-47-411 Gill net—Open periods. During ~~((1992))~~ 1994, it is unlawful to take, fish for or possess salmon taken with gill net gear for commercial purposes from Puget Sound except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the seasons provided for hereinafter in each respective fishing area:

AREA	TIME	DATE(S)
((6D:	6AM 9/19	4PM 10/29
Skiff fishery only:))		
7,7A:	4PM - 8AM	NIGHTLY 10/31, 11/1
7B:	7PM - 7AM	NIGHTLY 8/8, 8/9, 8/10,
		((8/11)) 8/15,
		8/16, ((8/17,
		8/18)) 8/22,
		8/23 ((8/24))
	6AM ((9/5))	through 4PM ((10/22))
	9/14	11/12
	((6AM	10/25 through 4PM 10/29
	6AM	11/1 through 4PM 11/5))
8:	4PM - 8AM	NIGHTLY 10/31, 11/7, 11/8,
		11/14, 11/15
8A, 8D:	((5PM 10/25	8AM 10/26))
	4PM - 7AM	NIGHTLY ((11/1, 11/2,))
		10/31
	4PM - 8AM	NIGHTLY 11/7, 11/8, 11/9,
		11/10, 11/14,
		11/15, 11/16,
		11/17, 11/21,
		11/22

9A:	6AM	((9/20))	through	4PM	((9/24))
		9/19			9/23
	6AM	((9/27))	through	4PM	((10/4))
		9/26			9/30
	6AM	((10/4))	through	4PM	((10/8))
		10/3			10/7
	6AM	((10/11))	through	4PM	((10/15))
		10/10			10/14
	6AM	((10/18))	through	4PM	((10/22))
		10/17			10/21
	6AM	((10/25))	through	4PM	((10/29))
		10/24			10/28
	6AM	((11/4))	through	4PM	((11/5))
		10/31			11/4
10,11:	((6PM - 8AM	NIGHTLY	9/20, 9/27, 10/4,		
			10/5, 10/18		
	5PM - 10/25	8AM	10/26		
	6PM - 11/1	7AM	11/2		
	4PM - 11/8	8AM	11/9))		
	4PM - 8AM	NIGHTLY	10/31, 11/07,		
			11/14		
12,12B:	((6PM - 8AM	NIGHTLY	10/18, 10/19		
	5PM - 8AM	NIGHTLY	10/25, 10/26		
	4PM - 11/1	7AM	11/2))		
	4PM - 8AM	NIGHTLY	10/31, 11/7, 11/8,		
			11/14, 11/15,		
			11/16		
((12A:	6AM - 8PM	DAILY	9/7, 9/8, 9/9,		
			9/10, 9/13, 9/14,		
			9/15, 9/16, 9/17,		
			9/20, 9/21, 9/22,		
			9/23, 9/24		
	7AM - 7PM	DAILY	9/27, 9/28, 9/29,		
			9/30, 10/1, 10/4,		
			10/5, 10/6, 10/7,		
			10/8		

Notes: ~~Area 12A - Skiff gill net fishing only.)~~

All other saltwater and freshwater areas - closed.
Nightly openings refer to the start date.

AMENDATORY SECTION (Amending Order 92-47, filed 7/20/92, effective 8/20/92)

WAC 220-47-412 Drift gill net and skiff gill net—Minimum mesh sizes. It is unlawful to take, fish for or possess salmon taken with net gear using mesh less than the size hereinafter designated for each species season:

CHINOOK SEASON	7" MINIMUM MESH
COHO SEASON	5" MINIMUM MESH
PINK SEASON	5" MINIMUM MESH
CHUM SEASON	6" MINIMUM MESH
	<u>6.25" MINIMUM MESH for areas</u>
	<u>8, 12, 12B and 12C, only, through</u>
	<u>12/31/94. Effective 1/1/95, 6.25"</u>
	<u>MINIMUM MESH</u>

WSR 94-09-072
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed April 20, 1994, 12:00 noon]

Original Notice.
Title of Rule: Chapter 16-32 WAC, Schedule of laboratory fees.
Purpose: Establishes fees for services performed by the department's Animal Health Diagnostic Laboratory.

Statutory Authority for Adoption: Chapter 16.38 RCW.
Statute Being Implemented: Chapter 16.38 RCW.

Summary: Proposal increases fees established by rule by amounts within the fiscal growth factor set for FY 94 and FY 95, and establishes new fees for new services.

Reasons Supporting Proposal: Revenues generated by the current fee schedule are not adequate to support program activity.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Linda Polzin, Olympia, Washington, 753-2228.

Name of Proponent: Washington State Department of Agriculture, governmental.

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

Explanation of Rule, its Purpose, and Anticipated Effects: The rule establishes the schedule of user fees for the Animal Health Diagnostic Laboratory services and related activities. These fees are a source of funds for program activities and revenue generated must be adequate. We anticipate this fee increase will furnish more revenue per unit service and offset increases in necessary laboratory expenditures.

Proposal Changes the Following Existing Rules: Increases individual fees within the 7.18% fiscal growth factor for FY 94 and within the fiscal growth factor for FY 95 permitted by provisions of Initiative 601.

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

Hearing Location: Washington State Department of Agriculture, 1111 Washington Street, 2nd Floor, Room 259, Olympia, WA 98504-2560, on May 25, 1994, at 1:30 p.m.

Submit Written Comments to: Mary Toohey, Assistant Director, Laboratory Services, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, by May 25, 1994.

Date of Intended Adoption: May 27, 1994.

April 20, 1994
Mary A. Martin Toohey
Assistant Director

NEW SECTION

WAC 16-32-009 Schedule of laboratory fees. Effective through June 30, 1994, the following fees shall be charged for services performed by the diagnostic laboratory of the laboratory services division, state department of agriculture:

(1) Requests for special scheduling of tests to be conducted within twenty four hours of sample receipt (STAT testing) will be honored if time and personnel are available. A fifty percent surcharge on all test fees will be charged.

(2) If the owner is a resident of Washington State the following fees shall apply:

(a) Accession fee for each submission date (per owner)	\$10.00
(b) Bacteriology:	
Aerobic culture (1-3 tissues per animal)	\$ 7.50
each additional animal, same submission	\$ 2.10
Antibiotic sensitivity tests (each organism)	\$ 3.20
Paratuberculosis (Johne's disease)	\$10.70
each additional sample in herd, same	

submission	\$ 3.20
Milk culture - per animal	\$ 7.50
each additional animal in herd, same submission	\$ 2.10
Trichomoniasis	\$ 2.65
Campylobacteriosis	\$ 2.65
(c) Serology:	
Food animal:	
Single virus or bacteria (CF, Agglutination, AGID):	
1st animal	\$ 2.65
each additional animal in herd, same submission	\$ 1.05
Companion animals:	
Equine Infectious Anemia (EIA), AGID, each animal	\$ 3.75
Leptospirosis microscopic agglutination	
1st animal	\$ 5.35
each additional animal, same submission	.53
<u>Brucella canis</u> tube agglutination	
1st animal	\$ 5.35
each additional animal, same submission	.53
<u>Brucella canis</u> slide agglutination	
1st animal	\$ 5.35
each additional animal, same submission	\$ 3.25
(d) ELISA testing	
Bluetongue (first animal)	\$ 7.00
each additional animal in herd, same submission	\$ 3.50
Equine Infectious Anemia (EIA), each animal	\$10.00
(e) Other services and supplies:	
Forwarding of samples to other laboratories	\$ 5.00
Shipping supplies or samples, handling fee each shipment	\$ 3.00
(3) If the owner is an out-of-state resident, the following fees shall apply:	
(a) Accession fee for each submission date (per owner)	\$15.00
(b) Bacteriology:	
Aerobic culture (1-3 tissues per animal)	\$10.70
each additional animal, same submission	\$ 3.20
Antibiotic sensitivity tests (each organism)	\$ 4.25
Paratuberculosis (Johne's disease)	\$16.05
each additional sample in herd, same submission	\$ 4.25
Milk culture - per animal	\$10.70
each additional animal in herd, same submission	\$ 3.20
Trichomoniasis	\$ 3.75
Campylobacteriosis	\$ 3.75
(c) Serology:	
Food animal:	
Single virus or bacteria (CF, Agglutination, AGID):	
1st animal	\$ 4.25
each additional animal in herd, same submission	\$ 1.05
Companion animal:	
Equine Infectious Anemia (EIA), AGID, each animal	\$ 5.35
Leptospirosis microscopic agglutination	
1st animal	\$ 8.00
each additional animal, same submission	\$ 1.60
<u>Brucella canis</u> tube agglutination	

1st animal	\$ 8.00
each additional animal, same submission	\$ 1.60
<u>Brucella canis</u> slide agglutination	
1st animal	\$ 8.00
each additional animal, same submission	\$ 4.80
(d) ELISA testing	
Bluetongue (first animal)	\$10.50
each additional animal, same submission	\$ 5.25
Equine Infectious Anemia (EIA), each animal	\$15.00
(e) Other services and supplies:	
Forwarding of samples to other laboratories	\$ 7.50
Shipping supplies or samples, handling fee each shipment	\$ 4.50
(4) A fee shall be charged by the department for any other analysis, supplies or service not listed in this section. Such fees shall be based on labor costs, supply and material costs, and administrative and overhead costs.	

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

NEW SECTION

WAC 16-32-011 Schedule of laboratory fees. Effective July 1, 1994, the following fees shall be charged for services performed by the diagnostic laboratory of the laboratory services division, state department of agriculture:

(1) Requests for special scheduling of tests to be conducted within twenty four hours of sample receipt (STAT testing) will be honored if time and personnel are available. A fifty percent surcharge on all test fees will be charged.

(2) If the owner is a resident of Washington State, the following fees shall apply:

(a) Accession fee for each submission date (per owner)	\$10.00
(b) Bacteriology:	
Aerobic culture (1-3 tissues per animal)	\$ 7.95
each additional animal, same submission	\$ 2.20
Antibiotic sensitivity tests (each organism)	\$ 3.40
Paratuberculosis (Johne's disease)	\$11.35
each additional sample in herd, same submission	\$ 3.40
Milk culture - per animal	\$ 7.95
each additional animal in herd, same submission	\$ 2.20
Trichomoniasis	\$ 2.80
Campylobacteriosis	\$ 2.80
(c) Serology:	
Food animal:	
Single virus or bacteria (CF, Agglutination, AGID):	
1st animal	\$ 2.80
each additional animal in herd, same submission	\$ 1.10
Companion animals:	
Equine Infectious Anemia (EIA), AGID, each animal	\$ 3.95
Leptospirosis microscopic agglutination	
1st animal	\$ 5.65
each additional animal, same submission	.55
<u>Brucella canis</u> tube agglutination	
1st animal	\$ 5.65
each additional animal, same submission	.55

<u>Brucella canis</u> slide agglutination	
1st animal	\$ 5.65
each additional animal, same submission	\$ 3.45
(d) ELISA testing	
Bluetongue (first animal)	\$ 7.45
each additional animal in herd, same submission	\$ 3.70
Equine Infectious Anemia (EIA), each animal	\$10.60
(e) Other services and supplies:	
Forwarding of samples to other laboratories	\$ 5.30
Shipping supplies or samples, handling fee	
each shipment	\$ 3.15
(3) If the owner is an out-of-state resident, the following fees shall apply:	
(a) Accession fee for each submission date (per owner)	\$15.00
(b) Bacteriology:	
Aerobic culture (1-3 tissues per animal)	\$11.35
each additional animal, same submission	\$ 3.40
Antibiotic sensitivity tests (each organism)	\$ 4.50
Paratuberculosis (Johne's disease)	\$17.05
each additional sample in herd, same submission	\$ 4.50
Milk culture - per animal	\$11.35
each additional animal in herd, same submission	\$ 3.40
Trichomoniasis	\$ 3.95
Campylobacteriosis	\$ 3.95
(c) Serology:	
Food animal:	
Single virus or bacteria (CF, Agglutination, AGID):	
1st animal	\$ 4.50
each additional animal in herd, same submission	\$ 1.10
Companion animal:	
Equine Infectious Anemia (EIA), AGID, each animal	\$ 5.65
Leptospirosis microscopic agglutination	
1st animal	\$ 8.50
each additional animal, same submission	\$ 1.70
<u>Brucella canis</u> tube agglutination	
1st animal	\$ 8.50
each additional animal, same submission	\$ 1.70
<u>Brucella canis</u> slide agglutination	
1st animal	\$ 8.50
each additional animal, same submission	\$ 5.10
(d) ELISA testing	
Bluetongue (first animal)	\$11.15
each additional animal, same submission	\$ 5.55
Equine Infectious Anemia (EIA), each animal	\$15.95
(e) Other services and supplies:	
Forwarding of samples to other laboratories	\$ 7.95
Shipping supplies or samples, handling fee	
each shipment	\$ 4.75
(4) A fee shall be charged by the department for any other analysis, supplies or service not listed in this section. Such fees shall be based on labor costs, supply and material costs, and administrative and overhead costs.	

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-32-010 Schedule of laboratory fees.

WSR 94-09-001
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Public Assistance)

[Order 3729—Filed April 6, 1994, 2:38 p.m.]

Date of Adoption: April 6, 1994.

Purpose: New chapter 388-250 WAC, Grant standards and new chapter 388-255 WAC, Special payments. Rewriting, reorganizing, and recodifying rules relating to financial and medical assistance programs. This facilitates on-line (computer) access by eligibility staff in our field offices and makes the policies easier to understand. Repeals chapter 388-29 WAC.

Citation of Existing Rules Affected by this Order: Repealing chapter 388-29 WAC, Standards—Eligibility.

Statutory Authority for Adoption: RCW 74.08.090.

Pursuant to notice filed as WSR 94-06-035 on February 25, 1994.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-255-1150(2) changed "an accredited school" to "a recognized school or training facility."

Effective Date of Rule: Thirty-one days after filing.

April 6, 1994

Rosemary Carr
for Dewey Brock, Chief
Office of Vendor Services

REPEALER

The following chapter of the Washington Administrative Code is repealed:

Chapter 388-29 WAC Standards—Eligibility

Chapter 388-250 WAC
GRANT STANDARDS

NEW SECTION

WAC 388-250-1010 Definitions. (1) "Consolidated standards of need," means combining individual requirement amounts into a single dollar value.

(2) "Energy costs" means space heat, lighting, water heating, and other household energy consumption.

(3) "Grant maximum" means the amount of payment authorized regardless of household size. No incremental increase in the grant payment will be made for additional members of an assistance unit beyond the grant maximum for a designated household size.

(4) "Household maintenance and operations" means household supplies, housewares, linens, sewing supplies, household management, laundry, banking, and telephone.

(5) "Monthly grant amount" means the payment standard and any additional requirements less any countable income, or the grant maximum, whichever is less.

(6) "Need standard" means the income required by an applicant or recipient to maintain a minimum and adequate level of living.

(7) "Payment standard" means the amount to which the applicant's or recipient's available income and resources are compared in determining financial eligibility.

(8) "Rateable reduction" means the percentage difference between the need standard and the payment standard.

(9) "Requirement" means an item or service the department recognizes as essential to the welfare of a person.

(a) "Additional requirement" means a requirement essential to some clients under specified conditions.

(b) "Basic requirements" means food, clothing, shelter, energy costs, transportation, household maintenance and operations, personal maintenance, and necessary incidentals.

(10) "Residing in own home" means living arrangement not involving boarding and rooming or care in a hospital, nursing home, or another institution.

NEW SECTION

WAC 388-250-1050 Standards of assistance. (1) The department shall establish consolidated standards of assistance each fiscal year.

(2) The department may establish standards of assistance that vary by geographical areas, program, and family size.

(3) The department may establish grant maximums and rateable reductions.

(4) The department may establish a separate standard for shelter provided to the recipient at no cost.

NEW SECTION

WAC 388-250-1100 Standards of assistance—Assistance units. (1) The department shall determine which persons to include in an assistance unit.

(2) When creating the assistance unit, the department shall consider:

(a) Household members for whose support the applicant is legally responsible; and

(b) Categorical program requirements.

(3) The department shall not include a person receiving benefits under Title XVI of the Social Security Act in an aid to families with dependent children assistance unit.

NEW SECTION

WAC 388-250-1150 Standards of assistance—Basic requirements. (1) The department shall provide a person eligible for an AFDC, general assistance, or refugee assistance grant the basic requirements.

(2) The department shall apply standards for basic requirements to persons with or without shelter costs.

(3) The department shall base the monthly payment standard and maximums thereto, if in effect, on the number of recipients in the assistance unit.

(4) When two or more assistance units share a common dwelling, the department shall base the monthly standard for each on the number of members in the assistance unit.

(5) When a person is in a medical institution, the department shall not compute basic requirements of food, shelter, and household maintenance in the grant, but pay basic requirements as a medical care cost.

(6) The department shall apply standards for additional requirements to persons with circumstances specified in WAC 388-255-1020.

(7) State supplements for supplemental security income recipients shall not be less than the levels specified under 20 CFR 416.2098.

NEW SECTION

WAC 388-250-1200 Standards of assistance—Basic requirements - Need and payment standards. (1) A household with an obligation to pay shelter costs includes:

(a) A person owning, purchasing, or renting, this includes payment of only costs of property taxes, or fire insurance, or sewer, or water or garbage;

(b) A person residing in a lower income housing project, assisted under the United States Housing Act of 1937, or Section 236 of the National Housing Act, if the person either pays rent or makes a utility payment in lieu of a rental payment.

(2) Effective April 23, 1990, family or person is considered homeless if they:

(a) Lack a fixed, regular, and adequate nighttime residence;

(b) Reside in a public or privately operated shelter designed to provide temporary living accommodations; or

(c) Live in temporary lodging provided through a public or privately funded emergency shelter program.

(3) A household with shelter provided at no cost includes requirements for shelter, food, clothing, energy, personal maintenance and necessary incidentals, household maintenance and operations, and transportation.

NEW SECTION

WAC 388-250-1250 Standards of assistance—Need standards. (1) Effective September 1, 1993, the department shall determine the statewide monthly need standard for a household with an obligation to pay shelter to be:

Recipients in Household	Need Standard
1	\$ 739
2	935
3	1,158
4	1,361
5	1,569
6	1,781
7	2,056
8	2,276
9	2,500
10 or more	2,716

(2) Effective September 1, 1993, the department shall determine a household with shelter provided at no cost, except as described under WAC 388-250-1200, to be:

Recipients in Household	Need Standard
1	\$ 449
2	569
3	705
4	828
5	955
6	1,084
7	1,251
8	1,385
9	1,522
10 or more	1,653

NEW SECTION

WAC 388-250-1300 Standards of assistance—One hundred eighty-five percent of need standards. (1) Effective September 1, 1993, the department shall determine one hundred eighty-five percent of the statewide monthly need standard for basic requirements for a household with an obligation to pay shelter costs to be:

Recipients in Household	185% of Need Standard
1	\$ 1,367
2	1,730
3	2,142
4	2,518
5	2,903
6	3,295
7	3,804
8	4,211
9	4,625
10 or more	5,025

(2) Effective September 1, 1993, the department shall determine one hundred eighty-five percent of the statewide monthly need standard for basic requirements for a household with shelter provided at no cost to be:

Recipients in Household	185% of Need Standard
1	\$ 830
2	1,052
3	1,304
4	1,531
5	1,766
6	2,005
7	2,314
8	2,562
9	2,815
10 or more	3,058

NEW SECTION

WAC 388-250-1350 Standards of assistance—Payment standards for general assistance-unemployable, and alcoholism and drug additional treatment and support act programs. The statewide monthly payment standard for general assistance-unemployable, and alcoholism and drug addiction treatment and support act programs shall be as follows:

(1) Effective January 1, 1991, the department shall determine the statewide monthly payment standard for a household with an obligation to pay for shelter to be:

Recipients in Household	Payment Standard
1	\$ 339
2	428
3	531
4	624
5	719
6	817

PERMANENT

7	943	7	591
8	1,044	8	654
9	1,146	9	718
10 or more	1,246	10 or more	780

(2) Effective January 1, 1991, the department shall determine the payment standard for a household with shelter provided at no cost, except as described under WAC 388-250-1200, to be:

Recipients in Household	Payment Standard
1	\$ 206
2	261
3	323
4	380
5	438
6	497
7	574
8	635
9	698
10 or more	758

NEW SECTION

WAC 388-250-1400 Standards of assistance—Payment standards for aid to families with dependent children, refugee assistance, and general assistance for pregnant women programs. The statewide monthly payment standard for aid to families with dependent children, refugee assistance, and general assistance for Pregnant women programs shall be as follows:

(1) Effective January 1, 1993, the department shall determine the statewide monthly payment standard for a household with an obligation to pay for shelter to be:

Recipients in Household	Payment Standard
1	\$ 349
2	440
3	546
4	642
5	740
6	841
7	941
8	1,075
9	1,180
10 or more	1,283

(2) Effective January 1, 1993, the department shall determine the payment standard for a household with shelter provided at no cost, except as described under WAC 388-250-1200, to be:

Recipients in Household	Payment Standard
1	\$ 212
2	268
3	332
4	391
5	451
6	511

NEW SECTION

WAC 388-250-1450 Standards of assistance—Grant maximum. (1) The department shall ensure that a grant to a family of eight or more does not exceed the maximum in subsection (3) of this section.

(2) In computing the grant amount, the department shall deduct nonexempt income available to meet need from the monthly payment standard specified in this chapter.

(3) Effective January 1, 1993, the grant maximum is:

<u>Number in Household</u>	<u>Maximum</u>
8 or more	\$1,075

NEW SECTION

WAC 388-250-1500 Standards of assistance—Consolidated emergency assistance (CEAP). Effective January 1, 1993, the department shall determine the statewide standards for the consolidated emergency assistance program to be the amount necessary to meet allowable emergent needs not to exceed one hundred percent of the payment standard.

(1) Maximum CEAP grant.

Recipients in Household	Maximum Grant
1	\$ 349
2	440
3	546
4	642
5	740
6	841
7	971
8 or more	1,075

(2) CEAP payment maximums for individual emergent need items.

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	1	2	3	4	5	6	7	8 (or more)
Food	\$211	\$268	\$332	\$391	\$450	\$511	\$583	\$645
Shelter	258	325	404	476	548	621	719	795
Clothing	30	38	47	56	64	73	83	94
Minor Medical	179	228	282	332	382	432	501	554
Utilities	87	110	136	160	184	210	243	268
Household Maint.	64	81	100	118	136	155	178	197

Job-related transportation, as needed, is not to exceed the grant maximum.

Transportation of a child to home, as needed, is not to exceed the grant maximum.

NEW SECTION

WAC 388-250-1550 Standards of assistance—Persons in medical institutions. Effective July 1, 1988, the department shall determine the monthly standard for clothing, personal maintenance, and necessary incidentals for an eligible person in a skilled nursing home, a public nursing home, a general or tuberculosis hospital, joint commission on accreditation of hospitals (JCAH)-approved psychiatric hospital or an intermediate care facility to be forty-one dollars and sixty-two cents.

NEW SECTION

WAC 388-250-1600 Standards of assistance—Persons in congregate care facilities (CCF), adult residential rehabilitation centers/adult residential treatment facilities (ARRC/ARTF), and division of developmental disabilities (DDD) group home facilities. (1) The department shall determine the monthly eligibility standard for CCF, ARRC/ARTF, and DDD group home care to be:

(a) The department-contracted facility rate for payment to such facilities to provide a specific level of care and supervision; plus

(b) A monthly allowance of thirty-eight dollars and eighty-four cents for clothing, personal maintenance, and necessary incidentals (CPI).

(2) The department shall determine the monthly grant payment to be the CPI allowance.

NEW SECTION

WAC 388-250-1650 Standards of assistance—Adult family home care. (1) The department shall determine the monthly eligibility standard for adult family home (AFH) care to be:

(a) The department-contracted facility rate for payment to AFHs to provide a specific level of care and supervision; plus

(b) A monthly allowance of thirty-eight dollars and eighty-four cents for clothing, personal maintenance, and necessary incidentals (CPI); plus

(c) Additional service hours computed at the department contracted rate as described under WAC 388-15-880.

(2) The department shall determine the monthly grant payment standard to be the one-person monthly payment standard as defined under WAC 388-250-1350.

NEW SECTION

WAC 388-250-1700 Standards of assistance—Supplemental security income. Effective January 1, 1994, the standards of SSI assistance paid to an eligible individual and couple are:

(1) Living alone (own household or alternate care, except nursing homes or medical institutions).

	Standard	Federal SSI Benefit	State Supplement
Area I: King, Pierce, Snohomish, Thurston, and Kitsap Counties			
Individual	\$474.00	\$446.00	28.00
Individual with one essential person	691.00	669.00	22.00
Couple:			
Both eligible	691.00	669.00	22.00
Includes one essential person	691.00	669.00	22.00
Includes ineligible spouse	638.00	446.00	192.00
Area II: All Counties Other Than the Above			
Individual	\$453.55	\$446.00	7.55
Individual with one essential person	669.00	669.00	0
Couple:			
Both eligible	669.00	669.00	0
Includes one essential person	669.00	669.00	0
Includes ineligible spouse	606.15	446.00	160.15
Areas I and II:			
Eligible individual with more than one essential persons: \$446 for eligible individual plus \$223 for each essential person (no state supplement).			
Eligible couple with one or more essential persons: \$669 for eligible couple plus \$223 for each essential person (no state supplement).			
(2) Shared living (Supplied shelter): Area I and II			
	Standard	Federal SSI Benefit	State Supplement
Individual	\$303.15	\$297.34	\$ 5.81
Individual with one essential person	452.30	446.00	6.30
Couple:			
Both eligible	452.30	446.00	6.30
Includes one essential person	452.30	446.00	6.30
Includes eligible spouse	416.97	297.34	119.63
Area I and II:			
Eligible individual with more than one essential person: \$297.34 for eligible individual plus \$148.67 for each essential person (no state supplement).			
Eligible couple with one or more essential person: \$446 for eligible couple plus \$148.67 for each essential person (no state supplement).			
Area I and Area II:			
Medicaid Institutions	41.62	30.00	11.62

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NEW SECTION

WAC 388-250-1750 Standards of assistance—Additional requirements. (1) The department shall determine:

(a) **Restaurant meals** — Effective January 1, 1993, the monthly standard for restaurant meals to be one hundred eighty-seven dollars and nine cents.

(b) **Home-Delivered Meals** — The monthly standard to be the amount charged by the agency delivering the service when a plan for use of this service is approved by the department.

(c) **Food for Guide Dog or service animal** — Effective January 1, 1991, the monthly standard for food for guide dog or service animal to be thirty-three dollars and sixty-six cents.

(d) **Telephone** — The monthly standard for telephone is the current Washington telephone assistance program (WTAP) discounted payment amount of eight dollars or the minimum standard residential rate available in the area for the service, whichever is less.

(e) **Laundry** — Effective January 1, 1993, the monthly standard for laundry to be eleven dollars and thirteen cents.

(f) **Winterizing Homes—AFDC** — Effective January 1991, the maximum allowance for winterizing a home is five hundred dollars.

(2) The department shall ensure the total of payments made under this section for one month does not exceed one month's AFDC payment standard for a household with an obligation to pay for shelter. See Additional requirements - Emergent Needs Situations (WAC 388-255-1350).

**Chapter 388-255 WAC
SPECIAL PAYMENTS**

NEW SECTION

WAC 388-255-1020 Additional requirements—General provisions. (1) The department shall provide additional requirements under the circumstances and limitations specified in this chapter.

(2) The department shall provide for certain additional requirements when a person's circumstances indicate that the item is essential in according to the department established criteria. In determining whether the need for an additional requirement exists, the department shall consider:

- (a) The circumstances that created the need;
- (b) The person's health or living conditions; and
- (c) Other pertinent factors as described under subsection (4) of this section.

(3) The department shall verify the need for an additional requirement.

(4) The need for an additional requirement may regularly recur or be nonrecurring. When the requirement is ongoing, the department shall:

- (a) Add the requirement to the basic monthly grant payment for the assistance unit;
- (b) Establish a plan for periodically reviewing the need for the requirement;
- (c) Re-establish the need for an ongoing additional requirement as often as the case plan indicates, but at least:
 - (i) Semiannually for AFDC, or refugee assistance recipients; or

(ii) Annually for general assistance or SSI recipients, when the need is not likely to change; or

(iii) More frequently if circumstances are likely to change.

NEW SECTION

WAC 388-255-1050 Additional requirements—Restaurant meals. (1) The department may authorize additional requirements for restaurant meals for clients eligible for AFDC, refugee or general assistance grants, and SSI recipients.

(2) The department shall authorize restaurant meals as an additional requirement when the department determines:

(a) A client is physically or mentally unable to prepare meals; and

(b) Board, or board and room, is not available or the use of such facilities is not feasible for the person.

(3) The monthly standard for restaurant meals is described under WAC 388-250-1750(1).

NEW SECTION

WAC 388-255-1100 Additional requirements—Home-delivered meals (meals on wheels). (1) The department may authorize additional requirements for home-delivered meals (meals on wheels) for clients eligible for AFDC grants, refugee cash assistance, general assistance grants, or SSI benefits.

(2) The department shall authorize home-delivered meals (meals on wheels) as an additional requirement when the department determines:

(a) A person cannot be expected to prepare all of their own meals, and home-delivered meals are available; and

(b) The person requires help in preparation of meals and would benefit nutritionally or otherwise from home-delivered meals; and

(c) Help in preparation of meals is not reasonably available without cost to the person; and

(d) Board (or board and room) is not available, is not feasible, or is costlier for the recipient.

(4) The department shall determine the monthly standard to be the amount charged by the agency delivering the service. (See WAC 388-250-1750.)

NEW SECTION

WAC 388-255-1150 Additional requirements—Food for guide dog or service animal. (1) The department may authorize additional requirements for food for a guide dog or service animal for clients eligible for AFDC grants, refugee cash assistance, general assistance grants, or SSI benefits.

(2) The department shall determine the cost of food for a guide dog or service animal to be an additional requirement when the animal has been trained at a recognized school or training facility.

(3) The monthly standard for food for a guide dog or service animal is described under WAC 388-250-1750.

NEW SECTION

WAC 388-255-1200 Additional requirement—Telephone. (1) The department may authorize additional requirements for telephone assistance for clients eligible for AFDC grants, refugee cash assistance, general assistance grants, or SSI benefits.

(2) The department shall authorize telephone services as an additional requirement when the department determines:

- (a) The lack of a telephone would endanger the clients life or make a more expensive type of care necessary; and
- (b) The function of a telephone cannot be performed by other means, including the help of neighbors, relatives or other community services.

(3) The monthly standard for telephone is described under WAC 388-250-1750.

NEW SECTION

WAC 388-255-1250 Additional requirements—Laundry. (1) The department may authorize additional requirements for laundry for clients eligible for AFDC grants, refugee cash assistance, general assistance grants or SSI benefits.

(2) The department shall authorize laundry as an additional requirement when the department determines:

- (a) The client is physically unable to do laundry; and
- (b) A person is not able to perform this service for the client at no cost.

(3) The monthly standard for laundry is described under WAC 388-250-1750.

NEW SECTION

WAC 388-255-1300 Additional requirements—Winterizing homes AFDC. (1) The department may authorize additional requirements for winterizing homes for clients eligible for AFDC grants assistance.

(2) The department shall authorize repairs to a home owned or being purchased by an AFDC client as an additional requirement under the following circumstances:

- (a) The primary purpose of the repairs is to minimize heat loss or otherwise increase the efficiency of the home heating system;
- (b) The repairs are necessary to render the home habitable;
- (c) Lack of repairs would require the assistance unit to move to rental quarters;
- (d) The rental costs expended by the assistance unit over a period of two years would exceed the costs, including repairs, attributable to continued occupancy; and
- (e) Expenditures for home repair has not been previously made under the policies outlined under subsection (2)(a), (b), (c) and (d) of this section.

(3) The department shall ensure all expenditures for repairs are paid by vendor payments when there is sufficient recorded evidence that a home repair was performed.

(4) The maximum allowance for winterizing a home is described under WAC 388-250-1750.

NEW SECTION

WAC 388-255-1350 Additional requirements for emergent situations. (1) The department may authorize additional requirements for emergent situations for clients eligible for AFDC grants or refugee cash assistance.

(2) The department shall allow additional requirements in the following emergent situations when, for good cause, a client does not have adequate funds to:

(a) Secure housing and necessary clothing in the event of a natural disaster, such as flood or fire, and relief is not available through the department of community development's individual and family grant program;

(b) Prevent imminent eviction or secure new housing, where a formal written notice of eviction, notice to pay or vacate, or notice of foreclosure has been received. The department shall limit payment to the amount needed to either prevent the eviction, or to secure new housing, as described under subsection (4) of this section, whichever is less;

(c) Correct a sudden malfunction resulting in loss of heat, water, electricity, or cooking facilities. The client is legally responsible for the repairs when winterization funds are not available. The department shall limit payment to actual costs of repairs or replacement when another alternative does not exist.

(d) Obtain new housing when:

(i) The premises contains a verifiable material defect jeopardizing the occupant's health and safety; and

(ii) The landlord or owner fails or refuses to correct the defect within the time allowed by law.

(e) Prevent an impending utility shutoff when:

(i) A notice of impending shutoff has been received; or

(ii) Verified by the department that the client is without necessary fuel for heating or cooking. The department shall authorize only the amount necessary to meet the emergent need.

(f) Obtain new housing for needs caused by an abusive spouse. The department shall limit payment to:

(i) Established fees paid to shelters for abused spouses; or

(ii) The amount necessary to obtain new housing.

(g) Obtain food when another resource is not available.

(3) The department shall establish good cause when the department determines funds ordinarily available to meet are not available because of:

(a) Stolen proceeds from cashed warrants;

(b) Payment for the necessities of:

(i) Medical bills;

(ii) Child care in an emergency;

(iii) Avoiding abuse; or

(iv) Dental care for alleviation of pain or to obtain employment.

(c) Payments to meet temporary extra costs for the necessary need items of housing, utilities, food, or clothing provided the actions of the recipient were reasonable under the circumstances. The department shall:

(i) Presume a recipient acted reasonably when the amount expended for these necessities does not exceed the amount specified under WAC 388-250-1400;

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(ii) Determine other cases on a case-by-case basis. If the amount in WAC 388-250-1400 is exceeded, the department shall make a judgment regarding reasonableness.

(4) The department shall ensure the total of payments made under this section for one month does not exceed one month's AFDC payment standard for a household with an obligation to pay for shelter, as established under WAC 388-250-1400.

NEW SECTION

WAC 388-255-1400 One-time grant—Authorization—Disbursement. (1) The department shall make a one-time grant to supplement or replace a regular monthly grant payment.

(2) The department shall authorize a one-time payment for:

(a) An additional requirement under WAC 388-255-1050 through WAC 388-255-1350, unless the payment is otherwise specified;

(b) Income or assistance budgeted by the department as available to, but not received by, the assistance unit;

(c) Supplemental assistance a client needs from the date the recipient leaves an institution to the date the client receives the regular, adjusting, or reinstated grant;

(d) Initiating, reinstating, or increasing a grant as required by a fair hearing or court decision;

(e) Compensation for an underpayment to client or former client;

(f) An exception to the rule approved by the department under chapter 388-200-1150 WAC;

(g) Reissuance of a canceled warrant to adjust the grant;

(h) A change in the basic requirements which results in an increase in the regular grant;

(i) Assistance which requires a partial month payment in compliance with the ten-day advance notice rules on reduction, suspension, or termination of a grant; and

(j) A person added to the assistance unit.

(3) Except as provided in subsection (2)(d) and (e) of this section, the department shall ensure a retroactive one-time grant does not cover a period of more than sixty days before the date of authorization.

WSR 94-09-006
PERMANENT RULES
DEPARTMENT OF HEALTH
[Filed April 11, 1994, 9:12 a.m.]

Date of Adoption: March 30, 1994.

Purpose: To lower the inactive late renewal penalty fee to half the amount of the inactive renewal fee.

Citation of Existing Rules Affected by this Order: Amending WAC 246-843-990.

Statutory Authority for Adoption: RCW 43.70.250.

Other Authority: Chapter 18.52 RCW.

Pursuant to notice filed as WSR 94-05-065 on February 14, 1994.

Effective Date of Rule: Thirty-one days after filing.

April 8, 1994
Bruce Miyahara
Secretary

[AMENDATORY SECTION (Amending WSR 93-14-011, filed 6/24/93)]

WAC 246-843-990 Nursing home administrator fees. The following fees shall be charged by the ~~health~~ ~~((professional licensing))~~ professions quality assurance division of the department of health:

Title of Fee	Fee
Application (examination and original license)	\$325.00
Reexamination (partial)	125.00
Application - Reciprocity	295.00
Temporary Permit	190.00
Renewal	295.00
Inactive license renewal	110.00
Late renewal penalty	145.00
<u>Late renewal penalty - inactive</u>	<u>55.00</u>
Duplicate license	15.00
Certification	15.00
Administrator-in-training	100.00

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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 94-09-008
PERMANENT RULES
DEPARTMENT OF HEALTH
(Podiatric Medical Board)
[Filed April 11, 1994, 9:21 a.m.]

Date of Adoption: March 25, 1994.

Purpose: To adopt the model procedural rules for adjudicative proceedings.

Statutory Authority for Adoption: RCW 18.22.015, 18.130.050.

Pursuant to notice filed as WSR 94-05-081 on February 15, 1994.

Effective Date of Rule: Thirty-one days after filing.

March 30, 1994

N. Jerry Schlesinger, D.P.M.
Chairman

NEW SECTION

WAC 246-922-500 Adjudicative proceedings. The board adopts the model procedural rules for adjudicative proceedings as adopted by the department of health and contained in chapter 246-11 WAC, including subsequent amendments.

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WSR 94-09-010
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed April 11, 1994, 4:21 p.m.]

Date of Adoption: December 1, 1993.

Purpose: To implement RCW 43.19.080, which regulates the manner by which the director of the Department of Financial Institutions and employees of the department may lawfully borrow money from financial institutions under the jurisdiction of the department.

Statutory Authority for Adoption: RCW 43.19.080.

Pursuant to notice filed as WSR 93-20-040 on September 29, 1993.

Effective Date of Rule: Thirty-one days after filing.

April 11, 1994

Fred Hellberg
Policy Assistant

CHAPTER 208-04
General Provisions

NEW SECTION

WAC 208-04-010 Definitions. For the purposes of this chapter:

(1) "Department" means the department of financial institutions.

(2) "Director" means director of the department.

(3) "Financial institution" means any bank, consumer loan company, credit union, foreign bank branch, savings bank, savings and loan association, trust company or department, securities broker-dealer, investment advisor, or similar lending institution under the department's direct jurisdiction.

NEW SECTION

WAC 208-04-020 Purpose; effective date. The purpose of this chapter is to implement RCW 43.19.080, which regulates the manner by which the director and employees of the department may lawfully borrow money from financial institutions under the jurisdiction of the department. This chapter applies to loans and material changes to loans made on or after October 1, 1993.

NEW SECTION

WAC 208-04-030 Requirements for loans to department employees and the director. The following procedures and requirements govern loans from financial institutions to employees and the director:

(1) **Requirements for all employees.** No employee of the department may borrow money from a financial institution under the jurisdiction of the department unless the loan is consistent with RCW 43.19.080. The director shall inform employees of the requirements for loans from financial institutions that are specified in these rules and in RCW 43.19.080.

(2) **Loan notification and determination of conformance requirements for employees with administrative or regulatory duties and the director.**

(a) Any employee of the department who the director determines has administrative authority or carries out functions of a regulatory or discretionary nature that could affect a financial institution or its officers or employees shall provide notice to the director of a proposed loan by the financial institution to the employee. Upon receipt of the notice, the director or the director's designee shall promptly review the loan and notify the employee in writing whether or not the loan conforms with RCW 43.19.080. In cases where the loan does not conform, the director or the director's designee shall notify the employee in writing of the reason why it fails to conform and demand that the terms of the loan be modified to conform with the law. If the loan is not modified, the director shall commence appropriate action.

(b) In making a loan conformance determination required by (a) of this subsection, the director or the director's designee may consider:

(i) A written and sworn declaration by the applicant's loan officer or broker that the terms offered and underwriting procedures used are not less stringent than those prevailing at the time for comparable transactions with other persons not employed by either the department or the financial institution;

(ii) Rates and terms readily available in a newspaper of general circulation quoting rates and terms contemporaneous with the applicant's loan; and

(iii) Other relevant information necessary to make a knowledgeable determination that the loan conforms with RCW 43.19.080.

(c) The employee shall provide notice of loans covered by (a) of this subsection on forms prepared by the department. Forms must include all material terms, including but not limited to, the type of loan, the name of the financial institution, the interest rate, the term, the amount financed, the loan fees, and all collateral requirements. Forms must also include the sworn declaration described in (b)(i) of this subsection.

(d) The director shall provide notice to the governor of a proposed loan by a financial institution to the director that is subject to RCW 43.19.080. The governor or the governor's designee shall make a written determination of conformance of the loan in accordance with the same procedures and requirements and using the same forms as are required for other employees of the department, as specified in this section.

(3) **Special loan transactions and circumstances.** The following requirements govern special loan transactions and circumstances:

(a) A material change in terms of outstanding loans or obligations on a loan from a financial institution is subject to the requirements of this section. Material changes include, but are not limited to, changes in amount disbursed on term loans, changes in interest rate, changes in loan fees, and changes in collateral requirements.

(b) All lines of credit, including credit cards, extended to employees and the director from a financial institution are subject to the requirements of this section at the time the line of credit is approved. Subsequent draws on the line of credit are not subject to these requirements unless the terms of the line of credit are materially changed. An increase in the

amount of the line of credit is not considered a material change in terms.

(c) An employee whose loan is held by an institution that subsequently comes under the jurisdiction of the department through merger, conversion, or other business transaction is not subject to the requirements this section. However, a material change in terms of such an outstanding loan or obligation is subject to the requirements.

(d) A loan made to an employee from an institution not under the jurisdiction of the department that is subsequently sold to an institution under the department's jurisdiction, in whole or in part, is not subject to the requirements of this section. However, a material change in terms in such a loan is subject to the requirements.

(e) The director shall adopt conflict of interest standards and procedures, consistent with the purposes of this chapter and RCW 43.19.080, that govern loans made by financial institutions to persons or entities other than the employee when the proceeds of the loan provide a clear financial benefit to the employee. These loans include, but are not limited to, loans to businesses or other enterprises in which the employee has a substantial financial interest, and loans to spouses and other immediate family members of the employee.

(4) **Violation of rules.** A violation of this section may subject the employee to appropriate discipline.

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.

WSR 94-09-012

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed April 12, 1994, 1:24 p.m., effective May 14, 1994]

Date of Adoption: April 12, 1994.

Purpose: Revisions to the rules address and clarify Washington management service issues to decrease confusion and enhance the successful outcomes of this program.

Citation of Existing Rules Affected by this Order: Amending WAC 356-56-015, 356-56-030, 356-56-115, and 356-56-230.

Statutory Authority for Adoption: Chapter 41.06 RCW, RCW 41.06.500.

Pursuant to notice filed as WSR 94-06-064 on March 2, 1994.

Changes Other than Editing from Proposed to Adopted Version: The changes that occurred in the adopted sections are as a result of public meetings with people concerned with or affected by these rules. The changes were as a result of editing and content comments from affected employees, personnel representatives, employee organization representatives, and agency directors. The rules were reorganized for better understanding and smoother flow.

Effective Date of Rule: May 14, 1994.

April 12, 1994
Dennis Karras
Director

AMENDATORY SECTION (Amending WSR 94-01-126, filed 12/17/93, effective 1/18/94)

WAC 356-56-015 Phase in agencies-Application of rules. Chapter 356-56 WAC adopted by the director of personnel and effective January 1994 will apply only to the department of personnel, department of revenue, (~~department of transportation,~~) and office of minority and women's business enterprises. Chapter 356-56 WAC will apply to the department of transportation effective March 15, 1994. After the phase-in period, the director will adopt rules that apply to all agencies.

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 WSR 94-01-126, filed 12/17/93, effective 1/18/94)

WAC 356-56-030 Equal opportunity and affirmative action. (1) Washington management service policies and practices shall not discriminate on the basis of race, creed, color, religion, national origin, sex, age, marital status, veteran status, sexual orientation, or the presence of any sensory, mental, or physical disability.

(2) Each agency will include Washington management service positions in its affirmative action plans required by chapter 356-09 WAC. Each agency will be accountable for establishing procedures, goals, timetables, and record keeping and monitoring procedures for Washington management service positions as part of its affirmative action program.

AMENDATORY SECTION (Amending WSR 94-01-126, filed 12/17/93, effective 1/18/94)

WAC 356-56-115 Salary adjustments. (1) Adjustments to the compensation for a position with no change in point factor evaluation shall not exceed the maximum or fall below the minimum amount set by the director of personnel for the management band. Normally, salary adjustments initiated by the agency will not exceed ten percent for a single fiscal year. Requests for exception may be granted only by the director of personnel. Salary adjustments may be made under the following conditions:

(a) Legislatively directed general and/or special increase;

(b) Documented recruitment and/or retention problems as approved by the agency director or designee;

(c) Documented agency and/or state internal salary relationship problems, as approved by the agency director or designee; or

(d) Progression adjustments may be granted (~~during the first four years~~) following hire or promotion (~~in accordance with WAC 356-56-205(1)). An agency may adjust an employee's pay~~) by up to five percent annually, for a maximum total of twenty percent, in recognition of the employee's demonstrated growth and development.

~~((i) An employee who transitions into Washington management service shall continue to receive an annual increment until the employee's salary reaches the maximum of the range assigned to the former job classification.~~

~~((ii))~~ Progression adjustments must be within the forty-five thousand dollar salary limit established by the 1993

legislature until such time as the limit is changed or removed.

(2) Voluntary movement to a position of a lesser point factor evaluation may result in a salary decrease which exceeds ten percent.

(3) A promotion is the assignment of additional responsibilities which results in a higher point factor evaluation in the same position, or movement to a different position that has a higher point factor evaluation. Increases in salary made to meet the new point factor evaluation may exceed ten percent.

(4) A disciplinary demotion is the assignment of responsibilities which results in a lower point factor evaluation in the same position, or movement to a different position that has a lower point factor evaluation. The resulting salary decrease may exceed ten percent and must be in conformance with the provisions of the Fair Labor Standards Act. A disciplinary reduction in salary in conformance with the Fair Labor Standards Act may also exceed ten percent.

(5) Involuntary downward movement based on a non-disciplinary reassignment of duties that results in a lower point factor evaluation of an employee's present position shall not cause a decrease in the employee's current salary. The employee's current salary will be retained until such time as it is exceeded by the ~~((new salary level))~~ Washington management service salary structure or the employee leaves the position.

(6) An agency may provide a lump sum recognition payment within guidelines established by the department of personnel in recognition of documented exceptional work and performance results. Such recognition compensation shall not become a permanent salary increase but is considered to be income for the documented exceptional work and performance results. A payment made as a lump sum for recognition purposes shall be included within the ten percent annual adjustment limitation in the fiscal year in which it is paid.

AMENDATORY SECTION (Amending WSR 94-01-126, filed 12/17/93, effective 1/18/94)

WAC 356-56-230 Reversion. (1) During the review period, the appointing authority may separate or revert the employee from the position with written notification of the effective date.

(2) ~~((If a Washington management service permanent employee is appointed to a position within an agency or to another agency and reverted during the review period, the hiring agency will place the employee in a vacant funded position for which the employee is qualified, and that is comparable to the employee's position and salary prior to the last Washington management service appointment.))~~ If a Washington management service permanent employee is appointed to a Washington management service position in the same agency, and reverted during the review period, the agency will place the employee in a vacant funded Washington management service position for which the employee is qualified, and that is comparable to the employee's position and salary prior to the last Washington management service appointment. If no vacant funded positions are available, the agency shall place the employee in a position for which the

employee is qualified in the Washington management service similar to the employee's previous position and salary.

(3) If a Washington management service permanent employee is appointed to a Washington management service position in a different agency, and is reverted during the review period, the hiring agency will place the employee in a vacant funded Washington management service position for which the employee is qualified, and that is comparable to the employee's position and salary prior to the last Washington management service appointment. If no vacant funded positions are available, the hiring agency shall place the employee in a position for which the employee is qualified, in the Washington management service similar to the employee's previous position and salary.

(4) If a permanent Washington general service employee is appointed to a Washington management service position in the same agency and is reverted during the review period, the employee will retain reversion rights to and be placed in a position in the Washington general service class in which the employee held permanent status prior to the Washington management service appointment as provided in WAC 356-30-315.

(5) If a permanent Washington general service employee is appointed to a Washington management service position in a different agency and is reverted during the review period, the hiring agency will place the employee in a vacant funded position for which the employee is qualified, and that is comparable to the employee's position and salary prior to the last Washington management service appointment. If no funded vacancies are available, the employee is separated and may request to be placed on the reversion registers for the Washington general service class in which the employee held status prior to the Washington management service appointment as provided in WAC 356-30-315.

(6) Within the first six months of any review period, an employee may voluntarily revert to the Washington general service position, if vacant and funded, held prior to the employee's first Washington management service appointment or to a similar funded vacant position at the same salary range. If no funded vacancies are available, the employee may request to be placed on the reversion registers for the Washington general service class in which the employee held status prior to the first Washington management service appointment.

~~((4))~~ (7) Nothing in this section shall preclude agencies and the reverted employee from reaching mutual agreement on placement of a reverted employee within the Washington management service or within the Washington general service if permitted by the respective rules.

~~((5))~~ (8) If reversion of a permanent employee appointed to or within the Washington management service results in fewer funded positions than employees entitled to the positions, and the agency consequently conducts a reduction in force, the provisions of WAC 356-56-550 will apply.

~~((6) Reversion of employees appointed from the Washington general service will be carried out as provided in WAC 356-30-320.~~

~~(a) A permanent employee who is appointed from the Washington general service to a Washington management service position with the same agency will retain reversion~~

rights to the class in which the employee held permanent status prior to the appointment.

(b) A permanent employee who is appointed from the Washington general service to a Washington management service position in another agency and is reverted retains the right to return to a funded position in the class and agency in which the employee held permanent status prior to the appointment to the Washington management service. If no vacant funded position is available, the employee may request to be placed on the reversion register as per WAC 356-26-030 (3) and (5) and 356-30-320.)

((7)) (9) An appointee to a Washington management service position from outside state service who is separated prior to completion of the review period will not attain permanent status, nor have reversion rights to any position within the Washington management service or within the Washington general service.

((8)) (10) Employees may not appeal reversion or separation from the review period.

WSR 94-09-016
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed April 13, 1994, 2:02 p.m.]

Date of Adoption: April 13, 1994.

Purpose: To provide state tax reporting information to laundries and dry cleaners.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-165.

Statutory Authority for Adoption: RCW 82.32.300.

Other Authority: RCW 82.04.050.

Pursuant to notice filed as WSR 94-01-156 on December 21, 1993.

Effective Date of Rule: Thirty-one days after filing.

April 13, 1994

Russell W. Brubaker

Assistant Director

AMENDATORY SECTION (Amending Order ET 83-16, filed 3/15/83)

WAC 458-20-165 Laundries, dry cleaners, ((laundry agents,)) self-service laundries and dry cleaners.

~~((Laundries, Dry Cleaners, Laundry Agents, Self-Service Laundries and Dry Cleaners~~

The term)) (1) Introduction. This section discusses the business and occupation (B&O) tax and retail sales tax liability of laundries, dry cleaners, pickup and delivery services, and self-service laundries and dry cleaners. RCW 82.04.050 includes within the definition of "retail sale" repairing, cleaning, and altering tangible personal property for consumers, except sales of laundry services by nonprofit hospital associations to their members.

(2) Terms.

(a) A "laundry or dry cleaning business" ((applies to (1) the business of)) includes operating a plant or establishment, or contracting with others, for laundering, cleaning, dyeing, pressing and incidentally repairing such articles as clothing, linens, bedding, towels, curtains, drapes, and rugs((-ete-; (2)

so-called "launderettes," "washettes," "cleanettes" or similar)). Laundry or dry cleaning businesses include self-service businesses ((wherein)) which provide coin and noncoin operated laundry or dry cleaning facilities ((are provided for hire; it includes the operation of both coin and noncoin operated equipment, and (3) one who, under his own name, operates a place of business or pickup and delivery system for the collection and distribution of such articles, holding himself out to the public as performing such services, even though such person owns no plant and contracts with another for a part or all of the services rendered. This does not apply, however, to a person holding himself out as an agent for a particular laundry or dry cleaning plant.

The term "laundry agent" applies to any person who, under his own name, operates a place of business or pickup and delivery system for the collection and distribution of articles to be laundered, cleaned, dyed or pressed, holding himself out as agent for some particular establishment and acting as an independent contractor rather than as an employee.

The term)) and pickup and delivery laundry services performed by persons operating in their own name and not as commissioned agent for another laundry business.

(b) A "laundry or linen supply service" ((means)) is the business of ((contracting to provide)) providing customers with a supply of clean linen, uniforms, towels, etc., whether ownership of such property is in the person operating the laundry or linen supply service or in the customer. ((Such services may include the providing of cabinets and other toilet equipment, paper towels, soap and similar consumable supplies.)) The term includes supply services which operate their own cleaning establishments as well as those which contract with other laundry or dry cleaning businesses.

(3) Business and Occupation Tax.

(a) Retailing. Persons operating laundry or dry cleaning businesses, including self-service or coin operated ((laundry or dry cleaning)) businesses, ((but not including coin operated laundry facilities when such facilities are situated in an apartment house, hotel, motel, rooming house or trailer camp for the exclusive use of the tenants,)) are taxable under the retailing classification upon the gross proceeds of sales ((which are subject to the retail sales tax as hereinafter provided)), without any deduction on account of commissions allowed or amounts paid to another for the performance of all or part of the laundry or dry cleaning service rendered.

((Persons operating self-service or coin operated laundries or dry cleaning businesses are taxable under the retailing classification upon))

(i) The gross proceeds of sales includes charges for cleaning and for sales of starch, soap, blueing or any other article sold to customers.

(ii) Laundries in Washington which provide linen supply services are making retail sales in this state even though their customers may be located outside this state. Gross income from such services is subject to tax because the charge is for laundering which takes place in this state, rather than being a true rental of property (uniforms, linen, etc.) to nonresidents.

(b) Wholesaling. Tax is due under the wholesaling classification upon the gross proceeds of sales derived from

laundry or dry cleaning services rendered for other laundry and dry cleaning (~~(establishments)~~) businesses.

~~(c) Service and other activities. ((Persons operating coin-operated laundry facilities which are situated in an apartment house, hotel, motel, rooming house or trailer camp for the exclusive use of the tenants are taxable under service and other activities on the gross income from such facilities. Laundry agents are taxable under this classification upon the gross commissions received by them.)) Nonprofit associations composed exclusively of nonprofit hospitals are taxable under the service and other activities classification ((upon)) on gross income received for providing laundry services to ((such)) their members. Persons who collect and distribute laundry or dry cleaning as a commissioned agent for one or more laundry or dry cleaning businesses, and who act as an independent contractor rather than as an employee, are liable for service B&O tax on their gross commissions. See WAC 458-20-159 for the recordkeeping requirements for showing agency status.~~

(4) Retail Sales Tax.

~~(a) Laundry and dry cleaning businesses, ((and)) including ((so-called "laundrettes," "washettes," "cleanettes" and)) self-service or coin-operated laundries or dry cleaners((and)), ((laundry agents)) and ((persons operating)) laundry or linen supply services are required to collect the retail sales tax upon the total charge made to the customer for laundry and dry cleaning service or laundry supply service ((rendered by them. The tax is not applicable to gross receipts)). RCW 82.04.050 was amended by chapter 25, Laws of 1993 sp.s. to include as a retail sale the income from coin-operated laundry facilities ((when such facilities are)) situated in an apartment house, hotel, motel, rooming house or trailer camp for the exclusive use of the tenants. This change became effective July 1, 1993. Previously such charges were taxed under the service and other business activities classification.~~

~~(b) Laundry and dry cleaning businesses which provide their services through commissioned agents should collect and remit the retail sales tax to the department.~~

~~(i) If the agent is a hotel or an apartment which bills guests or tenants for laundry or dry cleaning services, the hotel or apartment should collect the retail sales tax on the total charge for the laundry or dry cleaning and remit the payment to the laundry or dry cleaning business. The laundry or dry cleaning business is responsible for remitting the tax to the department.~~

~~(ii) If the agent is a commissioned driver, the laundry or dry cleaning business can bill the customer directly for the services or the driver can collect the payment from the customer and remit the payment to the laundry or dry cleaning business. In either case, the retail sales tax must be collected on the total charge made to the customer and the laundry or dry cleaning business is responsible for remitting the tax to the department.~~

~~((Laundries, dry cleaning businesses and laundry agents who pay agency commissions or maintain commission drivers must account for the retail sales tax upon such operations as follows:~~

~~(1) Where agency commissions are allowed hotels, apartments, etc., on laundry or dry cleaning done for their guests, the retail sales tax must be collected by the laundry or dry cleaner upon the full retail charge to the final consumer.~~

~~(2) Commission drivers operating in the name of the laundry or cleaning establishment must collect the retail sales tax on the total charge made to the customer, remitting the same on each settlement to the plant, which in turn is responsible for the payment of the tax to the state.))~~

~~(c) Sales by supply houses to laundries, dry cleaners and persons operating laundry or linen supply services of soaps, cleaning solvents and other articles or substances which are used in rendering a laundry, laundry supply or cleaning service are retail sales and are subject to the retail sales tax. Sales to such persons of dyes, fabric softeners, starches and similar articles or substances, ((the primary purpose of)) which ((is to)) become ingredients of the articles cleaned, are sales at wholesale and are not subject to the retail sales tax. Similarly, sales to persons operating laundry or linen supply services of linen, uniforms, towels, cabinets, hand soap and similar property rented or supplied to customers as a part of the service rendered are wholesale sales. Sales by supply houses to laundries, dry cleaners and operators of laundry or linen supply services of equipment and supplies such as machinery, hand tools, sewing notions, scissors, spotting brushes, stationery, etc., are retail sales and the retail sales tax must be collected thereon.~~

~~((Generally, sales by supply houses to persons operating self-service or coin-operated laundries, of soaps or other articles which are furnished by such persons to their customers, the charge for which is included within the charge for use of facilities, are wholesale sales, and supply houses need not collect the retail sales tax thereon upon receipt of a resale certificate from the customer. However, sales of such supplies to persons operating coin-operated laundry facilities which are situated in an apartment house, hotel, motel, rooming house or trailer camp for the exclusive use of the tenants are retail sales upon which the retail sales tax must be collected.))~~

~~(d) Sales by supply houses to self-service or coin-operated laundries of any items which the laundries give to their customers are retail sales. Sales of soap, bleach, fabric softener or other supplies to self-service or coin-operated laundries for resale to their customers are wholesale sales. The laundry or dry cleaning business should provide a resale certificate to the supply house as provided in WAC 458-20-102. A sale is for resale if the self-service business sells the supplies to customers separate from the charge for the use of the laundry appliances.~~

~~(e) Sales to all operators of laundry or dry cleaning establishments of equipment such as washing machines, ironers, furniture, etc., are retail sales subject to the sales tax.~~

~~(f) In most cases the retail sales tax must be stated separately from the selling price or collected separately from the buyer. (See RCW 82.08.050.) An exception is made for coin-operated sales. The seller may deduct the tax from the total amount received in coin-operated machines to arrive at the net amount which becomes the measure of the tax.~~

~~(g) In general, the place of sale for purposes of local sales tax is the place the laundry services are performed. See WAC 458-20-103 and 458-20-145.~~

~~(i) If a laundry or dry cleaning business contracts with another laundry or dry cleaning business to do the cleaning, the place of sale is the location of the laundry or dry cleaning business used by the customer to drop off and pickup the laundry.~~

(ii) If a laundry or dry cleaning business uses a commissioned agent such as a hotel, an apartment, or a commissioned driver for pickup and delivery of the articles to be cleaned, the place of sale is the location of the laundry or dry cleaning business which does the cleaning.

WSR 94-09-019
PERMANENT RULES
FISH AND WILDLIFE
COMMISSION

[Order 632—Filed April 14, 1994, 9:12 a.m., effective May 1, 1994]

Date of Adoption: April 8, 1994.

Purpose: To insure the rules and regulations for the Northern squawfish sport-reward fishery are clear, concise, and enforceable.

Summary: This regulation will provide rules and regulations governing the Northern squawfish sport-reward fishery that are clear, concise, and enforceable.

Reasons Supporting Proposal: This proposed regulation change will reflect the change of time the sport-reward registration stations are open. Regulations need to be in place both in Washington and Oregon to enable enforcement agencies to enforce the fishery regulations. Concurrent regulations are being promulgated by the Oregon Department of Fish and Wildlife for Oregon waters.

Short Explanation of Rule, its Purpose, and Anticipated Effects: This regulation will provide clear rules for anglers participating in the Northern squawfish sport-reward fishery that will be consistent with those being promulgated in Oregon. The purpose of the regulation is to provide clear rules for participation in the fishery. The anticipated effect is increased compliance with the fishery rules.

Statement of Finding: An effective date of May 1, 1994, which is earlier than the 31 days after filing is necessary because the time requirements would be contrary to the public interest. This is essential because sport fishery is planned to start May 2, 1994.

Citation of Existing Rules Affected by this Order: Amending WAC 232-12-166 Northern squawfish sport-reward fishery Columbia and Snake rivers.

Statutory Authority for Adoption: RCW 77.12.040.

Pursuant to notice filed as WSR 94-06-043 on February 28, 1994.

Changes Other than Editing from Proposed to Adopted Version: The adopted version of WAC 232-12-166 Northern squawfish sport-reward fishery Columbia and Snake rivers differs from the proposed version filed with the Code Reviser in the following specifics:

Amendatory Section

First paragraph, remove the following leading sentence, "During days, at times, and at sites to be specified by the Washington Department of Wildlife, a bounty in an amount to be specified by the department shall be paid for each Northern squawfish (*Ptychocheilus oregonensis*) taken by legal angling methods, in waters open to fishing, from the mouth of the Columbia River to the boat restricted zone below the Priest Rapids Dam;" and replace it with, "The Washington Department of Fish and Wildlife shall administer a bounty voucher program for Northern squawfish (*Ptychocheilus oregonensis*) taken by legal fishing methods,

in waters open to fishing, from the mouth of the Columbia River to the boundary markers 650 feet below the fish ladders at Priest Rapids Dam;"

First paragraph, last word, remove "payment" and replace it with "a voucher."

(a) last sentence, "A fishing day is a 24-hour period from 9:01 p.m. though 9:00 p.m. of the following day..." remove "though" and replace it with "through."

(c) first sentence, remove "To be eligible for a voucher," and begin sentence with Each northern squawfish....

(d) add "and" to the end of the phrase.

(e) remove "and" from the end of the phrase, replace it with a period.

(f) delete the entire sentence.

Effective Date of Rule: May 1, 1994.

April 14, 1994

John C. McGlenn
Chair

AMENDATORY SECTION (Amending Order 596 [WSR 93-10-013], filed 4/23/93)

WAC 232-12-166 Northern squawfish sport-reward fishery Columbia and Snake rivers. (~~During days, at times, and at sites to be specified by the Washington Department of Fish and Wildlife, a bounty in an amount to be specified by the Department shall be paid for each northern squawfish (*Ptychocheilus oregonensis*) taken by legal angling methods, in waters open to fishing, from the mouth of the Columbia River to the boat restricted zone below the Priest Rapids Dam;~~) The Washington Department of Fish and Wildlife shall administer a bounty voucher program for Northern squawfish (*Ptychocheilus oregonensis*) taken by legal fishing methods, in waters open to fishing, from the mouth of the Columbia River to the boundary markers 650 feet below the fish ladders at Priest Rapids Dam; from the mouth of the Snake River to the boat restricted zone below Hells Canyon Dam, and from backwaters and sloughs as well as up to 400 feet into the tributaries of the reaches listed above on the Columbia and Snake rivers. In addition, the following requirements shall be met to qualify for ~~((payment))~~ a voucher:

(a) Each angler must register in person, prior to fishing, at one of the registration stations each fishing day. A fishing day is a 24-hour period from 9:01 p.m. ~~((though))~~ through 9:00 p.m. of the following day;

(b) Each angler, in person must exchange their eligible northern squawfish for a voucher ~~((between the hours 9:00 a.m. and 9:00 p.m.))~~ during the posted hours, and at the same registration station where the angler registered during the same fishing day;

(c) ~~((To be eligible for a voucher,))~~ E((e))ach northern squawfish must be eleven inches or longer in total length and presented in fresh condition or alive;

(d) Anglers shall provide information regarding their catch as requested by Department personnel at the registration site and mail in survey forms; and

(e) Anglers shall obtain angling licenses and must use a single rod, reel, and line with up to three hooks with no more than three points each ~~((and))~~.

~~((f) A reward payment may be refused if in the judgement of the Department, any of the above conditions have not been met.))~~

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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 errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

PERMANENT

WSR 94-09-025
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed April 15, 1994, 8:52 a.m., effective January 1, 1995]

Date of Adoption: March 9, 1994.

Purpose: Establish minimum requirements for permits, design, installation, maintenance and operation for on-site sewage systems approved by local health, and the Washington State Department of Health.

Citation of Existing Rules Affected by this Order: Chapter 246-272 WAC. Repealing WAC 246-272-001 through 246-272-240; and adopting WAC 246-272-00101 through 246-272-28001 with amendments.

Statutory Authority for Adoption: RCW 43.20.050.

Pursuant to notice filed as WSR 93-21-062 on October 19, 1993.

Changes Other than Editing from Proposed to Adopted Version: Amendments and reason for adoption, chapter 246-272 WAC, On-site sewage system regulations, adopted March 9, 1994.

Adopted Amendment: Operation and maintenance planning for all on-site sewage systems required by January 1, 2000.

Reason for Adoption: This broadens the planning requirement for operation and maintenance monitoring plans to reduce potential failures, and includes a six year delay before implementation to reduce impact.

246-272-15501 Operation and maintenance.

(2) The local health officer shall:

(a) Provide operation and maintenance information to the OSS owner upon approval of any installation, repair, or alteration of an OSS; and

(b) Develop and implement plans to:

(i) Monitor all OSS performance within areas of special concern;

(ii) Initiate periodic monitoring of each OSS no later than January 1, 2000, to assure that each OSS owner properly maintains and operates the OSS in accordance with this section and in accordance with other applicable operation and maintenance requirements.

(~~ii~~ iii) Disseminate relevant operation and maintenance information to OSS owners through effective means routinely and upon request; and

(~~iii~~ iv) Assist in distributing educational materials to OSS owners.

Adopted Amendment: Nonconforming repair terminology.

Reason for Adoption: This resolves confusion by replacing the term "nonconforming" repair throughout the document with a more appropriate term that clarifies intent. Amendments occur in the following sections.

246-272-01001 Definitions.

~~"Nonconforming repair" means an on-site sewage system with a repaired disposal component that does not comply with required vertical or horizontal separation between the disposal component and water or well where potential contamination could risk public health and has not been granted concurrence by the department to recognize that additional means have been employed to minimize health risk.~~

"TABLE VI Repair": A repair or replacement of an existing on-site sewage system which, because of site limitations, must utilize treatment standards shown in Table VI in lieu of compliance with new construction requirements for vertical separation and/or horizontal set back from surface waters or drinking water wells or springs.

246-272-07001 Connection to public sewer system.

(3) The owner of a residence or other facility served by a Table VI noneconforming repair as defined in WAC 246-272-01001 of this chapter shall abandon the OSS according to the requirements specified in WAC 246-272-18501, and connect the residence or other facility to a public sewer system when:

(a) Connection is deemed necessary to protect public health by the local health officer;

(~~ab~~) An adequate public sewer becomes available within two hundred feet of the residence or other facility as measured along the usual or most economically feasible route of access; and

(~~bc~~) The sewer utility allows the sewer connection.

246-272-16501 Repair of failures.

(1) When an OSS failure occurs, the OSS owner shall:

(a) Repair or replace the OSS with a conforming system or a noneconforming Table VI repair either on the:

(3) The local health officer shall permit a noneconforming Table VI repair only when:

(a) Installation of a conforming system is not possible; and

(b) Connection to either an approved LOSS or a public sewer is not feasible.

(4) The person responsible for the design shall locate and design noneconforming repairs to:

246-272-16501 Repair of failures.

(5) The local health officer shall identify noneconforming Table VI repair permits for the purpose of tracking future performance, ~~and describe on the permit the manner and extent of OSS non-conformance~~

246-272-16501 Repair of failures.

(6) An OSS owner receiving a noneconforming Table VI repair permit from the local health officer shall:

PERMANENT

Amendment: Strike requirement for owners to record permits on property title.

Reason for Adoption: This removes a negative incentive for owners to report, or repair failing systems.

246-272-16501

(6) An OSS owner receiving a ~~nonconforming~~ Table VI repair permit from the local health officer shall:

(a) ~~Record a copy of the permit, accompanying easements, restrictive covenants, and declaration of covenants with the county auditor;~~

(ba) Immediately report any failure to the local health officer;

(eb) Monitor the performance of the OSS according to the "Interim Guidelines for the Application of Treatment Standards 1 and 2, using Alternative On-site Sewage Treatment/Disposal Systems" amended August 4, 1992, (available upon written request to the department of health) and report the results to the local health officer at a minimum frequency of:

- (i) Quarterly when treatment standard 1 is required; and
- (ii) Annually when treatment standard 2 is required;

(dc) Comply with all local and state requirements stipulated on the permit;

Adopted Amendment: Appeals to the Washington State Board of Health by local boards of health when submitting regulations.

Reason for Adoption: This replaced the proposed "arbitration panel and binding decision," with good faith effort by an advisory panel preceding appeals to the Washington State Board of Health to assure their involvement.

246-272-02001 Local regulation.

(4) If the department denies ~~the approval of~~ local regulations, the local board of health may ~~initiate an appeal process by:~~

(a) Resubmitting revised regulations for departmental consideration; or

(b) Submitting a written request for a review of the departmental denial within 120 days from the date the local board of health receives the written reasons for the denial.

~~(5) Written requests for review shall be submitted to an arbitration panel that is acceptable to both the department and local board of health whose decision shall be binding on the department and the local board. The arbitration panel shall include one departmental employee, one employee from a local health department other than that which requested the review, and one member of the technical review committee described in WAC 246-272-23501.~~

(5) Upon receipt of written request for review of the departmental denial, the department shall:

(a) Acknowledge the receipt of the request in writing; and

(b) Form a mutually acceptable advisory panel consisting of:

(i) One departmental employee;

(ii) One employee from a local health jurisdiction other than that which requested the review; and

(iii) One member of the technical review committee described in WAC 246-272-23501.

(6) ~~If good faith efforts to reach agreement are unsuccessful, the local board of health may appeal the denial to the Washington State Board of Health for resolution.~~

(6)(7) Nothing in this chapter shall prohibit the adoption and enforcement of more stringent regulations by local health departments where such regulations are needed to protect the public health.

Adopted Amendment: Increased the proposed horizontal setback between disposal component and marine surface water from 50 to 100 feet for new systems, with provision to maintain the current policy allowing existing systems to be expanded to within 50 feet of marine shorelines.

Reason for Adoption: Addressed concerns regarding potential contamination of surface waters in Puget Sound, but continues to recognize the precedent regarding the expansion of existing systems that are located adjacent [to] marine shorelines.

246-272-09501 Location.

(1) Persons shall design and install OSS to meet the minimum horizontal separations shown in Table I, Minimum Horizontal Separations:

{NOTE: Entire table not shown.}

TABLE I
MINIMUM HORIZONTAL SEPARATIONS

Items requiring setback	From edge of disposal component and reserve area	From septic tank, holding tank, containment vessel, pump chamber, and distribution box	From building sewer, collection, and non-perforated distribution line ¹
Surface water ¹ Saltwater Fresh water	50 ft. <u>100 ft.</u> 100 ft.	50 ft. 50 ft.	10 ft. 10 ft.

(5) A local health officer may allow expansion of an existing on-site sewage system adjacent to a marine shoreline that does not meet the minimum horizontal separation between the disposal component and the ordinary high water mark required by WAC 246-272-09501 Table I, provided that:

(a) The system meets all requirements of WAC 246-272-11501;

(b) the system complies with all other requirements of WAC 246-272-09501 and WAC 246-272-17501;

(c) horizontal separation between the disposal component and the ordinary high water mark is 50 feet or greater; and

(d) vertical separation is 3 feet or greater with a conventional gravity drainfield, or 2 feet or greater with a conventional pressure distribution drainfield.

Adopted Amendment: Change term "saltwater" to "marine water" throughout document.

Reason for Adoption: The defined term "surface water" addresses bodies of "marine" waters, but the term "saltwater" was used throughout in the document. Replacing the term "saltwater" with "marine water" not only improved consistency within this document but with other departmental documents also.

246-272-01001 Definitions.

"**Ordinary high-water mark**" means the mark on lakes, streams, and tidal waters, found by examining the

{NOTE: Entire table not shown in its entirety for space considerations.}

**TABLE I
MINIMUM HORIZONTAL SEPARATIONS**

Items requiring setback	From edge of disposal component and reserve area	From septic tank, holding tank, containment vessel, pump chamber, and distribution box	From building sewer, collection, and non-perforated distribution line ¹
Surface water ³ Saltwater Marine water Fresh water	50 100 ft. 100 ft.	50 ft. 50 ft.	10 ft. 10 ft.

Adopted Amendment: Clarify intent regarding decisions when connection to public sewer is required.

Reason for Adoption: This clarifies that two alternatives exist for nonconforming systems within 200 feet of adequate sewer services: Hook up to the sewer, or install a conforming system.

246-272-07001 Connection to public sewer system.

(1) When adequate public sewer services are available within two hundred feet of the residence or facility ~~The local health officer, upon the failure of an existing on-site sewage system may:~~

(a) Require hook-up to a public sewer system ~~if an adequate public sewer exists within two hundred feet of the residence or other facility;~~ or

(b) Permit the repair or replacement of the on-site sewage system only if a conforming system can be designed and installed.

Adopted Amendment: Improved clarity regarding "expansions" to existing systems.

Reason for Amendment: This change clarified understanding that, before residences or facilities can be expanded, the on-site system serving them must meet the construction standards required by this chapter.

246-272-17501 Expansions.

The local health officer or department shall require a ~~conforming~~ an on-site sewage system and a reserve area in

beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland with respect to vegetation, as that condition exists on the effective date of this chapter, or as it may naturally change thereafter. The following definitions apply where the ordinary high water mark cannot be found:

(a) The ordinary high-water mark adjoining ~~saltwater~~ marine water is the elevation at mean higher high tide; and

(b) The ordinary high-water mark adjoining freshwater is the line of mean high water.

246-272-09501 Location.

(1) Persons shall design and install OSS to meet the minimum horizontal separations shown in Table I, Minimum Horizontal Separations:

full compliance with the new system construction standards specified in this chapter for an expansion of a residence or other facility.

Adopted Amendment: Combine the words "well head" to "wellhead," and change "zones" to "areas" for areas of special concern for consistency with other departmental documents.

Reason for Changes: This makes the on-site system rules consistent terminology used by the Department of Health, drinking water section in documents that refer to public water supply wellhead protection.

246-272-21501 Areas of special concern.

(1) The local health officer may investigate and take appropriate action to minimize public health risk in formally designated areas such as:

(d) Designated public water supply ~~well head~~ wellhead protection ~~zones~~ areas.

Adopted Amendment: Establish a time limit for the Washington State Department of Health to respond to waiver requests.

Reason for Adoption: This addressed a concern expressed by the building industry that delayed response to waiver requests might cause financial impact for builders.

246-272-25001 Waiver of state regulations.

(1) If concurrence is granted by the department, the local health officer may grant a waiver from specific

PERMANENT

requirements in this chapter for OSS under 3500 gallons per day only after the following procedure has been completed:

(a) The applicant submits a waiver application to the local health officer, including justification describing how the requested waiver is consistent with purpose and objectives to meet the public health intent of this chapter;

(b) When the local health officer determines that the waiver is consistent with the standards in, and the intent of, this chapter, the applicant forwards the completed waiver form, pertinent and supportive material, with required departmental fee to the department;

(c) Upon receipt of the waiver application, the department shall respond to the applicant within seven working days as to the status of departmental review. This notification is to include information regarding issues or concerns the department has identified and the expected date for completion of the review.

(ed) Upon review, the department returns the waiver application to the local health officer and a copy to the applicant, indicating that the department either concurs with the waiver as requested, or conditionally concurs with the request, or states reasons for denying the request.

Adopted Amendment: Improve clarity regarding applicability of the regulations.

Reason for Adoption: Modified language for accurate implementation.

246-272-03001 Applicability.

(2) Preliminary plat specifying general methods of sewage treatment, disposal, system designs and locations approved prior to the effective date of these regulations;

~~(a) shall be acted upon in accordance with regulations in force at the time of preliminary plat approval; and~~

~~(b) shall have for a maximum validity period of five years from the date of approval, or remain valid for an additional year beyond the effective date of these regulations, whichever assures the most lenient expiration date.~~

Adopted Amendment: Modify language to clarify that engineers do not require certification by the local health officer to conduct soil and site evaluations or design on-site sewage systems.

Reason for Adoption: This change recognizes that engineers are certified by the state of Washington Board of Registration for Professional Engineers and Land Surveyors to practice within the scope of their education and experience therefore don't require additional certification by local health officers.

246-272-11001 Soil and site evaluation.

(1) The local health officer or department shall permit only engineers, qualified designers and soil scientists to perform soil and site evaluations.

246-272-11501 Design.

(1) The local health officer shall require that on-site sewage systems be designed only by engineers or qualified designers or ~~engineers~~, except:

Adopted Amendment: Include a protocol for addressing regional waivers.

Reason for Adoption: Established a protocol necessary for local boards of health to be granted regional or jurisdic-

tional waivers to requirements of this chapter by the Washington State Board of Health.

246-272-25001 Waiver of state regulations.

(1) For individual, site-by-site waiver requests, if concurrence is granted by the department, the local health officer may grant a waiver from specific requirements in this chapter for OSS under 3500 gallons per day only after the following procedure has been completed:

(a) The applicant submits a waiver application to the local health officer, including justification describing how the requested waiver is consistent with purpose and objectives to meet the public health intent of this chapter;

(b) When the local health officer determines that the waiver is consistent with the standards in and the intent of this chapter, the applicant forwards the completed waiver form, pertinent and supportive material, with required departmental fee to the department;

(c) Upon receipt of the waiver application, the department shall respond to the applicant within seven working days as to the status of departmental review. This notification is to include information regarding issues or concerns the department has identified and the expected date for completion of the review.

(d) Upon review, the department returns the waiver application to the local health officer and a copy to the applicant, indicating that the department either concurs with the waiver as requested, or conditionally concurs with the request, or states reasons for denying the request.

(2) The department may grant a waiver from specific requirements in this chapter for a LOSS if a person submits a completed departmental waiver application and required fee to the department, including justification showing the requested waiver is consistent with the LOSS standards in this chapter, and is consistent with the purpose and objectives of this chapter to assure public health protection.

(3) If an applicant desires to modify and resubmit a previously denied waiver request, the process described above in subsection (1) for OSS under 3500 gallons per day, or subsection (2) above for a LOSS shall be followed again.

(4) For general, multiple-site waivers to respond to regional conditions or issues, if approval is granted by the state board of health, the local health officer may, under the conditions and requirements of an intergovernmental agreement with the department, grant waivers from specific requirements in this chapter for OSS under 3500 gallons per day only after the following requirements have been met:

(a) The local health officer shall submit to the department for review, a proposal for an intergovernmental agreement (IGA) between the local board of health and the department that provides:

(i) Justification for the waiver request based on sound technical and scientific information and data;

(ii) Written concurrence by the department of ecology that the standards of chapter 173-201 WAC, Water quality standards for surface waters and chapter 173-200 WAC, Water quality standards for ground water will be met;

(iii) An appropriate local public review of the proposed IGA, including opportunity for review and comment by adjacent county governments, state agencies, affected parties, and others; and

(iv) Appropriate technical, administrative, and regulatory requirements to assure public health protection, and limitations, conditions, revocation clauses, and other items as required by the department or the state board of health.

(b) The department shall, within 90 days of receipt of a completed proposal:

(i) Determine if the proposed IGA, with its supporting documentation, adequately addresses technical criteria and standards, and regulatory control to assure public health protection at least equal to that provided by this chapter; and

(ii) Submit to the state board of health a report with departmental recommendations regarding the waiver request and the proposed IGA.

(c) The department may establish fees or other mechanisms of cost recovery, to cover the costs of departmental review, development, and on-going oversight of proposed intergovernmental agreements, and any departmental activity as provided and agreed upon in intergovernmental agreements, as described in this section.

Effective Date of Rule: January 1, 1995.

April 13, 1994
Sylvia Beck
Executive Director
State Board of Health

Chapter 246-272 WAC ON-SITE SEWAGE SYSTEMS

NEW SECTION

WAC 246-272-00101 Purpose, objectives, and authority. (1) The purpose of this chapter is to protect the public health by minimizing:

(a) The potential for public exposure to sewage from on-site sewage systems; and

(b) Adverse effects to public health that discharges from on-site sewage systems may have on ground and surface waters.

(2) This chapter regulates the location, design, installation, operation, maintenance, and monitoring of on-site sewage systems to:

(a) Achieve long-term sewage treatment and effluent disposal; and

(b) Limit the discharge of contaminants to waters of the state.

(3) This chapter is adopted by the state board of health in accordance with the authority granted in RCW 43.20.050 to establish minimum requirements for the department of health, and local boards of health whether or not they choose to adopt local regulations.

NEW SECTION

WAC 246-272-00501 Administration. The local health officers and the department shall administer this chapter under the authority and requirements of chapters 70.05, 70.08, 70.46, and 43.70 RCW. Under RCW 70.05.060(7), fees may be charged for this administration.

NEW SECTION

WAC 246-272-01001 Definitions. "Additive" means a commercial product added to an on-site sewage system intended to affect performance or aesthetics of an on-site sewage system.

"Alternative system" means an on-site sewage system other than a conventional gravity system or conventional pressure distribution system. Properly operated and maintained alternative systems provide equivalent or enhanced treatment performance as compared to conventional gravity systems.

"Approved" means a written statement of acceptability, in terms of the requirements in this chapter, issued by the local health officer or the department.

"Approved list" means "List of Approved Systems and Products," developed annually and maintained by the department and containing the following:

List of proprietary devices approved by the department;

List of specific systems meeting treatment standard 1 and treatment standard 2;

List of experimental systems approved by the department;

List of septic tanks, pump chambers, and holding tanks approved by the department.

"Area of special concern" means an area of definite boundaries delineated through public process, where a local health officer, or the department in consultation with the health officer, determines additional requirements for on-site sewage systems may be necessary to reduce potential failures, or minimize negative impact of on-site systems upon public health.

"Cesspool" means a pit receiving untreated sewage and allowing the liquid to seep into the surrounding soil or rock.

"Conforming system" means any on-site sewage system, except an experimental system, meeting any of the following criteria:

Systems in full compliance with new construction requirements under this chapter; or

Systems approved, installed, and operating in accordance with requirements of previous editions of this chapter; or

Systems or repairs permitted through departmental concurrence by the waiver process which assure public health protection by higher treatment performance or other methods.

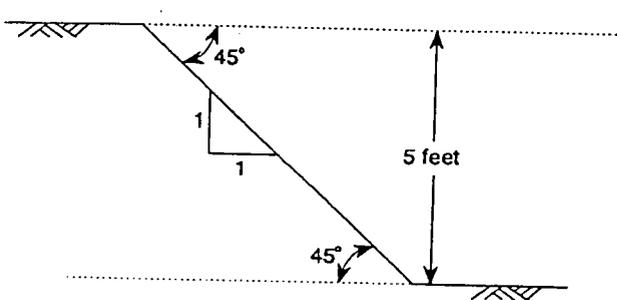
"Conventional gravity system" means an on-site sewage system consisting of a septic tank and a subsurface soil absorption system with gravity distribution of the effluent.

"Conventional pressure distribution system" means an on-site sewage system consisting of a septic tank and a subsurface soil absorption system with pressure distribution of the effluent. Design, operation and maintenance, and performance monitoring are described by "Guidelines for Pressure Distribution Systems" by the Washington state department of health.

"Covenant" means a recorded agreement stating certain activities and/or practices are required or prohibited.

"Cuts and/or banks" means any naturally occurring or artificially formed slope greater than one hundred percent

(forty-five degrees) and extending vertically at least five feet from the toe of the slope to the top of the slope as follows:



"Designer" means a person who matches site and soil characteristics with appropriate on-site sewage technology.

"Development" means the creation of a residence, structure, facility, mobile home park, subdivision, planned unit development, site, area, or any activity resulting in the production of sewage.

"Department" means the Washington state department of health.

"Disposal component" means a subsurface absorption system (SSAS) or other soil absorption system receiving septic tank or other pretreatment device effluent and transmitting it into original, undisturbed soil.

"Effluent" means liquid discharged from a septic tank or other on-site sewage system component.

"Engineer" means a person who is licensed and in good standing under chapter 18.43 RCW.

"Expansion" means a change in a residence, facility, site, or use that:

Causes an on-site sewage system to exceed its existing treatment or disposal capability, for example, when a residence is increased from two to three bedrooms or a change in use from an office to a restaurant; or

Reduces the treatment or disposal capability of the existing on-site sewage system or the reserve area, for example, when a building is placed over a reserve area.

"Experimental system" means any alternative system: Without design guidelines developed by the department;

or
A proprietary device or method which has not yet been evaluated and approved by the department.

"Failure" means a condition of an on-site sewage system that threatens the public health by inadequately treating sewage or by creating a potential for direct or indirect contact between sewage and the public. Examples of failure include:

- Sewage on the surface of the ground;
- Sewage backing up into a structure caused by slow soil absorption of septic tank effluent;
- Sewage leaking from a septic tank, pump chamber, holding tank, or collection system;
- Cesspools or seepage pits where evidence of ground water or surface water quality degradation exists;
- Inadequately treated effluent contaminating ground water or surface water; or

Noncompliance with standards stipulated on the permit.
"Ground water" means a subsurface water occupying the zone of saturated soil, permanently, seasonally, or as the result of the tides. Indications of ground water may include:

Water seeping into or standing in an open excavation from the soil surrounding the excavation.

Spots or blotches of different color or shades of color interspersed with a dominant color in soil, commonly referred to as mottling. Mottling is a historic indication for the presence of ground water caused by intermittent periods of saturation and drying, and may be indicative of poor aeration and impeded drainage. Also see "water table."

"Holding tank sewage system" means an on-site sewage system which incorporates a holding tank, the services of a sewage pumper/hauler, and the off-site treatment and disposal for the sewage generated.

"Industrial wastewater" means the water or liquid carried waste from an industrial process. 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 feedlots, poultry houses, or dairies. The term includes contaminated storm water and leachate from solid waste facilities.

"Installer" means a qualified person approved by a local health officer to install or repair on-site sewage systems or components.

"Large on-site sewage system (LOSS)" means any on-site sewage system with design flows, at any common point, greater than three thousand five hundred gallons per day.

"Local health officer" means the health officer of the city, county, or city-county health department or district within the state of Washington, or a representative authorized by and under the direct supervision of the local health officer, as defined in chapter 70.05 RCW.

"May" means discretionary, permissive, or allowed.

"On-site sewage system (OSS)" means an integrated arrangement of components for a residence, building, industrial establishment or other places not connected to a public sewer system which:

Convey, store, treat, and/or provide subsurface soil treatment and disposal on the property where it originates, upon adjacent or nearby property; and

Includes piping, treatment devices, other accessories, and soil underlying the disposal component of the initial and reserve areas.

"Ordinary high-water mark" means the mark on lakes, streams, and tidal waters, found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland with respect to vegetation, as that condition exists on the effective date of this chapter, or as it may naturally change thereafter. The following definitions apply where the ordinary high-water mark cannot be found:

The ordinary high-water mark adjoining marine water is the elevation at mean higher high tide; and

The ordinary high-water mark adjoining freshwater is the line of mean high water.

"Person" means any individual, corporation, company, association, society, firm, partnership, joint stock company,

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or any governmental agency, or the authorized agents of any such entities.

"Planned unit development" means a development characterized by a unified site design, clustered residential units and/or commercial units, and areas of common open space.

"Pressure distribution" means a system of small diameter pipes equally distributing effluent throughout a trench or bed, as described in the *"Guidelines for Pressure Distribution Systems"* by the department. Also see "conventional pressure distribution."

"Proprietary device or method" means a device or method classified as an alternative system, or a component thereof, held under a patent, trademark or copyright.

"Public sewer system" means a sewerage system:

Owned or operated by a city, town, municipal corporation, county, or other approved ownership consisting of a collection system and necessary trunks, pumping facilities and a means of final treatment and disposal; and

Approved by or under permit from the department of ecology, the department of health and/or a local health officer.

"Pumper" means a person approved by the local health officer to remove and transport wastewater or septage from on-site sewage systems.

"Repair" means restoration, by reconstruction or relocation, or replacement of a failed on-site sewage system.

"Reserve area" means an area of land approved for the installation of a conforming system and dedicated for replacement of the OSS upon its failure.

"Residential sewage" means sewage having the constituency and strength typical of wastewater from domestic households.

"Restrictive layer" means a stratum impeding the vertical movement of water, air, and growth of plant roots, such as hardpan, claypan, fragipan, caliche, some compacted soils, bedrock and unstructured clay soils.

"Seepage pit" means an excavation more than three feet deep where the sidewall of the excavation is designed to dispose of septic tank effluent. Seepage pits may also be called "dry wells."

"Septage" means the mixture of solid wastes, scum, sludge, and liquids pumped from within septic tanks, pump chambers, holding tanks, and other OSS components.

"Septic tank" means a watertight pretreatment receptacle receiving the discharge of sewage from a building sewer or sewers, designed and constructed to permit separation of settleable and floating solids from the liquid, detention and anaerobic digestion of the organic matter, prior to discharge of the liquid.

"Sewage" means any urine, feces, and the water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments or other places. For the purposes of these regulations, "sewage" is generally synonymous with domestic wastewater. Also see "residential sewage."

"Shall" means mandatory.

"Soil log" means a detailed description of soil characteristics providing information on the soil's capacity to act as an acceptable treatment and disposal medium for sewage.

"Soil type" means a numerical classification of fine earth particles and coarse fragments as described in WAC 246-272-11001 (2)(e).

"Subdivision" means a division of land or creation of lots or parcels, described under chapter 58.17 RCW, now or as hereafter amended, including both long and short subdivisions, planned unit developments, and mobile home parks.

"SSAS" or "subsurface soil absorption system" means a system of trenches three feet or less in width, or beds between three and ten feet in width, containing distribution pipe within a layer of clean gravel designed and installed in original, undisturbed soil for the purpose of receiving effluent and transmitting it into the soil.

"Surface water" means any body of water, whether fresh or marine, flowing or contained in natural or artificial unlined depressions for significant periods of the year, including natural and artificial lakes, ponds, springs, rivers, streams, swamps, marshes, and tidal waters.

"Table VI repair" means a repair or replacement of an existing on-site sewage system which, because of site limitations, must utilize treatment standards shown in Table VI in lieu of compliance with new construction requirements for vertical separation and/or horizontal set back from surface waters or drinking water wells or springs.

"Treatment standard 1" means a thirty-day average of less than 10 milligrams per liter of biochemical oxygen demand (five-day BOD₅), 10 milligrams per liter of total suspended solids (TSS), and a thirty-day geometric mean of less than 200 fecal coliform per 100 milliliters.

"Treatment standard 2" means a thirty-day average of less than 10 milligrams per liter of biochemical oxygen demand (five-day BOD₅), 10 milligrams per liter of total suspended solids (TSS), and a thirty-day geometric mean of less than 800 fecal coliform per 100 milliliters.

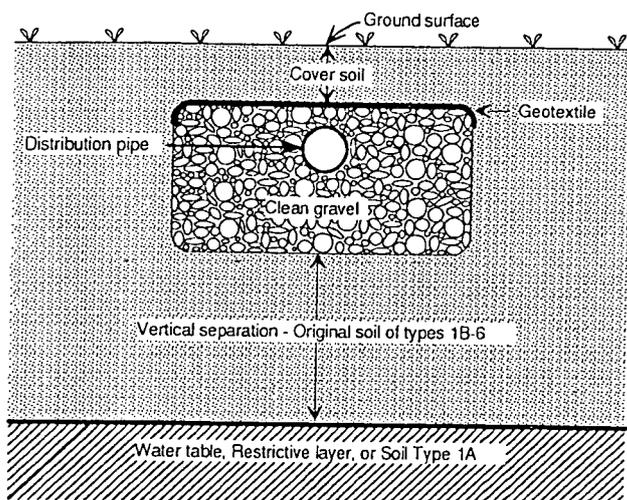
"Unit volume of sewage" means:

A single family residence;

A mobile home site in a mobile home park; or

Four hundred fifty gallons of sewage per day where the proposed development is not single family residences or a mobile home park.

"Vertical separation" means the depth of unsaturated, original, undisturbed soil of soil types 1B-6 between the bottom of a disposal component and the highest seasonal water table, a restrictive layer, or soil type 1A, as illustrated below by the profile drawing of a subsurface soil absorption system:



"Water table" means the upper surface of the ground water, whether permanent or seasonal. Also see "ground water."

"Wave barrier" means a bulkhead of adequate height and construction protecting the immediate area of on-site sewage system components from wave action.

NEW SECTION

WAC 246-272-02001 Local regulation. (1) Local boards of health may adopt and enforce local rules and regulations governing on-site sewage systems when the local regulations are:

- (a) Consistent with, and as stringent as, this chapter; and
- (b) Approved by the department prior to the effective date of local regulations.

(2) A local board of health may apply for departmental approval of local regulations at any time by initiating the following procedure:

(a) The local board shall submit the proposed local regulations to the department.

- (b) Within ninety days of receipt, the department shall:
 - (i) Approve the regulation; or
 - (ii) Signify automatic tacit agreement with the local regulations and permitting local implementation by failing to act; or

(iii) Deny approval of the regulations. If the department determines local regulations are not consistent with this chapter, the department shall provide specific reasons for denial.

(3) Upon receipt of departmental approval or after ninety days without notification, whichever comes first, the local board may implement adopted regulations. The local board shall provide a copy of the adopted local regulations to the department.

(4) If the department denies approval of local regulations, the local board of health may:

(a) Resubmit revised regulations for departmental consideration; or

(b) Submit a written request for a review of the departmental denial within one hundred twenty days from the date the local board of health receives the written reasons for the denial.

(5) Upon receipt of written request for review of the departmental denial, the department shall:

(a) Acknowledge the receipt of the request in writing; and

(b) Form a mutually acceptable advisory panel consisting of:

- (i) One departmental employee;
- (ii) One employee from a local health jurisdiction other than that which requested the review; and
- (iii) One member of the technical review committee described in WAC 246-272-23501.

(6) If good faith efforts to reach agreement are unsuccessful, the local board of health may appeal the denial to the Washington state board of health for resolution.

(7) Nothing in this chapter shall prohibit the adoption and enforcement of more stringent regulations by local health departments where such regulations are needed to protect the public health.

NEW SECTION

WAC 246-272-03001 Applicability. (1) The local health officer and the department:

(a) Shall apply this chapter to OSS treating wastewater and disposing of effluent from residential sewage sources;

(b) May apply this chapter to OSS for sources other than residential sewage, excluding industrial wastewater, if pretreatment, siting, design, installation, and operation and maintenance measures provide treatment and effluent disposal equal to that required of residential sewage.

(2) Preliminary plats specifying general methods of sewage treatment, disposal, system designs and locations approved prior to the effective date of these regulations shall be acted upon in accordance with regulations in force at the time of preliminary plat approval for a maximum period of five years from the date of approval or for an additional year beyond the effective date of these regulations, whichever assures the most lenient expiration date.

(3) A valid sewage system design approval, or installation permit issued prior to the effective date of these regulations:

(a) Shall be acted upon in accordance with regulations in force at the time of issuance;

(b) Shall have a maximum validity period of five years from the date of issuance or remain valid for an additional year beyond the effective date of these regulations, whichever assures the most lenient expiration date; and

(c) May be modified to include additional requirements if the health officer determines that a serious threat to public health exists.

(4) The Washington state department of ecology has authority and approval over:

(a) Domestic or industrial wastewater under chapter 173-240 WAC; and

(b) Sewage systems using mechanical treatment, or lagoons, with ultimate design flows above three thousand five hundred gallons per day.

(5) The Washington state department of health has authority and approval over:

(a) Systems with design flows through any common point between three thousand five hundred to fourteen thousand five hundred gallons per day; and

(b) Any large on-site sewage system "LOSS" for which jurisdiction has been transferred to the department of health under conditions of memorandum of agreement with the department of ecology.

(6) The local health officer has authority and approval over:

(a) Systems with design flows through any common point up to three thousand five hundred gallons per day;

(b) Any large on-site sewage system "LOSS" for which jurisdiction has been transferred to a local health jurisdiction from the department by contract.

(7) Where this chapter conflicts with chapter 90.48 RCW, Water Pollution Control, the requirements under those statutes apply.

NEW SECTION

WAC 246-272-04001 Alternative systems and proprietary devices. (1) The department:

(a) May approve guidelines for alternative systems if they are based upon:

(i) Sufficient theory and/or applied research to warrant guideline development; and

(ii) Sufficient accumulation of performance data to prove treatment standards are met; and

(iii) Review and recommendations by the technical review committee established under WAC 246-272-23501.

(b) May maintain lists of approved methods, proprietary devices, guidelines, and alternative systems.

(c) May charge fees to cover the cost of administering an alternative system program.

(2) The local health officer or department shall only permit installation of alternative systems for which there are alternative system guidelines, or a proprietary device if it appears on the list of approved systems or devices maintained by the department under subsection (1)(a) and (b) of this section.

(3) The local health officer:

(a) May require performance monitoring or sampling of any alternative system.

(b) May charge fees to cover the costs for monitoring system performance.

(c) Shall submit copies of evaluation reports to the department when alternative system performance is evaluated.

(d) Shall notify the department of alternative system approvals and failures.

(4) Persons desiring product inclusion on the approved list, or intending to alter an approved device or method, shall submit to the department:

(a) Documentation, data, plans, or other information requested, in an acceptable format for technical evaluation to certify that the product meets all the criteria in the appropriate guidelines; and

(b) Required fees.

(5) Persons desiring continued retention on the list of approved systems and products shall submit to the department:

(a) An acceptable annual report which includes any changes in the product and certifies that the device meets appropriate guidelines; and

(b) Required fees.

NEW SECTION

WAC 246-272-05001 Experimental systems. (1) Persons proposing a system for inclusion on the departmental approved list of experimental systems shall submit to the department for review and approval, a written proposal which includes:

(a) Description of existing theory and/or applied research supporting the application;

(b) Proposed testing protocol;

(c) Proposed operation, maintenance, and monitoring detail and schedules;

(d) Maximum number of installations;

(e) Proposed locations and uses, if multiple locations are proposed;

(f) Proposed reporting detail and frequency;

(g) Proposed schedule for the experimental program;

(h) Name(s) of the person(s) financially responsible for the experimental program, including:

(i) Routine operation and maintenance;

(ii) Monitoring; and

(iii) Repair and/or replacement of the system.

(i) Verification that the proposal is consistent with the intent of this chapter, requirements of this section, and the departmental application process.

(2) The local health officer:

(a) May permit a limited number of specific experimental systems if:

(i) The specific system is included on the department's approved list of experimental systems under subsection (5)(b) of this section;

(ii) The site will accommodate the installation of a conforming system in the event of failure of the experimental system;

(iii) Local agreements to provide for monitoring, sampling, testing, reporting, maintenance, repairs, and the replacement of the system in accordance with the protocol approved by the department under subsection (1) of this section are completed and signed.

(b) May charge fees to cover the cost of evaluating or monitoring the experimental system.

(3) After the experimental system proposal is approved, the person noted as responsible for an experimental system program on the departmental approved list shall:

(a) Follow the experimental system protocol, procedures, and other related written agreements approved by the department and the local health officer;

(b) Monitor the experimental system and submit records as required to meet department's approval or the local health officer's permit; and

(c) Annually renew each state experimental system permit.

(4) A person desiring to install an experimental system shall:

(a) Obtain a permit from the local health officer;

(b) Submit a written promise to the health officer agreeing to abandon the experimental system and install a conforming system if:

(i) The system fails;

(ii) The performance of the experimental system is unsatisfactory; or

(iii) The applicant fails to adequately monitor the experimental system and submit records as required in the department's approval or the local health officer's permit;

(iv) The system components do not function as indicated by submitted documents;

(v) Performance does not meet the anticipated objectives of the experiment; or

(vi) The state experimental system permit is not renewed annually.

(c) Provide financial guarantees, acceptable to the health officer, and a copy of the recorded covenant required under (b) of this subsection to the local health officer; and

(d) Obtain through the local health officer an annually renewable state experimental system permit.

(5) The department:

(a) Shall obtain recommendations from the technical review committee prior to issuing approval of a proposal;

(b) Shall maintain a list of experimental systems that have been approved by the department, which also indicates each system's current status, application, use, and restrictions;

(c) Shall monitor the performance of the experimental system, including evaluation of any failures;

(d) Shall annually renew the state experimental system permit when:

(i) The requirements under subsections (3)(a) and (b) of this section are satisfied; and

(ii) The performance of the system is satisfactory; and

(e) Shall no longer apply the requirements of this section when the requirements of WAC 246-272-04001 are satisfied.

(6) The department and the local health officer shall not permit an experimental LOSS.

NEW SECTION

WAC 246-272-07001 Connection to public sewer system. (1) When adequate public sewer services are available within two hundred feet of the residence or facility the local health officer, upon the failure of an existing on-site sewage system may:

(a) Require hook-up to a public sewer system; or

(b) Permit the repair or replacement of the on-site sewage system only if a conforming system can be designed and installed.

(2) Except as noted in subsection (1) of this section, the owner of a failure shall abandon the OSS under WAC 246-272-18501 and connect the residence or other facility to a public sewer system when:

(a) The distance between the residence or other facility and an adequate public sewer is two hundred feet or less as measured along the usual or most feasible route of access; and

(b) The sewer utility allows the sewer connection.

(3) The owner of a residence or other facility served by a Table VI repair as defined in WAC 246-272-01001 of this chapter shall abandon the OSS according to the requirements specified in WAC 246-272-18501, and connect the residence or other facility to a public sewer system when:

(a) Connection is deemed necessary to protect public health by the local health officer;

(b) An adequate public sewer becomes available within two hundred feet of the residence or other facility as measured along the usual or most economically feasible route of access; and

(c) The sewer utility allows the sewer connection.

(4) Local boards of health may require a new development to connect to a public sewer system to protect public health.

NEW SECTION

WAC 246-272-08001 Large on-site sewage systems (LOSS). (1) Persons proposing a new LOSS for which the department has jurisdiction by WAC or memorandum of agreement with the department of ecology shall meet the requirements specified in "*Design Standards for Large On-site Sewage Systems*," 1993, Washington state department of health (available upon written request to the department).

(2) Persons shall submit the documents and fees specified under (a) through (f) of this subsection and obtain approval from the department before installing a LOSS to serve any facility:

(a) A preliminary report, stamped and signed by an engineer, including:

(i) A discussion of the proposed project, including the schedule of construction;

(ii) A discussion of compliance with other state and local zoning, platting, health, and building regulations as they relate to sewage treatment and disposal;

(iii) An analysis of the site's capacity to treat and dispose of the proposed quantity and quality of sewage;

(iv) An analysis of the factors identified in WAC 246-272-20501 (2)(d)(ii)(A); and

(v) A soil and site evaluation as specified in WAC 246-272-11001 signed by the evaluator;

(vi) A management plan describing the:

(A) Management entity consisting of one of the following:

(I) For residential subdivisions where the lots are individually owned, a public entity serves as the primary management entity, or as the third party trust for a private management entity; or

(II) For other uses, including single ownership, a public entity or a private entity via an appropriate contract or agreement provides management;

(B) Duties of the management entity, including specific tasks and frequency of operation and maintenance;

(C) Controls to ensure the continuity and permanency of proper operation and maintenance;

(D) Methods and frequency of monitoring, recordkeeping, and reporting to the department;

(E) Rights and responsibilities of management; and

(F) Rights and responsibilities of persons purchasing connections to the LOSS.

(b) Complete plans and specifications of the LOSS:

(i) Showing a conventional pressure distribution system with three feet of vertical separation;

(ii) Meeting all other design criteria within "*Design Standards for Large On-site Sewage Systems*," 1993, department of health (available upon written request to the department); and

(iii) Stamped and signed by an engineer;

(c) A schedule of inspections to confirm the installation conforms to the plans and specifications;

(d) A draft operation and maintenance manual, describing the LOSS and outlining routine maintenance procedures for proper operation of the system;

(e) Required fees; and

(f) Other information as required by the department.

(3) Persons desiring to repair, modify or expand a facility served, or to be served by a LOSS shall submit all documents and fees specified under subsection (2)(a) through (f) of this section, unless the department waives submission of some elements as unnecessary, and obtain approval from the department.

(4) The department:

(a) Shall not change the terms of a project's construction approval during a two-year validity period. However additional terms to protect public health may be included before granting one-year approval permit extensions;

(b) Shall conduct a presite inspection; and

(c) May allow the applicant to renew approval under the initial terms for successive one-year periods if:

(i) The LOSS is incomplete two years after the department's approval;

(ii) The applicant requests renewal in writing; and

(iii) The applicant submits required fees.

(5) A qualified installer shall install the LOSS.

(6) The applicant or applicant's agent:

(a) Shall comply with all conditions set forth in the department's construction approval;

(b) May request extensions to the construction approval permit; and

(c) Shall comply with any additional conditions upon construction approval extensions set forth by the department, and pay required fees for renewing the approval.

(7) Before a new LOSS is used:

(a) An engineer shall stamp, sign, and submit a LOSS construction report to the department within sixty days following the completion of construction of the LOSS including:

(i) A completed form stating the LOSS was constructed in accordance with the department's approved plans and specifications; and

(ii) An "as built" or "record" drawing;

(b) The department shall conduct a final inspection; and

(c) The owner shall:

(i) Submit an operation and maintenance manual developed by an engineer for the installed LOSS to the department for review and approval; and

(ii) Obtain a LOSS operating permit from the department by:

(A) Completing and submitting forms to the department; and

(B) Paying required fees.

(8) The owner of a LOSS that has been approved by the department or local health officer or constructed after July 1, 1984, shall:

(a) Obtain a LOSS operating permit from the department; and

(b) Annually renew it.

(9) The owner shall annually renew the LOSS operating permit by:

(a) Continued retention of an approved management entity to operate and maintain the LOSS;

(b) Submitting a report to the department demonstrating the LOSS is operated, maintained, and monitored in accordance with this chapter and the approved operation and maintenance manual; and

(c) Submitting required fees.

(10) The department:

(a) Shall issue a LOSS operating permit to owners of LOSS meeting the requirements of subsections (1) through (7) of this section;

(b) Shall annually renew the LOSS operating permit when the owner has complied with the requirements under subsection (9) of this section;

(c) May revoke the LOSS operating permit when the:

(i) Approved management entity ceases to operate and maintain the LOSS;

(ii) Owner does not meet other conditions of the LOSS operating permit; or

(iii) LOSS fails;

(d) Shall monitor the performance of LOSS; and

(e) Shall apply the requirements under WAC 246-272-16501 to failing LOSS.

(11) The department may request the assistance of the local health officer to review the site or the design or to inspect the construction of a LOSS.

(12) A local health officer and the department may enter into a contract under which:

(a) The local health officer will assume the department's responsibilities in subsections (2), (4), (6), (7)(a), (b) and (c)(i) of this section to regulate LOSS; and

(b) The local health officer may charge fees to a LOSS applicant or owner for services provided if the authorization for such fees is set forth in local regulations adopted under this chapter.

NEW SECTION

WAC 246-272-09001 Permits for OSS under three thousand five hundred gallons per day. (1) Prior to beginning the construction process, a person proposing the installation, repair, modification, connection to, or expansion of an OSS, shall develop and submit the following to the local health officer and obtain approval:

(a) General information including:

(i) Name and address of the property owner and the applicant at the head of each page of submission;

(ii) Parcel number and address, if available, of the site;

(iii) Source of drinking water supply;

(iv) Identification if the property is within the boundaries of a recognized sewer utility;

(v) Size of the parcel;

(vi) Type of permit for which application is being made, for example, new installation, repair, expansion, alteration, or operational;

(vii) Source of sewage, for example, residential, restaurant, or other type of business;

(viii) Location of utilities;

(ix) Name of the site evaluator;

(x) Name of the designer;

(xi) Date of application; and

(xii) Signature of applicant.

(b) The soil and site evaluation as specified under WAC 246-272-11001(2).

(c) A complete, detailed, and dimensional site plan including:

(i) Designated areas for the proposed initial system and the reserve area;

(ii) The location of all soil logs and other soil tests for the OSS;

(iii) General topography and/or slope of the site;

(iv) Site drainage characteristics;

(v) The location of existing and proposed encumbrances affecting system placement, including legal access documents if any component of the OSS is not on the lot where the sewage is generated; and

(vi) An arrow indicating north.

(d) A detailed system design meeting the requirements under WAC 246-272-11501 including:

(i) A dimensional drawing showing the location of components of the proposed OSS, and the system designed for the reserve area if reserve site characteristics differ significantly from the initial area;

(ii) Vertical cross-section drawings showing:

(A) The depth of the disposal component, the vertical separation, and depth of soil cover; and

(B) Other OSS components constructed at the site.

(iii) Calculations and assumptions supporting the proposed design, including:

(A) Soil type;

(B) Hydraulic loading rate in the disposal component; and

(C) System's maximum daily flow capacity.

(e) Such additional information as deemed necessary by the local health officer.

(2) The local health officer may develop the required information specified in subsection (1) of this section if authorization for such actions is included in local regulations.

(3) The local health officer shall:

(a) Issue a permit when the information submitted under subsection (1) of this section meets the requirements contained in this chapter and in local regulations;

(b) Identify the permit as a new installation, repair, expansion, modification, or operational permit;

(c) Specify the expiration date on the permit;

(d) Include a reminder on the permit application of the applicant's right of appeal; and

(e) State the period of validity and the date and conditions of renewal when requiring operational permits to be obtained and retained;

(4) The local health officer may revoke or deny a permit for due cause. Examples include, but are not limited to:

(a) Development or continued use of an OSS that threatens the public health;

(b) Misrepresentation or concealment of material fact in information submitted to the local health officer; or

(c) Failure to meet conditions of the permit or the regulations.

(5) Before the local health officer issues a permit for the installation of an OSS to serve more than one development, the applicant shall show:

(a) An approved public entity owning or managing the OSS in perpetuity; or

(b) An arrangement with a management entity acceptable to the local health officer, recorded in covenant, lasting until the on-site system is no longer needed, and containing, but not limited to:

(i) A legal easement allowing access for construction, operation and maintenance, and repair of the OSS; and

(ii) Identification of an adequate financing mechanism to assure the funding of operation, maintenance, and repair of the OSS.

(6) The local health officer shall not delegate the authority to issue permits.

(7) The local health officer may stipulate additional requirements for a particular permit if necessary for public health protection.

NEW SECTION

WAC 246-272-09501 Location. (1) Persons shall design and install OSS to meet the minimum horizontal separations shown in Table I, Minimum Horizontal Separations:

**TABLE I
MINIMUM HORIZONTAL SEPARATIONS**

Items requiring setback	From edge of disposal component and reserve area	From septic tank, holding tank, containment vessel, pump chamber, and distribution box	From building sewer, collection, and non-perforated distribution line ¹
Non-public well or suction line	100 ft.	50 ft.	50 ft.
Public drinking water well	100 ft.	100 ft.	100 ft.
Public drinking water spring ³	200 ft.	200 ft.	100 ft.
Spring or surface water used as drinking water source ^{2,3}	100 ft.	50 ft.	50 ft.
Pressurized water supply line ⁴	10 ft.	10 ft.	10 ft.
Properly decommissioned well ⁵	10 ft.	N/A	N/A
Surface water ¹ Marine water Fresh water	100 ft. 100 ft.	50 ft. 50 ft.	10 ft. 10 ft.
Building foundation	10 ft. ⁶	5 ft. ⁶	2 ft.
Property or easement line ⁶	5 ft.	5 ft.	N/A
Interceptor / curtain drains/ drainage ditches Down-gradient ⁷ Up-gradient ⁷	30 ft. 10 ft.	5 ft. N/A	N/A N/A
Down-gradient cuts or banks with at least 5 ft. of original, undisturbed soil above a restrictive layer due to a structural or textural change	25 ft.	N/A	N/A
Down-gradient cuts or banks with less than 5 ft. of original, undisturbed, soil above a restrictive layer due to a structural or textural change	50 ft.	N/A	N/A

- 1 "Building sewer" as defined by the most current edition of the Uniform Plumbing Code.
"Nonperforated distribution" includes pressure sewer transport lines.
- 2 If surface water is used as a public drinking water supply, the designer shall locate the OSS outside of the required sanitary control area.
- 3 Measured from the ordinary high-water mark.
- 4 The local health officer may approve a sewer transport line within ten feet of a water supply line if the sewer line is constructed in accordance with section 2.4 of the department of ecology's "Criteria For Sewage Works Design," revised October 1985, or equivalent.
- 5 Before any component can be placed within one hundred feet of a well, the designer shall submit a "decommissioned water well report" provided by a licensed well driller, which verifies that

appropriate decommissioning procedures noted in chapter 173-160 WAC were followed. Once the well is properly decommissioned, it no longer provides a potential conduit to ground water, but septic tanks, pump chambers, containment vessels, or distribution boxes should not be placed directly over the site.

- 6 The local health officer may allow a reduced horizontal separation to not less than two feet where the property line, easement line, or building foundation is up-gradient.
- 7 The item is down-gradient when liquid will flow toward it upon encountering a water table or a restrictive layer. The item is up-gradient when liquid will flow away from it upon encountering a water table or restrictive layer.

(2) Where any condition indicates a greater potential for contamination or pollution, the local health officer or the department may increase the minimum horizontal separations. Examples of such conditions include excessively

permeable soils, unconfined aquifers, shallow or saturated soils, dug wells, and improperly abandoned wells.

(3) The horizontal separation between an OSS disposal component and an individual water well, spring, or surface water can be reduced to a minimum of seventy-five feet, by the local health officer, and be described as a "conforming" system upon signed approval by the health officer if the applicant demonstrates:

(a) Adequate protective site specific conditions, such as physical settings with low hydro-geologic susceptibility from contaminant infiltration. Examples of such conditions include evidence of confining layers and or aquatards separating potable water from the OSS treatment zone, excessive depth to ground water, down-gradient contaminant source, or outside the zone of influence; or

(b) Design and proper operation of an OSS system assuring enhanced treatment performance beyond that accomplished by meeting the vertical separation and effluent distribution requirements described in WAC 246-272-11501 (2)(f) Table IV; or

(c) Evidence of protective conditions involving both (a) and (b) of this subsection.

(4) Persons shall design and/or install disposal components only where:

(a) The slope is less than forty-five percent (twenty-four degrees);

(b) The area is not subject to:

(i) Encroachment by buildings or construction such as placement of swimming pools, power poles and underground utilities;

(ii) Cover by impervious material;

(iii) Vehicular traffic; or

(iv) Other activities adversely affecting the soil or the performance of the OSS.

(c) Sufficient reserve area for replacement exists to treat and dispose one hundred percent of the design flow;

(d) The land is stable; and

(e) Surface drainage is directed away from the site.

(5) A local health officer may allow expansion of an existing on-site sewage system adjacent to a marine shoreline that does not meet the minimum horizontal separation between the disposal component and the ordinary high water mark required by WAC 246-272-09501 Table I, provided that:

(a) The system meets all requirements of WAC 246-272-11501;

(b) The system complies with all other requirements of WAC 246-272-09501 and 246-272-17501;

(c) Horizontal separation between the disposal component and the ordinary high water mark is fifty feet or greater; and

(d) Vertical separation is three feet or greater with a conventional gravity drainfield, or two feet or greater with a conventional pressure distribution drainfield.

NEW SECTION

WAC 246-272-11001 Soil and site evaluation. (1)

The local health officer or department shall permit only engineers, qualified designers and soil scientists to perform soil and site evaluations.

(2) The person evaluating the soil and site shall:

(a) Record:

(i) A sufficient number of soil logs to evaluate conditions within:

(A) The initial disposal component; and

(B) The reserve area.

(ii) The ground water conditions, the date of the observation, and the probable maximum height;

(iii) The topography of the site;

(iv) The drainage characteristics of the site;

(v) The existence of structurally deficient soils subject to major wind or water erosion events such as slide zones and dunes;

(vi) The existence of designated flood plains; and

(vii) The location of existing encumbrances affecting system placement, such as:

(A) Wells and suction lines;

(B) Water sources and supply lines;

(C) Surface water;

(D) Abandoned wells;

(E) Outcrops of bedrock and restrictive layers;

(F) Buildings;

(G) Property lines and lines of easement;

(H) Interceptors such as footing drains, curtain drains and drainage ditches;

(I) Cuts, banks, and fills;

(J) Driveways and parking areas;

(K) Existing OSS; and

(L) Underground utilities.

(b) Use the soil and site evaluation procedures and terminology in accordance with chapter 3 and Appendix A of the "Design Manual: On-site Wastewater Treatment and Disposal Systems," United States Environmental Protection Agency, EPA-625/1-80-012, October, 1980, except where modified by, or in conflict, with this chapter (available upon written request to the department);

(c) Use the soil names and particle size limits of the United States Department of Agriculture Soil Conservation Service classification system;

(d) Determine texture, structure, compaction and other soil characteristics that affect the treatment and water movement potential of the soil by using normal field and/or laboratory procedures such as particle size analysis; and

(e) Classify the soil as in Table II, Soil Textural Classification:

TABLE II
SOIL TEXTURAL CLASSIFICATION

Soil Type	Soil Textural Classifications
1A	Very gravelly ¹ coarse sands or coarser. All extremely gravelly ² soils.
1B	Very gravelly medium sand, very gravelly fine sand, very gravelly very fine sand, very gravelly loamy sands.
2A	Coarse sands (also includes ASTM C-33 sand).
2B	Medium sands.
3	Fine sands, loamy coarse sands, loamy medium sands.
4	Very fine sands, loamy fine sands, loamy very fine sands, sandy loams, loams.
5	Silt loams, that are porous and have well developed structure.
6	Other silt loams, sandy clay loams, clay loams, silty clay loams.
Unsuitable for treatment or disposal	Sandy clay, clay, silty clay, and strongly cemented or firm soils.

1 Very Gravelly = >35% and <60% gravel and coarse fragments, by volume.

2 Extremely Gravelly = >60% gravel and coarse fragments, by volume.

(3) The owner of the property or his agent shall:

(a) Prepare the soil log excavation to:

(i) Allow examination of the soil profile in its original position by:

(A) Excavating pits of sufficient dimensions to enable observation of soil characteristics by visual and tactile means to a depth three feet deeper than the anticipated bottom of the disposal component; or

(B) Stopping at a shallower depth if a water table or restrictive layer is encountered; and

(ii) Allow determination of the soil's texture, structure, color, bulk density or compaction, water absorption capabilities or permeability, and elevation of the highest seasonal water table; and

(b) Assume responsibility for constructing and maintaining the soil log excavation in a manner to reduce potential for physical injury by:

(i) Placing excavated soil no closer than two feet of the excavation;

(ii) Providing a ladder, earth ramp or steps for safe egress to a depth of four feet, then scoop out a portion from the floor to gain the additional two foot depth necessary to observe the six feet of soil face, however the scooped portion is not to be entered;

(iii) Provide a physical warning barrier around the excavation's perimeter; and

(iv) Fill the excavation upon completion of the soil log.

(4) The local health officer:

(a) Shall render a decision on the height of the water table within twelve months of receiving the application under precipitation conditions typical for the region;

(b) May require water table measurements to be recorded during months of probable high-water table conditions, if insufficient information is available to determine the highest seasonal water table;

(c) May require any other soil and site information affecting location, design, or installation; and

(d) May reduce the required number of soil logs for OSS serving a single family residence if adequate soils information has previously been developed.

NEW SECTION

WAC 246-272-11501 Design. (1) The local health officer shall require that on-site sewage systems be designed only by engineers or qualified designers, except:

(a) Where at the discretion of the local health officer a resident owner of the single family residence is allowed to design a system for that residence; or

(b) The local health officer performs the soil and site evaluation and develops the design.

(2) The local health officer and the department shall require the following design criteria:

(a) All the sewage from the building served is directed to the OSS;

(b) Drainage from the surface, footing drains, roof drains, and other nonsewage drains is prevented from entering the OSS and the area where the OSS is located;

(c) The OSS is designed to treat and dispose of the following flows:

(i) For single family residences, one hundred twenty gallons per bedroom per day, with a minimum of two hundred forty gallons per day, unless technical justification is provided to support calculations using a lower design flow;

(ii) For other facilities, the design flows noted in "Design Manual: On-site Wastewater Treatment and Disposal Systems," United States Environmental Protection Agency, EPA-625/1-80-012, October, 1980 (available upon written request to the department.) If the type of facility is not listed in the EPA design manual, design flows from one of the following documents are used:

(A) "Design Standards for Large On-site Sewage Systems," 1993, Washington state department of health (available upon request to the department); or

(B) "Criteria for Sewage Works Design," revised October 1985, Washington state department of ecology (available upon written request to the department of ecology).

(d) Septic tanks:

(i) Are included on the approved list under subsection (5)(d) of this section;

(ii) Have the following minimum liquid capacities:

(A) For a single family residence use Table III, Required Minimum Liquid Volumes of Septic Tanks:

TABLE III
REQUIRED MINIMUM LIQUID VOLUMES OF SEPTIC TANKS

Number of bedrooms	Required minimum liquid tank volume in gallons
≤ 3	900
4	1000
Each additional bedroom	250

(B) For facilities handling residential sewage, other than one single family residence, one and one-half times the daily design flow with a minimum of one thousand gallons;

(iii) Have clean-out and inspection accesses within twelve inches of finished grade; and

(iv) Are designed with protection against floatation and ground water intrusion in high ground water areas;

(e) Pump chambers:

(i) Are included on the approved list under subsection (5)(d) of this section;

(ii) Have clean-out and inspection accesses at or above finished grade; and

(iii) Are designed with protection against floatation, ground water intrusion, and surface water inflow in high ground water areas;

(f) Methods for effluent distribution shall correlate to soil types 1A through soil type 6 as described by Table IV of this section, except where local regulations approved by the department under WAC 246-272-02001 are more stringent:

TABLE IV
METHODS OF EFFLUENT DISTRIBUTION FOR SOIL TYPES AND DEPTHS

SOIL TYPE	VERTICAL SEPARATION			
	< 1 foot	≥ 1 foot to < 2 feet	≥ 2 feet to < 3 feet	≥ 3 feet
1A	Not allowed	Pressure Distribution (see note) ^{1 & 2}	Pressure Distribution (see note) ¹	Pressure Distribution (see note) ¹
2A	Not allowed	Pressure Distribution (see note) ^{1 & 2}	Pressure Distribution	Pressure Distribution
1B - 6	Not allowed	Pressure Distribution (see note) ^{1 & 2}	Pressure Distribution	Gravity Distribution

¹ System meeting Treatment Standard 2 required.

² Mound systems installed where the original, undisturbed, unsaturated soil depth is between twelve and eighteen inches, require pretreatment by an intermittent sand filter.

(g) SSAS beds are only designed in soil types 2A, 2B, or 3, with a width not exceeding ten feet;

(h) Designs for conventional gravity systems in type 1A soil are not permitted due to the inadequate treatment performance capability of coarse grained soils. However, an exception may be permitted by the local health officer if the site meets all of the following criteria:

(i) System serves a single family residence;

(ii) The lot size is greater than two and one-half acres;

(iii) Annual precipitation in the region is less than twenty-five inches per year as described by "Washington Climate" published jointly by the Cooperative Extension Service, College of Agriculture, and Washington State University (available for inspection at Washington state libraries);

(iv) The system is located outside all areas of special concern defined by WAC 246-272-21501(1);

(v) The system is located outside the twelve county Puget Sound water quality authority region; and

(vi) The geologic conditions beneath the disposal component must satisfy the minimum unsaturated depth requirements to ground water identified by interpreting a readable, representative well log. The method for determination is described by "Design Guideline for Conventional Gravity Systems In Soil Type 1," (available upon written request to the department).

(i) Individual SSAS laterals greater than one hundred feet in length are to use pressure distribution;

(j) OSS having daily design flows between one thousand and three thousand five hundred gallons of sewage per day:

(i) Are located only in soil types 1 - 5;

(ii) Are located on slopes of less than thirty percent, or seventeen degrees; and

(iii) Have pressure distribution;

(k) Conventional gravity systems and conventional pressure distribution system have:

(i) The calculation of absorption area based upon the design flows in (c) of this subsection and loading rates equal

to or less than those in Table V, Maximum hydraulic loading rate for residential sewage, and applied only to the bottom of the trench of the excavation.

**TABLE V
MAXIMUM HYDRAULIC LOADING RATE
FOR RESIDENTIAL SEWAGE¹**

SOIL TYPE	SOIL TEXTURAL CLASSIFICATION DESCRIPTION	LOADING RATE gal./sq. ft./day
1A	Very gravelly ² coarse sands or coarser, extremely gravelly ³ soils.	Varies according to system selected to meet Treatment Standard 2 ⁴
1B	Very gravelly medium sands, very gravelly fine sands, very gravelly very fine sands, very gravelly loamy sands.	Varies according to soil type of the non-gravel portion ⁵
2A	Coarse sands (includes the ASTM C-33 sand).	1.2
2B	Medium sands.	1.0
3	Fine sands, loamy coarse sands, loamy medium sands.	0.8
4	Very fine sands, loamy fine sands, loamy very fine sands, sandy loams, loams.	0.6
5	Silt loams that are porous and have well developed structure.	0.45
6	Other silt loams, sandy clay loams, clay loams, silty clay loams.	0.2

¹ Compacted soils, cemented soils, and/or poor soil structure may require a reduction of the loading rate or make the soil unsuitable for conventional OSS systems.

² Very Gravelly = >35% and <60% gravel and coarse fragments, by volume.

³ Extremely Gravelly = >60% gravel and coarse fragments, by volume.

⁴ Due to the highly permeable nature of type 1A soil, only alternative systems which meet or exceed Treatment Standard 2 can be installed. However, a conventional gravity system may be used if it meets all criteria listed under (h) of this subsection. The loading rate for these systems is provided in the appropriate guideline.

⁵ The maximum loading rate listed for the soil described as the non-gravel portion is to be used for calculating the absorption surface area required. The value is to be determined from this table.

(ii) The bottom of a SSAS shall not be deeper than three feet below the finished grade, except under special conditions approved by the local health officer. The depth of such system shall not exceed ten feet from the finished grade;

(iii) The sidewall below the invert of the distribution pipe is located in original, undisturbed soil;

(iv) Clean gravel, covered with a geotextile; and

(v) A cover of between six and twenty-four inches of mineral soil containing no greater than ten percent organic content over the gravel to preclude accumulation of water over the drainfield.

(l) For other features, conventional gravity systems shall conform with the "Design Manual: On-site Wastewater Treatment and Disposal Systems," United States Environmental Protection Agency, EPA-625/1-80-012, October, 1980 (available upon written request to the department) except

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where modified by, or in conflict with this section or local regulations.

(3) When proposing the use of OSS for nonresidential sewage, the designer shall provide to the local health officer:

(a) Information to show the sewage is not industrial wastewater;

(b) Information to establish the sewage's strength and identify chemicals found in the sewage that are not found in residential sewage; and

(c) A design providing treatment equal to that required of residential sewage.

(4) The local health officer or department:

(a) Shall approve only OSS designs meeting the requirements of this chapter;

(b) Shall only permit the use of septic tanks, pump chambers, and holding tanks on the approved list under subsection (5)(d) of this section;

(c) Shall not approve designs for:

(i) Cesspools;

(ii) Seepage pits, except as allowed for repairs under WAC 246-272-16501(3); or

(iii) Conventional gravity systems or conventional pressure distribution systems in soil type 1A, except when an applicant meets all criteria established by subsection (2)(h) of this section.

(d) May approve a design for the reserve area different than the design approved for the initial OSS, if both designs meet the requirements of this chapter for new construction; and

(e) May allow the hydraulic loading rate calculated for the infiltration surface area in a disposal component to include six inches of the SSAS sidewall height for determining design flow where total recharge by annual precipitation and irrigation is less than twelve inches per year.

(5) The department shall:

(a) Develop and maintain design and construction standards for septic tanks, pump chambers, and holding tanks.

(b) Review septic tanks, pump chambers, and holding tanks, approving those satisfying the design and construction standards developed by the department.

(c) Require an annual report from the manufacturers or distributors of all products on the approved list under (d) of this subsection which assures that the product still meets the standards defined in this section, before relisting the product.

(d) Maintain a list of approved septic tanks, pump chambers, holding tanks that meet design and construction standards.

(e) Make periodic checks of products approved under this subsection.

(6) Persons desiring to manufacture or distribute septic tanks, pump chambers, holding tanks for use in an OSS shall:

(a) Certify the product meets standards for subsection (5)(a) of this section and submit the required documentation to the department for approval when:

(i) The manufacturer or distributor needs initial departmental review and listing to allow permitting by the local health officer or department;

(ii) The department amends the applicable criteria or standards; or

(iii) The manufacturer or distributor alters the product;

(b) Submit an annual report acceptable to the department to retain departmental approval; and

(c) Pay required fees to the department.

NEW SECTION

WAC 246-272-12501 Holding tank sewage systems.

(1) Persons shall not install or use holding tank sewage systems for residential development or expansion of residences, whether seasonal or year-round, except as set forth under subsection (2) of this section.

(2) The local health officer may approve installation of holding tank sewage systems only:

(a) For permanent uses limited to controlled, part-time, commercial usage situations, such as, recreational vehicle parks and trailer dump stations.

(b) For interim uses limited to handling of emergency situations.

(c) For repairs as permitted under WAC 246-272-16501(1)(c)(i).

(3) A person proposing to use a holding tank sewage system shall:

(a) Follow established design criteria established by the department;

(b) Submit a management program to the local health officer assuring ongoing operation and maintenance before the local health officer issues the installation permit; and

(c) Use a holding tank on the current approved list under WAC 246-272-11501 (5)(d).

NEW SECTION

WAC 246-272-13501 Installation. (1) The local health officer and the department shall require approved installers to construct OSS, except as noted under subsection (2) of this section.

(2) The local health officer may allow the resident owner of a single family residence to install the OSS for that single family residence when: The OSS is either located on the same lot as the residence or situated on adjoining property controlled by the owner and legally listed as an encumbrance.

(3) The installer described by either subsection (1) or (2) of this section shall:

(a) Follow the approved design;

(b) Have the approved design in possession during installation;

(c) Only install septic tanks, pump chambers, and holding tanks approved by the department;

(d) Be on the site at all times during the excavation and construction of the OSS;

(e) Install the OSS to be watertight, except for the disposal component;

(f) Cover the installation only after the local health officer has given approval to cover; and

(g) Back fill and grade the site to prevent surface water from accumulating over any component of the OSS.

NEW SECTION

WAC 246-272-14501 Inspection. (1) The local health officer shall:

(a) Visit the OSS site during the site evaluation, construction, or final construction inspection;

(b) Either inspect the OSS before cover or allow the designer of the OSS to perform the inspection before cover if:

(i) The designer is qualified; and

(ii) The designer is not also named as installer of the system; and

(iii) A qualified installer installed the OSS.

(c) Keep the "as-built" or "record" drawings on file.

(2) The person responsible for the final construction inspection shall:

(a) Assure the OSS meets the approved design; and

(b) Direct the person responsible for final cover of the system to place a permanent marker at finished grade where needed to identify the location of the septic tank's first manhole.

(3) The designer or installer, as directed by the local health officer, upon completion of the OSS shall develop and submit a complete and detailed, "as-built" or "record drawing" to both the health officer and the OSS owner that include:

(a) For new OSS, measurements to existing site features enabling the first tank manhole to be easily located, and a dimensioned reserve area; and

(b) For repaired or altered OSS, the new, repaired, or altered components with their relationship to the existing system.

NEW SECTION

WAC 246-272-15501 Operation and maintenance.

(1) The OSS owner is responsible for properly operating and maintaining the OSS, and shall:

(a) Determine the level of solids and scum in the septic tank once every three years;

(b) Employ an approved pumper to remove the septage from the tank when the level of solids and scum indicates that removal is necessary;

(c) Protect the OSS area and the reserve area from:

(i) Cover by structures or impervious material;

(ii) Surface drainage;

(iii) Soil compaction, for example by vehicular traffic or livestock; and

(iv) Damage by soil removal and grade alteration;

(d) Keep the flow of sewage to the OSS at or below the approved design both in quantity and waste strength;

(e) Operate and maintain alternative systems as directed by the local health officer; and

(f) Direct drains, such as footing or roof drains, away from the area where the OSS is located.

(2) The local health officer shall:

(a) Provide operation and maintenance information to the OSS owner upon approval of any installation, repair, or alteration of an OSS; and

(b) Develop and implement plans to:

(i) Monitor all OSS performance within areas of special concern;

(ii) Initiate periodic monitoring of each OSS no later than January 1, 2000, to assure that each OSS owner properly maintains and operates the OSS in accordance with this section and in accordance with other applicable operation and maintenance requirements.

(iii) Disseminate relevant operation and maintenance information to OSS owners through effective means routinely and upon request; and

(iv) Assist in distributing educational materials to OSS owners.

(3) Persons shall not:

(a) Use or introduce strong bases, acids or chlorinated organic solvents into an OSS for the purpose of system cleaning;

(b) Use a sewage system additive unless it is specifically approved by the department; or

(c) Use an OSS to dispose of waste components atypical of residential wastewater.

(4) The local health officer shall require annual inspections of OSS serving food service establishments and may require pumping as needed.

(5) The local health officer may require the owner of the OSS to:

(a) Use one or more of the following management methods or another method consistent with the following management methods for proper operation and maintenance:

(i) Obtain and comply with the conditions of a renewable or operational permit;

(ii) Employ a public entity eligible under Washington state statutes to, directly or indirectly, manage the OSS; or

(iii) Employ a private management entity, guaranteed by a public entity eligible under Washington state statutes or sufficient financial resources, to manage the OSS;

(b) Evaluate any effects the OSS may have on ground water or surface water; and/or

(c) Dedicate easements for inspections, maintenance, and potential future expansion of the OSS.

(6) Persons may obtain a handbook with material outlining management methods to achieve proper operation, maintenance, and monitoring of OSS from the department one year after the effective date of this chapter.

(7) The local health officer may require installation of observation ports in each individual lateral or bed which extend from the bottom of the gravel to the finished grade for monitoring OSS performance.

NEW SECTION

WAC 246-272-16501 Repair of failures. (1) When an OSS failure occurs, the OSS owner shall:

(a) Repair or replace the OSS with a conforming system or a Table VI repair either on the:

(i) Property served; or

(ii) Nearby or adjacent property if easements are obtained; or

(b) Connect the residence or facility to a:

(i) Publicly owned LOSS; or

(ii) Privately owned LOSS where it is deemed economically feasible; or

(iii) Public sewer; or

(c) Perform one of the following when requirements in (a) or (b) of this subsection are not feasible:

- (i) Use a holding tank; or
- (ii) Obtain a National Pollution Discharge Elimination System or state discharge permit from the Washington state department of ecology issued to a public entity or jointly to a public entity and the system owner only when the local health officer determines:
 - (A) An OSS is not feasible; and
 - (B) The only realistic method of final disposal of treated effluent is discharge to the surface of the land or into surface water; or
- (iii) Abandon the property.
- (2) Prior to replacing or repairing the effluent disposal component, the OSS owner shall develop and submit information required under WAC 246-272-09001(1).

- (3) The local health officer shall permit a Table VI repair only when:
 - (a) Installation of a conforming system is not possible; and
 - (b) Connection to either an approved LOSS or a public sewer is not feasible.
 - (4) The person responsible for the design shall locate and design repairs to:
 - (a) Meet the requirements of Table VI if the effluent treatment and disposal component to be repaired or replaced is closer to any surface water, well, or spring that is not used as a public water source as prescribed by the minimum separation required in Table 1 of WAC 246-272-09501(1);

TABLE VI

REQUIREMENTS FOR REPAIR OR REPLACEMENT OF DISPOSAL COMPONENTS NOT MEETING VERTICAL AND HORIZONTAL SEPARATIONS ^{1,2}

Vertical Separation in feet	Horizontal Separation in Feet ³		
	< 25	25 - 50	> 50 - ≤100
<1	Treatment Standard 1	Treatment Standard 1	Treatment Standard 2 ⁴
1-2	Treatment Standard 1	Treatment Standard 2 ⁴	Pressure Distribution
>2	Treatment Standard 2 ⁴	Pressure Distribution	Pressure Distribution

¹ The treatment standards refer to effluent quality before discharge to unsaturated, subsurface soil.

² The local health officer may permit ASTM C-33 sand to be used as fill to prevent direct discharge of treated effluent to ground water, surface water, or upon the surface of the ground.

³ The horizontal separation indicated is the distance between the disposal component and the surface water, well, or spring. If the disposal component is up-gradient of a surface water, well, or spring to be used as a potable water source, the next higher standard level of treatment shall apply unless treatment standard 1 is already being met.

⁴ Mound systems are not allowed to meet treatment standard 2.

- (b) Protect drinking water sources;
- (c) Prevent the direct discharge of sewage to ground water, surface water, or upon the surface of the ground;
- (d) Meet the horizontal separations under WAC 246-272-09501(1) to public drinking water sources;
- (e) Meet other requirements of this chapter to the maximum extent permitted by the site;
- (f) Maximize the:
 - (i) Vertical separation;

- (ii) Distance from a well, spring, or suction line; and
- (iii) Distance to surface water.
- (5) The local health officer shall identify Table VI repair permits for the purpose of tracking future performance.
 - (6) An OSS owner receiving a Table VI repair permit from the local health officer shall:
 - (a) Immediately report any failure to the local health officer;
 - (b) Monitor the performance of the OSS according to the "Interim Guidelines for the Application of Treatment Standards 1 & 2, using Alternative On-site Sewage Treatment/Disposal Systems" amended August 4, 1992, (available upon written request to the department of health) and report the results to the local health officer at a minimum frequency of:
 - (i) Quarterly when treatment standard 1 is required; and
 - (ii) Annually when treatment standard 2 is required;
 - (c) Comply with all local and state requirements stipulated on the permit.

NEW SECTION

WAC 246-272-17501 Expansions. The local health officer or department shall require an on-site sewage system and a reserve area in full compliance with the new system construction standards specified in this chapter for an expansion of a residence or other facility.

NEW SECTION

WAC 246-272-18501 Abandonment. Persons permanently removing a septic tank, seepage pit, cesspool, or other sewage container from service shall:

- (1) Have the septage removed by an approved pumper;
- (2) Remove or destroy the lid; and
- (3) Fill the void with soil.

NEW SECTION

WAC 246-272-19501 Septage management. (1) An individual shall be approved by the local health officer as a qualified pumper before removing septage from an OSS.

- (2) Persons removing septage from an OSS shall:
 - (a) Transport septage or sewage only in vehicles clearly identified with the name of the business and approved by the local health officer;
 - (b) Record and report septage removal to the local health officer;
 - (c) Dispose of septage, or apply septage biosolids to land only in a manner consistent with applicable laws.

NEW SECTION

WAC 246-272-20501 Developments, subdivisions, and minimum land area requirements. (1) A person proposing the development shall obtain approval from the local health officer prior to any development where the use of OSS is proposed.

(2) The local health officer shall require the following prior to approving any development:

- (a) Site evaluations as required under WAC 246-272-11001, excluding subsections (3)(a)(i) and (4)(d);
- (b) Where a subdivision with individual wells is proposed:
 - (i) Configuration of each lot to allow a one hundred-foot radius water supply protection zone to fit within the lot lines; or
 - (ii) Establishment of a one hundred-foot protection zone around each existing and proposed well site;
- (c) Where preliminary approval of a subdivision is requested, provision of at least one soil log per proposed lot, unless the local health officer determines existing soils information allows fewer soil logs;
- (d) Determination of the minimum lot size or minimum land area required for the development using Method I and/or Method II:
 - (i) **METHOD I.** Table VII, Single Family Residence Minimum Lot Size or Minimum Land Area Required Per Unit Volume of Sewage, shows the minimum lot size required per single family residence. For developments other than single family residences, the minimum land areas shown are required for each unit volume of sewage.

**TABLE VII
MINIMUM LAND AREA REQUIREMENT
SINGLE FAMILY RESIDENCE OR UNIT VOLUME OF SEWAGE**

Type of Water Supply	Soil Type (defined by section 11001 of this chapter)					
	1A, 1B	2A, 2B	3	4	5	6
Public	0.5 acre ¹	12,500 sq. ft.	15,000 sq. ft.	18,000 sq. ft.	20,000 sq. ft.	22,000 sq. ft.
	2.5 acre ²					
Individual, on each lot	1 acre ¹	1 acre	1 acre	1 acre	2 acres	2 acres
	2.5 acres ²					

¹ Due to the highly permeable nature of type 1 soil, only alternative systems which meet or exceed Treatment Standard 2 can be installed.

² A conventional gravity system in type 1 soil is only allowed if it is in compliance with all conditions listed under WAC 246-272-11501 (2)(h). One of these limiting conditions is a 2.5 acre minimum lot size.

(ii) **METHOD II.** A minimum land area proposal using Method II is acceptable only when the applicant:

(A) Justifies the proposal through a written analysis of the:

- (I) Soil type and depth;
- (II) Area drainage, and/or lot drainage;

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(III) Public health impact on ground and surface water quality;

(IV) Setbacks from property lines, water supplies, etc.;

(V) Source of domestic water;

(VI) Topography, geology, and ground cover;

(VII) Climatic conditions;

(VIII) Availability of public sewers;

(IX) Activity or land use, present, and anticipated;

(X) Growth patterns;

(XI) Reserve areas for additional subsurface treatment and disposal;

(XII) Anticipated sewage volume;

(XIII) Compliance with current planning and zoning requirements;

(XIV) Possible use of alternative systems or designs;

(XV) Existing encumbrances, such as listed in WAC 246-272-09001 (1)(c)(v) and 246-272-11001 (2)(a)(vii); and

(XVI) Any other information required by the local health officer.

(B) Shows development with public water supplies having:

(I) At least twelve thousand five hundred square feet lot sizes per single family residence;

(II) No more than 3.5 unit volumes of sewage per day per acre for developments other than single family residences; and

(C) Shows development with individual water supplies having at least one acre per unit volume of sewage; and

(D) Shows land area under surface water is not included in the minimum land area calculation; and

(e) Regardless of which method is used for determining required minimum lot sizes or minimum land area, submittal to the health officer of information consisting of field data, plans, and reports supporting a conclusion the land area provided is sufficient to:

(i) Install conforming OSS;

(ii) Assure preservation of reserve areas for proposed and existing OSS;

(iii) Properly treat and dispose of the sewage; and

(iv) Minimize public health effects from the accumulation of contaminants in surface and ground water.

(3) The local health officer shall require lot areas of twelve thousand five hundred square feet or larger except when a person proposes:

(a) OSS within the boundaries of a recognized sewer utility having a finalized assessment roll; or

(b) A planned unit development with:

(i) A signed, notarized, and recorded deed covenant restricting any development of lots or parcels above the approved density with the density meeting the minimum land area requirements of subsection (2)(d) of this section;

(ii) A public entity responsible for operation and maintenance of the OSS, or a single individual owning the OSS;

(iii) Management requirements under WAC 246-272-08001 when installing a LOSS; and

(iv) Extinguishment of the deed covenant and higher density development allowed only when the development connects to public sewers.

(4) The local health officer may:

(a) Allow inclusion of the area to the centerline of a road or street right-of-way in a Method II determination

under subsection (2)(d)(ii) of this section to be included in the minimum land area calculation if:

(i) The dedicated road or street right-of-ways are along the perimeter of the development;

(ii) The road or street right-of-ways are dedicated as part of the proposed development; and

(iii) Lots are at least twelve thousand five hundred square feet in size.

(b) Require detailed plot plans and OSS designs prior to final approval of subdivision proposals;

(c) Require larger land areas or lot sizes to achieve public health protection;

(d) Prohibit development on individual lots within the boundaries of an approved subdivision if the proposed OSS design does not protect public health by meeting requirements of these regulations; and

(e) Permit the installation of an OSS, where the minimum land area requirements or lot sizes cannot be met, only when all of the following criteria are met:

(i) The lot is registered as a legal lot of record created prior to the effective date of this chapter;

(ii) The lot is outside an area of special concern where minimum land area has been listed as a design parameter necessary for public health protection; and

(iii) The proposed system meets all requirements of these regulations other than minimum land area.

NEW SECTION

WAC 246-272-21501 Areas of special concern. (1) The local health officer may investigate and take appropriate action to minimize public health risk in formally designated areas such as:

(a) Shellfish protection districts or shellfish growing areas;

(b) Sole Source Aquifers designated by the U.S. Environmental Protection Agency;

(c) Areas with a critical recharging effect on aquifers used for potable water as designated under RCW 36.70A.170 (Washington Growth Management Act);

(d) Designated public water supply wellhead protection areas;

(e) Up-gradient areas directly influencing water recreation facilities designated for swimming in natural waters with artificial boundaries within the waters as described by the Water Recreation Facilities Act, chapter 70.90 RCW;

(f) Areas designated by the department of ecology as special protection areas under WAC 173-200-090, water quality standards for ground waters of the state of Washington;

(g) Wetland areas under production of crops for human consumption;

(h) Frequently flooded areas delineated by the Federal Emergency Management Agency; and

(i) Areas identified and delineated by the local board of health in consultation with the department to address public health threat from on-site systems.

(2) The permit issuing authority may impose more stringent requirements on new development and corrective measures to protect public health upon existing developments in areas of special concern, including:

(a) Additional location, design, and/or performance standards for OSS;

(b) Larger land areas for new development;

(c) Prohibition of development;

(d) Additional operation, maintenance, and monitoring of OSS performance;

(e) Requirements to upgrade existing OSS;

(f) Requirements to abandon existing OSS; and

(g) Monitoring of ground water or surface water quality.

(3) Within areas of special concern, to reduce risk of system failures, a person approved or designated by the local health officer shall:

(a) Inspect every OSS at least once every three years;

(b) Submit the following written information to both the local health officer and the property owner within thirty days following the inspection:

(i) Location of the tank;

(ii) Structural condition of the tank, including baffles;

(iii) Depth of solids in tank;

(iv) Problems detected with any part of the system;

(v) Maintenance needed;

(vi) Maintenance provided at time of inspection; and

(vii) Other information as required by the local health officer.

officer.

(c) Immediately report failures to the local health officer.

NEW SECTION

WAC 246-272-22501 Certification of designers, installers, pumpers, inspectors, and maintenance personnel. Guidelines defining qualifications for designers, installers, pumpers, inspectors and maintenance personnel shall be established by the department. The guidelines shall include, but not be limited to education, experience, testing, and certification.

NEW SECTION

WAC 246-272-23501 Technical review committee.

The department shall:

(1) Maintain a committee consisting of a maximum of nine individuals with technical or scientific knowledge applicable to OSS whose purpose is to provide technical advice to the department; and

(2) Select members for the technical review committee from:

(a) Local health departments;

(b) Engineering firms;

(c) The department of ecology;

(d) Land sales, development and building industries;

(e) Public sewer utilities;

(f) On-site sewage system design and installation firms;

(g) Environmental organizations;

(h) University/college academic communities;

(i) On-site sewage system or related product manufacturers; and

(j) Other interested organizations or groups.

(3) Convene meetings as needed.

NEW SECTION

WAC 246-272-24001 State advisory committee. The department shall:

(1) Maintain an on-site sewage advisory committee to:

(a) Make recommendations concerning departmental policy and regulations;

(b) Review program services; and

(c) Provide input to the department regarding the on-site sewage program;

(2) Select members from agencies, professions, organizations having knowledge and interest in OSS, and groups which are affected by the regulations; and

(3) Convene meetings as needed.

NEW SECTION

WAC 246-272-25001 Waiver of state regulations.

(1) For individual, site-by-site waiver requests, if concurrence is granted by the department, the local health officer may grant a waiver from specific requirements in this chapter for OSS under three thousand five hundred gallons per day only after the following procedure has been completed:

(a) The applicant submits a waiver application to the local health officer, including justification describing how the requested waiver is consistent with purpose and objectives to meet the public health intent of this chapter;

(b) When the local health officer determines that the waiver is consistent with the standards in and the intent of this chapter, the applicant forwards the completed waiver form, pertinent and supportive material, with required departmental fee to the department;

(c) Upon receipt of the waiver application, the department shall respond to the applicant within seven working days as to the status of departmental review. This notification is to include information regarding issues or concerns the department has identified and the expected date for completion of the review.

(d) Upon review, the department returns the waiver application to the local health officer and a copy to the applicant, indicating that the department either concurs with the waiver as requested, or conditionally concurs with the request, or states reasons for denying the request.

(2) The department may grant a waiver from specific requirements in this chapter for a LOSS if a person submits a completed departmental waiver application and required fee to the department, including justification showing the requested waiver is consistent with the LOSS standards in this chapter, and is consistent with the purpose and objectives of this chapter to assure public health protection.

(3) If an applicant desires to modify and resubmit a previously denied waiver request, the process described above in subsection (1) of this section for OSS under three thousand five hundred gallons per day, or subsection (2) of this section for a LOSS shall be followed again.

(4) For general, multiple-site waivers to respond to regional conditions or issues, if approval is granted by the state board of health, the local health officer may, under the conditions and requirements of an intergovernmental agreement with the department, grant waivers from specific requirements in this chapter for OSS under three thousand

five hundred gallons per day only after the following requirements have been met:

(a) The local health officer shall submit to the department for review, a proposal for an intergovernmental agreement (IGA) between the local board of health and the department that provides:

(i) Justification for the waiver request based on sound technical and scientific information and data;

(ii) Written concurrence by the department of ecology that the standards of chapter 173-201 WAC, Water quality standards for surface waters, and chapter 173-200 WAC, Water quality standards for ground water will be met;

(iii) An appropriate local public review of the proposed IGA, including opportunity for review and comment by adjacent county governments, state agencies, affected parties, and others; and

(iv) Appropriate technical, administrative, and regulatory requirements to assure public health protection, and limitations, conditions, revocation clauses, and other items as required by the department or the state board of health.

(b) The department shall, within ninety days of receipt of a completed proposal:

(i) Determine if the proposed IGA, with its supporting documentation, adequately addresses technical criteria and standards, and regulatory control to assure public health protection at least equal to that provided by this chapter; and

(ii) Submit to the state board of health a report with departmental recommendations regarding the waiver request and the proposed IGA.

(c) The department may establish fees or other mechanisms of cost recovery, to cover the costs of departmental review, development, and ongoing oversight of proposed intergovernmental agreements, and any departmental activity as provided and agreed upon in intergovernmental agreements, as described in this section.

NEW SECTION

WAC 246-272-26001 Enforcement. (1) The department or the local health officer:

(a) Shall enforce the rules of chapter 246-272 WAC; or
 (b) May refer cases within their jurisdiction to the local prosecutor's office or office of the attorney general, as appropriate.

(2) When a person violates the provisions under this chapter, the department, local health officer, local prosecutor's office, or office of the attorney general may initiate enforcement or disciplinary actions, or any other legal proceeding authorized by law, including but not limited to any one or a combination of the following:

(a) Informal administrative conferences, convened at the request of the department or owner, to explore facts and resolve problems;

(b) Orders directed to the owner and/or operator of the OSS and/or person causing or responsible for the violation of the rules of chapter 246-272 WAC;

(c) Denial, suspension, modification, or revocation of permits, approvals, or certification; and

(d) Civil or criminal action.

(3) Orders authorized under this section include the following:

(a) Orders requiring corrective measures necessary to effect compliance with chapter 246-272 WAC which may include a compliance schedule; and

(b) Orders to stop work and/or refrain from using any OSS or portion of the OSS or improvements to the OSS until all permits, certifications, and approvals required by rule or statute are obtained.

(4) Enforcement orders issued under this section shall:

(a) Be in writing;

(b) Name the person or persons to whom the order is directed;

(c) Briefly describe each action or inaction constituting a violation of the rules of chapter 246-272 WAC, or applicable local code;

(d) Specify any required corrective action, if applicable;

(e) Specify the effective date of the order, with time or times of compliance;

(f) Provide notice of the consequences of failure to comply or repeated violation, as appropriate. Such notices may include a statement that continued or repeated violation may subject the violator to:

(i) Denial, suspension, or revocation of a permit approval, or certification; and/or

(ii) Referral to the office of the county prosecutor or attorney general; and/or

(iii) Other appropriate remedies;

(g) Provide the name, business address, and phone number of an appropriate staff person who may be contacted regarding an order;

(h) Comply with chapters 43.70 and 34.05 RCW if issued by the department.

(5) Enforcement orders shall be personally served in the manner of service of a summons in a civil action or in a manner showing proof of receipt.

(6) The department shall have cause to deny the application or reapplication for an operational permit or to revoke, suspend, or modify a required operational permit of any person who has:

(a) Failed or refused to comply with the provisions of chapter 246-272 WAC, or any other statutory provision or rule regulating the operation of an OSS; or

(b) Obtained or attempted to obtain a permit or any other required certificate or approval by misrepresentation.

(7) For the purposes of subsection (6) of this section and WAC 246-272-27001, a person is defined to include:

(a) Applicant;

(b) Re-applicant;

(c) Permit holder; or

(d) Any individual associated with (a), (b), or (c) of this subsection including, but not limited to:

(i) Board members;

(ii) Officers;

(iii) Managers;

(iv) Partners;

(v) Association members;

(vi) Agents; and in addition

(vii) Third persons acting with the knowledge of such persons.

NEW SECTION

WAC 246-272-27001 Notice of decision—Adjudicative proceeding. (1) All local boards of health shall:

(a) Maintain an administrative appeals process to consider procedural and technical conflicts arising from the administration of local regulations; and

(b) Establish rules for conducting hearings requested to contest a local health officer's actions.

(2) The department shall provide notice of a denial, suspension, modification or revocation of a permit, certification, or approval consistent with RCW 43.70.115, chapter 34.05 RCW, and chapter 246-10 WAC.

(3) A person contesting a departmental decision regarding a permit, certificate, approval, or fine may file a written application for an adjudicative proceeding consistent with chapter 246-10 WAC.

(4) Department actions are governed under the Administrative Procedure Act, chapter 34.05 RCW, RCW 43.70.115, this chapter, and chapter 246-10 WAC.

NEW SECTION

WAC 246-272-28001 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.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-272-001 Authority.
- WAC 246-272-002 Purpose and objectives.
- WAC 246-272-005 Administration.
- WAC 246-272-010 Definitions.
- WAC 246-272-020 Local regulation.
- WAC 246-272-030 Applicability.
- WAC 246-272-040 Alternative systems.
- WAC 246-272-050 Experimental systems.
- WAC 246-272-060 No surface discharge.
- WAC 246-272-070 Connection to public sewer system.
- WAC 246-272-080 Larger on-site sewage systems.
- WAC 246-272-090 Permit.
- WAC 246-272-100 Minimum land area requirement.
- WAC 246-272-110 Determination of site characteristics.
- WAC 246-272-120 Subdivision and individual site review.
- WAC 246-272-130 Larger tract requirements.
- WAC 246-272-140 Location.
- WAC 246-272-150 Design.
- WAC 246-272-160 Repair of failures along marine shorelines.
- WAC 246-272-170 Marine expansions.
- WAC 246-272-180 Designer program.
- WAC 246-272-190 Inspection.
- WAC 246-272-200 Appeals.

- WAC 246-272-210 Waiver of state regulations.
- WAC 246-272-220 Disposal of septic tank waste.
- WAC 246-272-230 Installer requirements.
- WAC 246-272-240 State advisory committee.

WSR 94-09-028
PERMANENT RULES
DEPARTMENT OF AGRICULTURE
 [Order 5036—Filed April 15, 1994, 9:45 a.m.]

Date of Adoption: April 15, 1994.

Purpose: Rules placing additional restrictions on the use of mevinphos in chapter 16-219 WAC.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-219-030; and amending WAC 16-219-015, 16-219-020, and 16-219-025.

Statutory Authority for Adoption: RCW 15.58.040 and 17.21.030.

Pursuant to notice filed as WSR 94-05-092 on February 16, 1994; and WSR 94-08-033 on March 31, 1994.

Changes Other than Editing from Proposed to Adopted Version: WAC 16-219-027(4), a new notice must be filed on the intent to spray after forty eight hours, changed from 24 hours, from the original notice of intent.

Effective Date of Rule: Thirty-one days after filing.
April 15, 1994
James M. Jesernig
Director

AMENDATORY SECTION (Amending Order 3015, filed 7/23/93, effective 8/23/93)

WAC 16-219-015 Restricted use pesticides—Mevinphos (Phosdrin). For the purposes of WAC 16-219-015 through ((16-219-030)) 16-219-031, all formulations of mevinphos (Phosdrin) are declared to be restricted use pesticides due to its acute toxicity. If any restriction in WAC 16-219-015 through ((16-219-030)) 16-219-031 is in conflict with restrictions on the pesticide label, the most restrictive statement will apply.

NEW SECTION

WAC 16-219-017 Use requirements—Mevinphos (Phosdrin). (1) The use of all formulations containing the active ingredient mevinphos (Phosdrin) shall be prohibited throughout the state of Washington: *Provided*, That the use of mevinphos (Phosdrin) shall be allowed on the following crops:

- (a) Green peas grown west of the Cascades;
- (b) Fresh vegetable crops consisting of broccoli, brussels sprouts, cauliflower, and lettuce; and
- (c) Seed crops consisting of beets, bok-choi, cabbage, carrots, collards, kale, kohlrabi, leeks, mustard, onion, parsley, parsnip, radish, spinach, and turnip.

(2) A permit may be issued by the director, upon written request, for use of mevinphos (Phosdrin) on seed crops and fresh vegetables not listed in subsection (1) of this section when a pest problem with no viable alternatives for control is identified.

PERMANENT

NEW SECTION

WAC 16-219-018 Certified applicator requirements—Mevinphos (Phosdrin). All mixing and loading of any apparatus for application, the handling and all applications of mevinphos (Phosdrin) shall be conducted by a certified applicator who is licensed to apply the product. When an aerial application of mevinphos (Phosdrin) is to be made, the pilot making the application may not act as the certified applicator for mixing and loading or otherwise assist in the mixing and loading operation.

AMENDATORY SECTION (Amending Order 3015, filed 7/23/93, effective 8/23/93)

WAC 16-219-020 Application requirements—Mevinphos (Phosdrin). The following restrictions apply to any application of mevinphos (Phosdrin) (~~to pears or apples~~):

(1) ~~(A maximum of one pound active ingredient may be applied per acre per application.~~

(2) ~~A minimum of seven days between applications shall be observed.~~

(3) ~~Do not apply within ninety six hours of harvest.~~

(4) ~~An observer shall be present during all mixing and loading activities in order to furnish assistance in the event of an accident. The observer shall not be involved in the mixing or loading operation.~~

(5) ~~Do not apply within one hundred feet of any inhabited building or public road.~~

(6) ~~Do not apply when wind speeds exceed ten miles per hour.~~

(7) ~~Do not apply when air temperature exceeds 80 degrees Fahrenheit.~~

(8)) An observer shall be present during all mixing and loading activities in order to furnish assistance in the event of an accident. The observer shall not be involved in the mixing or loading operation. For purposes of this section, periodic visits by the observer at least once every hour to the actual mixing and loading site shall suffice for the observer requirements.

(2) Do not apply with hand equipment.

~~((9))~~ (3) Human flaggers are prohibited during aerial application.

~~((10) The pilot making the application may not assist in the mixing and loading operation, but may act as the observer as required in subsection (4) of this section.)~~ (4) Aerial applications shall not be applied within one hundred and fifty feet of an inhabited building: *Provided*, That this requirement may be waived if the applicator responsible for the application has written permission from the occupant of the dwelling(s) to apply.

NEW SECTION

WAC 16-219-022 Closed systems—Mevinphos (Phosdrin). No mixing and loading of any apparatus for application of mevinphos (Phosdrin) shall be allowed unless a closed system, as approved by the department, is utilized. The effective date for compliance with this section shall be April 1, 1995.

AMENDATORY SECTION (Amending Order 3015, filed 7/23/93, effective 8/23/93)

WAC 16-219-025 Restricted entry interval—Posting—Mevinphos (Phosdrin). (1) Entry into ~~((a pear or apple orchard))~~ an area treated with mevinphos (Phosdrin) is prohibited ~~((for ninety six hours after application: *Provided*, That entry into the treated area may occur within the ninety six hour interval if the person is wearing all the protective clothing required on the pesticide label for an applicator))~~ until such time as the restricted entry interval, as outlined on the product label, has expired: *Provided*, That entry into the treated area may occur under the conditions outlined on the product label.

(2) Any time mevinphos (Phosdrin) is applied to ~~((pears or apples))~~ any crop or site, the area being treated shall be posted with warning signs.

NEW SECTION

WAC 16-219-027 Prior notification—Mevinphos (Phosdrin). (1) All applications of mevinphos (Phosdrin) is prohibited unless the department is notified of the intent to make application at least twenty-four hours prior to commencing the actual application.

(2) Notice of intent to apply mevinphos (Phosdrin) shall be made by one of the following:

(a) By telephone or facsimile to the department office:

(i) For applications east of the Cascades, phone number (509) 575-2746 or facsimile (509) 575-2210;

(ii) For applications west of the Cascades, phone number (206) 902-2040 or facsimile (206) 902-2093.

(b) Other conditions to be designated by the department.

(3) The notice of intent shall include the following information:

(a) Name and telephone number of person making the application;

(b) Location of the land where the mevinphos (Phosdrin) is to be applied, specifying township, range and section;

(c) Year, month, day and time the mevinphos (Phosdrin) is to be applied; and

(d) Crop or site to be treated.

(4) Application of mevinphos (phosdrin) shall not begin prior to the day and time provided in the notice of intent. If the application cannot be started or completed within forty-eight hours from the day and time stated in the notice of intent, a new notice of intent shall be made to the department.

NEW SECTION

WAC 16-219-029 Dealer requirements—Mevinphos (Phosdrin). Pesticide dealers of mevinphos (Phosdrin) shall provide a copy of the mevinphos (Phosdrin) rules, as well as the WSDA safety information sheet to the purchaser at the time of distribution.

NEW SECTION

WAC 16-219-031 Weather conditions—Mevinphos (Phosdrin). No application of mevinphos (Phosdrin) shall be made when there is a temperature inversion, or if wind

speed exceeds ten miles per hour or when the temperature exceeds eighty degrees Fahrenheit.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-219-030 Training—Mevinphos
(Phosdrin).

WSR 94-09-034
PERMANENT RULES
PUGET SOUND AIR
POLLUTION CONTROL AGENCY

[Filed April 18, 1994, 8:58 a.m.]

Date of Adoption: April 14, 1994.

Purpose: To repeal unused definitions and to add new definitions; to repeal the prohibition on land clearing fires in the Bremerton area; to exempt outdoor fires from the agency's opacity, incinerator, and fugitive emission standards.

Citation of Existing Rules Affected by this Order: Amending Puget Sound Air Pollution Control Agency Regulation I, Sections 1.07, 8.03, and 8.04.

Statutory Authority for Adoption: Chapter 70.94 RCW. Pursuant to notice filed as WSR 94-06-061 on March 2, 1994.

Effective Date of Rule: Thirty-one days after filing.
April 15, 1994
Gerald S. Pade
Air Pollution Engineer

AMENDATORY SECTION

REGULATION I SECTION 1.07 (~~GENERAL~~) DEFINITIONS

When used herein (~~in Regulation I, II, or III of the Puget Sound Air Pollution Control Agency~~):

(a) ACCEPTABLE SOURCE IMPACT LEVEL (ASIL) means a concentration of a toxic air contaminant in the outdoor atmosphere in any area that does not have restricted or controlled public access that is used to evaluate the air quality impacts of a single source. There are three types of acceptable source impact levels: risk-based, threshold-based, and special. Concentrations for these three types of ASILs are established by the Board after public hearing and are listed in Appendix A of Regulation III.

(b) ((a)) ACTUAL EMISSIONS (~~as of a specified date~~) means the average rate at which the source actually emitted (~~pollutants~~) air contaminants during the 2-year period preceding (~~the specified~~) a specific date, and which is representative of normal source operations. To account for unusual circumstances such as strikes, the Control Officer may approve or require the use of another time period that (~~which~~) is more representative of normal operations than is the immediately preceding 2-year period.

(c) ((b)) ADEQUATE SOURCE OF HEAT means the ability to maintain 70°F at a point 3 feet above the floor in all normally inhabited areas of a dwelling.

(d) ((e)) AGENCY means the Puget Sound Air Pollution Control Agency.

(e) ((d)) AIR CONTAMINANT means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof.

(f) ((e)) AIR POLLUTION means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property.

(g) ((f)) AIR POLLUTION EPISODE means a period when a forecast, alert, warning, or emergency air pollution stage is declared by the Department of Ecology pursuant to RCW 70.94.715.

~~((g) AIR QUALITY STANDARD means an established concentration, exposure time, and frequency of occurrence of an air contaminant in the ambient air which shall not be exceeded.)~~

(h) ALLOWABLE EMISSIONS means the emission rate calculated using the maximum rated capacity of the source (unless the source is subject to a federally enforceable permit (~~which~~) that limits the operating rate, or hours of operation, or both) and the most stringent of the following:

(1) Any applicable standard (~~New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants promulgated by the United States Environmental Protection Agency~~) under 40 CFR Parts 60, (~~and~~) 61, and 63;

(2) Any applicable emission standard under Regulation I, II, or III;

(3) Any applicable State Implementation Plan emission standard, including those with a future compliance date; or

(4) Any applicable (~~The~~) emission standard (~~rate~~) specified (~~as a federally enforceable permit condition~~) in an Order of Approval or operating permit, including those with a future compliance date.

~~((See also definition of Total Allowable Emissions.))~~

(i) AMBIENT AIR means (~~that~~) the portion of the atmosphere, external to buildings, to which the general public has access.

(j) AMBIENT AIR QUALITY STANDARD means an established concentration, exposure time, and frequency of occurrence of an air contaminant in the ambient air that shall not be exceeded.

(k) ((j)) BEST AVAILABLE CONTROL TECHNOLOGY means technology that will result in an emission standard, including a visible emission standard, based on the maximum degree of reduction which the Agency, on a case-by-case basis, taking into account energy, environmental, and economic impacts, and other costs, determines is achievable for such source through application of production processes, available methods, systems, and techniques, including fuel cleaning or treatment, clean fuels, or innovative fuel combustion techniques for control of each air contaminant. In no event shall application of the best available control technology result in emissions of any air contaminant that would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, (~~and~~) 61, and 63. The Agency

may prescribe a design, equipment, work practice, or operational standard, or combination thereof, to meet the requirements of best available control technology. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice, or operation and shall provide for compliance by means that achieve equivalent results.

~~(l) ((k))~~ **BOARD** means the Board of Directors of the Puget Sound Air Pollution Control Agency.

~~(m) ((n))~~ **COMMENCED CONSTRUCTION** means that the owner or operator has all the necessary preconstruction approvals or permits and either has begun, or has caused to begin, a continuous program of actual on-site construction of the source or has entered into binding agreements or contractual obligations to undertake construction of the source which cannot be canceled or modified without substantial loss to the owner or operator.

~~(n) ((o))~~ **COMBUSTIBLE REFUSE** means solid or liquid combustible waste material.

~~(o) ((p))~~ **CONTROL EQUIPMENT** means any device which prevents or controls the emission of any air contaminant.

~~(p) ((q))~~ **CONTROL OFFICER** means the Air Pollution Control Officer of the Puget Sound Air Pollution Control Agency.

~~((e) CURTAILMENT means reduction or cessation of any operation for the purpose of reducing emissions.))~~

~~(q) ((r))~~ **EMISSION** means a direct or indirect release of any air contaminant into the ambient air.

~~(r) ((s))~~ **EMISSION STANDARD** means a requirement that limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice, or operational standard.

~~(s) ((t))~~ **EQUIPMENT** means any stationary or portable device or any part thereof that emits or may emit ~~((has the potential to emit))~~ any air contaminant into the atmosphere.

~~((s) EQUIPMENT USED IN A MANUFACTURING PROCESS means equipment as defined in this section in which some air contaminant emitted is caused by a manufacturing process.))~~

~~(t) ((u))~~ **FACILITY** means the sum total of all of the pollutant emitting activities that belong to the same industrial grouping (as defined by major groups in the Standard Industrial Classification Manual, NTIS Order No. PB 87-100012), are located on one or more contiguous or adjacent properties, and are owned or operated by the same person or persons under common control.

~~(u) ((v))~~ **FIRST STAGE OF IMPAIRED AIR QUALITY** means a condition declared by the Control Officer when particulates 10 microns and smaller in diameter are at an ambient level of 75 micrograms per cubic meter measured on a 24-hour average or when carbon monoxide is at an ambient level of 8 parts of contaminant per million parts of air by volume measured on an 8-hour average.

~~(v) ((w))~~ **FUEL BURNING EQUIPMENT** means equipment ~~((as defined in this section which))~~ that produces hot air, hot water, steam, or other heated fluids by external combustion of fuel.

~~(w) ((x))~~ **FUGITIVE DUST** means particulate matter or any visible air contaminant other than uncombined water that is not collected by a capture system and emitted from a stack, but is released to the atmosphere at the point of generation.

~~(x) ((y))~~ **FUGITIVE EMISSION** ~~((S))~~ means an emission ~~((S which))~~ that does not pass and ~~((which))~~ that could not reasonably pass through a stack, chimney, or other functionally equivalent opening.

~~(y) ((z))~~ **GASOLINE** means a volatile organic compound having a true vapor pressure greater than 1.5 pounds per square inch at 68°F, that is a liquid at standard conditions, and is used as a fuel for internal combustion engines.

~~(z) ((aa))~~ **GASOLINE STATION** means any site dispensing gasoline into fuel tanks of motor vehicles, marine vessels, or aircraft from stationary storage tanks.

~~(aa) ((ab))~~ **INCINERATOR** means a furnace for the destruction of waste.

~~(ab) ((ac))~~ **INSTALLATION** means the placement, assemblage, or construction of equipment or control equipment at the premises where the equipment or control equipment will be used, and includes all preparatory work at such premises.

~~(ac) ((bb))~~ **LOWEST ACHIEVABLE EMISSION RATE** means that rate of emissions ~~((which))~~ that reflects either the most stringent emission standard ~~((which))~~ that is contained in the implementation plan of any state for such class or category of source unless the owner or operator of the proposed source demonstrates that such emission standards are not achievable, or the most stringent emission standard ~~((which))~~ that is achieved in practice by such class or category of source, whichever is more stringent.

~~(dd) ((ee))~~ **MAJOR MODIFICATION** means a ~~((any))~~ modification of a major source that would increase the actual emissions of any air contaminant for which the area is designated nonattainment by more than the following:

Air Contaminant	Tons/Year
Carbon Monoxide	100.0
Volatile Organic Compounds	40.0
Nitrogen Oxides	40.0
PM ₁₀	15.0
Sulfur Dioxide	40.0
Lead	0.6

In determining whether the thresholds defining a major modification have been exceeded, the emissions permitted under Orders of Approval issued to the facility since the designation of nonattainment that were not major modifications, and all fugitive emission increases that can be reasonably quantified shall be included. Any emission reduction credits banked by the facility since the designation of nonattainment may be subtracted from this amount provided that any credits so applied are then considered to have been used. For modifications of an individual piece of equipment, the baseline shall be the source's actual emissions or allowable emissions, whichever is smaller. (Note: volatile organic compounds and nitrogen oxides are the air contaminants for which an area is designated nonattainment for ozone.)

~~(ee) ((dd))~~ **MAJOR SOURCE** means a facility that emits or has the potential to emit 100 tons per year or more

of any air contaminant subject to regulation under the federal Clean Air Act. In determining whether the threshold defining a major source has been exceeded all fugitive emissions that can be reasonably quantified shall be included. Any emission reduction credits banked by the facility may be subtracted from this amount provided that any credits so applied are then considered to have been used.

(ff) ~~((ee))~~ **MODIFICATION** means any physical change in, or change in the method of operation of, a source, except an increase in the hours of operation or production rates (not otherwise prohibited) or the use of an alternative fuel or raw material that the source is approved to use under an Order of Approval or operating permit, ~~((which))~~ that increases the amount of any air contaminant emitted or ~~((which))~~ that results in the emission of any air contaminant not previously emitted.

(gg) ~~((ff))~~ **MOTOR VEHICLE** means any operating vehicle or one capable of being operated ~~((which))~~ that has its own self-contained sources of motive power, is designed for the transportation of people or property, and is of the type for which a license is required for operation on a highway.

(hh) ~~((gg))~~ **MULTIPLE CHAMBER INCINERATOR** means ~~((any incinerator))~~ a furnace for the destruction of waste consisting of three or more refractory-lined combustion chambers in series, physically separated by refractory walls, interconnected by gas passage ports or ducts, and employing adequate design parameters necessary for maximum combustion of the material to be burned.

(ii) ~~((hh))~~ **NONATTAINMENT AREA** means a geographic area designated by the United States Environmental Protection Agency ~~((which))~~ that violates a primary or secondary national ambient air quality standard. ~~((In an ozone nonattainment area, both volatile organic compounds and nitrogen oxides are considered ozone precursors.))~~

(jj) ~~((ii))~~ **OUTDOOR FIRE** means the combustion of material in the open or in a container with no provision for control of such combustion or the control of the emissions of the combustion products.

(kk) ~~((jj))~~ **OWNER OR OPERATOR** means the person who owns, leases, supervises, or operates the equipment or control equipment.

(ll) ~~((kk))~~ **PARTICULATE MATTER** means any material, except water in an uncombined form, that is, has been, or is likely to become airborne and exists as a liquid or a solid at standard conditions.

(mm) ~~((ll))~~ **PERSON** means and includes any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or governmental agency.

(nn) ~~((mm))~~ **PM₁₀** means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on Appendix J of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

(oo) ~~((nn))~~ **POTENTIAL TO EMIT** means the maximum capacity of a facility to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of the facility to emit an air contaminant, including ~~((air pollution))~~ control equipment and restrictions on the hours of operation or on

the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable.

~~((oo))~~ **PRIMARY AIR MASS STATION or PAMS** means a type of station designed to measure contamination in the air mass and representing a relatively broad area. The sampling shall be representative of the general area concerned and not be contaminated by any special source. The probe inlet shall be a minimum of 4.6m (15 feet) and a maximum of 45.7m (150 feet) above ground level. Actual elevation should vary to prevent adverse exposure conditions caused by surrounding buildings and terrain. The probe inlet shall be placed approximately 1.5m (5 feet) above the supporting rooftop.

~~((pp))~~ **PRIMARY GROUND LEVEL MONITORING STATION or PGLMS** means a station designed to provide information on contaminant concentrations near the ground and provide data valid for the immediate area only. The probe inlet shall be 1.8 to 4.6m (6 to 15 feet) above ground level with a desired optimum height of 3.0m (10 feet). The probe inlet shall not be less than 0.6m (2 feet) from any building or wall. The sampling site shall be representative of the immediate area and not be contaminated by any unique source.

~~((qq))~~ **PROCESS WEIGHT** means total weight of the materials consumed or charged in any specific process including solid fuels charged, but excluding liquid and gaseous fuels, and combustion air.

~~((pp))~~ ~~((rr))~~ **REASONABLY AVAILABLE CONTROL TECHNOLOGY** means the lowest emission standard that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. Reasonably available control technology is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls.

~~((qq))~~ ~~((ss))~~ **REFUSE BURNING EQUIPMENT** means equipment ~~((as defined in this section))~~ employed to burn any solid or liquid combustible refuse.

~~((tt))~~ **REGULATION** means any regulation or any subsequently adopted additions or amendments thereto of the Puget Sound Air Pollution Control Agency.

~~((rr))~~ ~~((uu))~~ **SEASONED WOOD** means wood of any species that has been sufficiently dried so as to contain 20% or less moisture by weight.

~~((ss))~~ ~~((vv))~~ **SECOND STAGE OF IMPAIRED AIR QUALITY** means a condition declared by the Control Officer when particulates 10 microns and smaller in diameter are at an ambient level of 105 micrograms per cubic meter measured on a 24-hour average.

~~((tt))~~ ~~((ww))~~ **SOLID FUEL BURNING DEVICE** means a device that burns wood, coal, or any other nongaseous or nonliquid fuels, and includes any device burning any solid fuel used for aesthetic or space-heating purposes in a private residence or commercial establishment, which has a heat input less than 1 million Btu per hour.

~~((uu))~~ ~~((xx))~~ **SOURCE** means ~~((any))~~ a building, structure, equipment, control equipment, ~~((storage pile))~~ or facility ~~((which))~~ that emits or may emit any air contaminant into the atmosphere.

~~((yy))~~ **SPECIAL STATION** or **SS** means any station that does not meet the criteria or purpose of a Primary Air Mass Station or a Primary Ground Level Monitoring Station.

~~((vv))~~ ~~((zz))~~ **STANDARD CONDITIONS** means ~~((20°C and 1013 mb (68°F and 29.92 in. Hg)))~~ a temperature of 68°F and a barometric pressure of 29.92 inches of mercury.

~~((ww))~~ ~~((aaa))~~ **TOTAL ALLOWABLE EMISSIONS** means allowable emissions, including the emissions from all Orders of Approval issued to the facility since the designation of nonattainment that were not major modifications, ~~((as defined in this section))~~ and all fugitive emissions that can be reasonably quantified.

~~((xx))~~ **TOXIC AIR CONTAMINANT** or **TAC** means an air contaminant listed in Appendix A of Regulation III.

~~((yy))~~ ~~((bbb))~~ **TREATED WOOD** means wood of any species that has been chemically impregnated, painted, or similarly modified.

~~((zz))~~ **TRUE VAPOR PRESSURE** means the equilibrium partial pressure of an organic liquid (determined by methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss from Floating Roof Tanks", February 1989).

~~((aaa))~~ ~~((eee))~~ **URBANIZED AREA** means those portions of King, Pierce, Kitsap, and Snohomish Counties designated as urbanized areas by the U.S. Department of Commerce, Bureau of the Census.

~~((bbb))~~ ~~((ddd))~~ **VOLATILE ORGANIC COMPOUND** or **VOC** means ~~((any))~~ an organic compound that participates in atmospheric photochemical reactions. This excludes all compounds determined to have negligible photochemical reactivity by the U.S. Environmental Protection Agency and listed in 40 CFR 51.100(s).

AMENDATORY SECTION

REGULATION I SECTION 8.03 OUTDOOR FIRES - PROHIBITED AREAS

(a) It shall be unlawful for any person to cause or allow any outdoor fire described in Section 8.02 (c)(4) or (5) of this Regulation:

(1) Within Snohomish County Fire District #11 or King County Fire District #25;

(2) In any area where federal or state ambient air quality standards are exceeded for pollutants emitted by outdoor burning, including but not limited to carbon monoxide and particulates (PM₁₀); or

(3) In any area in which the applicable fire protection agency, county, or conservation district has determined not to issue burning permits for outdoor fires pursuant to RCW 70.94.745, RCW 70.94.750, RCW 70.94.775, and/or RCW 70.94.780(4).

~~((4))~~ In any area in which the applicable fire protection agency, county, or conservation district has determined that selected types of outdoor fires are prohibited under a valid burning permit program established pursuant to RCW

~~70.94.745, RCW 70.94.750, RCW 70.94.775, and/or RCW 70.94.780.)~~

(b) It shall be unlawful for any person to cause or allow any outdoor fire described in Section 8.02 (c)(4) or (5) of this Regulation within the Urban Growth Areas of Snohomish, King, and Pierce Counties.

~~((e))~~ It shall be unlawful for any person to cause or allow any outdoor fire described in Section 8.02 (e)(5) in Kitsap County Township 24N, Range 1E, Sections 1, 2, 10-15, and 22-24.)

AMENDATORY SECTION

REGULATION I SECTION 8.04 GENERAL CONDITIONS

(a) ~~((It shall be prima facie evidence that the person who owns or controls property on which an outdoor fire occurs has caused or allowed said outdoor fire.))~~ The provisions of Sections 9.03, 9.05, and 9.15 of Regulation I shall not apply to outdoor fires.

(b) Nothing contained in Article 8 shall be construed to allow outdoor fires in those areas in which open burning is prohibited by laws, ordinances, or regulations of the state or any city, county, or fire district.

(c) Nothing contained in Article 8 shall relieve the applicant from obtaining permits required by any state or local fire protection agency or from compliance with Section 11.101 of the Uniform Fire Code.

WSR 94-09-035
PERMANENT RULES
PUGET SOUND AIR
POLLUTION CONTROL AGENCY

[Filed April 18, 1994, 9:02 a.m.]

Date of Adoption: April 14, 1994.

Purpose: To amend the public notice and construction permit requirements to be consistent with chapter 173-400 WAC; to incorporate certain toxic air contaminant review requirements in the construction permit section (formerly in Section 2.03 of Regulation III); to amend the sulfur dioxide emission standards to be consistent with chapter 173.400 WAC; to amend the fuel oil requirements to be more consistent with RCW 70.04.610; to amend the ambient air quality standards for sulfur dioxide to be consistent with the state and federal ambient air quality standards; to amend the ambient air quality standards for suspended particulate to be consistent with the federal ambient air quality standards; and to clarify the applicability of the requirements for sources of toxic air contaminants.

Citation of Existing Rules Affected by this Order: Repealing Regulation I, Sections 11.01, 11.03, 11.04, 11.05, 11.06, 11.07, 11.08 and 11.09, and Regulation III, Section 2.03; and amending Regulation I, Sections 6.06, 6.07, 6.09, 9.07, 9.08, Article 11, and Regulation III, Sections 2.01 and 2.05.

Statutory Authority for Adoption: Chapter 70.94 RCW. Pursuant to notice filed as WSR 94-06-062 on March 2, 1994.

Effective Date of Rule: Thirty-one days after filing.
 April 15, 1994
 Gerald S. Pade
 Air Pollution Engineer

AMENDATORY SECTION

REGULATION I SECTION 6.06 ((REQUIREMENTS FOR)) PUBLIC NOTICE

(a) ~~((Within 15 days of the receipt of the information required by Section 6.03, the Board or Control Officer shall publish notice to the public of the opportunity to submit written comment during a 30 day period under any of the following conditions))~~ The Agency shall provide public notice for any proposed Order of Approval if:

(1) ~~((If otherwise required by the state or federal laws or regulations; or))~~ The proposed installation or modification would increase the emissions of any air contaminant by more than the following:

<u>Air Contaminant</u>	<u>Tons/Year</u>
<u>Carbon Monoxide</u>	<u>100.0</u>
<u>VOC</u>	<u>40.0</u>
<u>Nitrogen Oxides</u>	<u>40.0</u>
<u>PM₁₀</u>	<u>15.0</u>
<u>Sulfur Dioxide</u>	<u>40.0</u>
<u>Lead</u>	<u>0.6</u>
<u>Fluorides</u>	<u>3.0</u>
<u>Sulfuric Acid</u>	<u>7.0</u>
<u>Total Reduced Sulfur</u>	<u>10.0</u>

(2) ~~((If the proposed source would cause an annual increase of 10 tons of any air contaminant for which ambient air quality standards have been established; or))~~ The applicant requests a limit on the potential to emit;

(3) ~~((If offsetting emission reductions are required; or))~~ The applicant requests to bank emission reduction credits;

(4) The applicant requests approval of a risk analysis;

(5) The proposed installation or modification involves refuse burning equipment; or

(6) ~~((4) If it)~~ The ((Board or)) Control Officer determines that ((such)) there may be substantial public interest in the proposal ((comment would be appropriate)).

~~((b) The cost of publishing any public notice required by Section 6.06(a) shall be paid by the owner or applicant to the Agency;))~~

~~((e) Such p))~~ Public notice shall be published in a newspaper of general circulation in the area of the proposed project and shall ((contain)) include the following ((information)):

(1) ~~The ((N))~~ name and address of the owner or operator and the facility; ((-))

(2) ~~A ((B))~~ brief description of the proposal; ((proposed construction-))

(3) ~~The locations~~ at which ((#)) copies ((y)) of the preliminary determination and a summary of information considered in making such preliminary determination are available for ((to the)) public inspection; ((-))

(4) The deadline for submitting written comment; and

(5) That a public hearing may be held if the Agency determines within a 30-day period that significant public interest exists.

~~((d) If public notice is given by another agency on the proposed construction of a new source not required to have offsetting emission reductions, no public notice shall be required under this section;))~~

(c) Notice shall also be sent to the U.S. Environmental Protection Agency Regional Administrator.

(d) The cost of providing public notice shall be borne by the applicant.

(e) The Agency shall not make a final decision on any application until the public comment period has ended and any comments received have been considered. Unless a public hearing is held, the public comment period shall be the 30-day period for written comment published as provided above. If a public hearing is held, the public comment period shall extend through the hearing date.

(f) The applicant, any interested governmental entity, any group, or any person may request a public hearing within the 30-day period published as provided above. Any such request shall indicate the interest of the entity filing it and why a hearing is warranted. The Agency may, at its discretion, hold a public hearing if it determines significant public interest exists. Any such hearing shall be held upon such notice and at a time and place as the Agency deems reasonable. The Agency shall provide at least 30 days prior notice of any hearing.

AMENDATORY SECTION

REGULATION I SECTION 6.07 ORDER OF APPROVAL - ORDER TO PREVENT CONSTRUCTION

(a) ~~Within ((30)) 60~~ days of receipt of a complete Notice of Construction and Application for Approval, or ((30 days)) as promptly as possible after the close of the public comment period if subject to the public notice requirements of Section 6.06 of this Regulation, the Board or Control Officer shall issue an Order of Approval or an Order to Prevent Construction. A person seeking approval to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required by Article 7 of this Regulation provided that any such application shall be processed in accordance with the operating permit program procedures and deadlines.

(b) An Order of Approval may provide such conditions of operation as are reasonably necessary to assure compliance with ((Regulations I, II, and III)) all applicable emission standards.

(c) No Order of Approval shall be issued unless the Notice of Construction and Application for Approval demonstrates to the Board or Control Officer that:

(1) The operation of the source at the location proposed will not cause or contribute to a violation of an ambient air quality standard;

(2) The source will meet((#)) the requirements of all applicable emission standards ((including New Source Performance Standards and National Emission Standards for

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~~Hazardous Air Pollutants promulgated by the United States Environmental Protection Agency);~~

(3) Best available control technology is employed for the ~~((construction,))~~ installation~~((, or establishment))~~ of new sources and the modification of existing sources; and

(4) Reasonably available control technology is employed for the replacement of existing control equipment.

(d) No Order of Approval shall be issued for a new major source or major modification ~~((as defined in Section 1.07 of this Regulation))~~ in a nonattainment area unless the Notice of Construction and Application for Approval also demonstrates to the Board or Control Officer that:

(1) For those air contaminants for which the area is designated nonattainment, lowest achievable emission rate is employed for each new source at a new major source, and each new or modified source involved in a major modification;

(2) All existing major sources owned or operated by the applicant in the state of Washington are in compliance with all applicable emission standards under the federal Clean Air Act or are on an approved compliance schedule;

(3) Offsets in the form of emission reduction credits (banked pursuant to Section 6.08 of this Regulation) ~~((and))~~ in an amount greater than or equal to 1.10 times the proposed total allowable emissions from the new major source, or the increase from current actual emissions to the proposed total allowable emissions for a major modification, have been obtained from sources in the same nonattainment area and occur by the time the new major source or major modification begins operation; and

(4) The benefits of the proposed new major source or major modification significantly outweigh the environmental and social costs imposed as a result of its location, installation ~~((construction))~~, or modification. (This demonstration, which shall include an analysis of alternative sites, sizes, production processes, and environmental control techniques, may be in the form of an environmental impact statement prepared under the State Environmental Policy Act or the National Environmental Policy Act.)

(e) No Order of Approval shall be issued for a new or modified source of toxic air contaminants, except for sources exempted by Section 2.01 of Regulation III, unless the Notice of Construction and Application for Approval demonstrates to the Board or Control Officer that:

(1) The toxic air contaminant emissions from the source will not result in the exceedance of any acceptable source impact level listed in Appendix A of Regulation III; or

(2) The emissions from the source will not cause air pollution. This demonstration shall be performed in accordance with the Agency "Guidelines for Evaluating Sources of Toxic Air Contaminants" and requires approval from the Department of Ecology.

(f) ~~((e))~~ An Order of Approval shall expire unless ~~((construction))~~ the owner or operator has commenced construction of the source within ~~((24))~~ 18 months of the date of its issuance or if construction is discontinued for a period of more than ~~((24))~~ 18 months.

(g) ~~((f))~~ An Order to Prevent Construction shall set forth the objections in detail with references to the provisions of this Regulation ~~((s I, II, and III))~~ that would not be met. Such Order shall become final unless, no later than 15 days after the date the Order is served, the ~~((owner or))~~

applicant petitions for a reconsideration of the Order, with reasons for the reconsideration. The ~~((Board or))~~ Control Officer shall consider the petition, and shall within 30 days give written Order of Approval or final disapproval of the Notice of Construction setting forth the reasons for disapproval.

AMENDATORY SECTION

REGULATION I SECTION 6.09 NOTICE OF COMPLETION

~~((a))~~ Within 30 days of completion of the ~~((construction,))~~ installation~~((, establishment,))~~ or modification of an air contaminant source subject to the provisions of Section 6.03 of this Regulation, the owner or operator or applicant shall file a Notice of Completion with the Agency. Each Notice of Completion shall be submitted on a form provided by the Agency, and shall specify the date upon which operation of the source has commenced or will commence.

~~((b)) It shall be unlawful to cause or allow the construction, installation, establishment, or modification of an air contaminant source that is not in accordance with the plans, specifications, or other information approved by the Agency.)~~

AMENDATORY SECTION

REGULATION I SECTION 9.07 ~~((EMISSION OF))~~ SULFUR DIOXIDE EMISSION STANDARD ~~((OXIDES))~~

~~((For the purpose of this section, all sulfur present in gaseous compounds containing oxygen shall be deemed to be present as sulfur dioxide.~~

~~((a)) It shall be unlawful for any person to cause or permit the emission of sulfur dioxide from any premises which will result in concentrations and frequencies at a primary air mass station, a primary ground level monitoring station, or a special station, that exceed those shown in the following table:~~

TABLE I

Maximum Allowable Sulfur Dioxide Concentrations

*Concentration	Averaging Time	Frequency of Occurrence
1.0 ppm	5 minutes	once in any 8 consecutive hours
0.4 ppm	60 minutes	never to be exceeded
0.25 ppm	60 minutes	twice in any 7 consecutive days
0.10 ppm	24 hours	never to be exceeded
0.04 ppm	30 days	never to be exceeded
0.02 ppm	365 days	never to be exceeded

*Parts per million by volume

~~Emissions exceeding the limits established in this Section 9.07(a) shall not constitute a violation of Section 9.07, provided such emissions, from the emission point to the point of any such concentration, are on property controlled by the person responsible for such emissions.~~

~~((b)) It shall be unlawful for any person to cause or allow the emission of sulfur dioxide from any source (equipment) in excess of 1,000 (ppm) parts per million by volume on a dry basis, 1-hour average (corrected to 7%~~

oxygen for fuel burning equipment and refuse burning equipment) ((combustion sources)).

((e) When the emission of sulfur dioxide exceeds 18 kg (40 pounds) per hour, then it shall be unlawful for any person to cause or permit equipment used in a manufacturing process to emit to the atmosphere more than 10% of the sulfur contained in the process weight per hour. Any person processing such sulfur containing material shall, upon request, provide to the Agency such information and samples as may be required to determine compliance with this section.

(d) It shall be unlawful for any person to burn, sell or make available for sale any fuel containing a weight percentage of sulfur in excess of:

(1) Two percent (2.00%) for all oil except as provided for hereinafter in Section 9.07 (d)(3) and (d)(4).

(2) One percent (1.00%) for coal.

(3) Three tenths of a percent (0.30%) for Distillate No. 1 oil (ASTM D 396-69).

(4) Five tenths of a percent (0.50%) for Distillate No. 2 oil (ASTM D 396-69).

Except that when flue gas desulfurization equipment is used, higher sulfur content fuel may be sold if the resulting stack concentration of sulfur dioxide shall not be greater than that which would have occurred by burning the fuel described in 9.07 (d)(1), (2), (3) and (4).

(e)(1) When used in Regulation I:

(i) A WHOLESALE FUEL FACILITY means any refiners, distribution terminal, or primary fuel handling facility which sells, makes available for sale, or distributes liquid or solid fuel on a wholesale basis for subsequent use in fuel burning equipment located in the jurisdiction of this Agency; and

(ii) A WHOLESALE FUEL DEALER means the owner of a wholesale fuel facility.

(2) Each wholesale fuel dealer shall report information to the Agency for each calendar month after the effective date of this section, as follows:

(i) The quantity, specification, seller and percent sulfur by weight of fuel received at the wholesale fuel facility and the date of such receipt;

(ii) The method used in obtaining the sulfur content of such fuel;

(iii) Other pertinent information as required by the Control Officer;

(iv) Such reports to be submitted within 15 days of the end of the reporting month.)

AMENDATORY SECTION

REGULATION I SECTION 9.08 ((COMBUSTION AND MARKETING OF WASTE DERIVED FUELS)) FUEL OIL STANDARDS

(a) It shall be unlawful for any person to ((burn)) cause or allow the combustion of oil in fuel burning equipment or refuse burning equipment that exceeds any of the following limits unless that person has obtained an Order of Approval from ((waste derived fuel unless a "Notice of Construction and Application for Approval" to burn waste derived fuel has been filed with the Agency, and ordered approved by)) the

Agency in accordance with Section 6.07 of this Regulation: ((Article 6, Regulation I.))

Ash.....	0.1% (maximum)
Sulfur.....	1.0% (maximum for used oil)
Sulfur.....	2.00% (maximum for fuel oil)
Lead.....	100 ppm (maximum)
Arsenic.....	5 ppm (maximum)
Cadmium.....	2 ppm (maximum)
Chromium.....	10 ppm (maximum)
Total Halogens.....	1,000 ppm (maximum)
Polychlorinated Biphenyls (PCBs).....	2 ppm (maximum)
Flash Point.....	100°F (minimum)

(b) It shall be unlawful for any person to sell((-)) or make available for sale((-, waste derived fuel for burning to a person who has not obtained prior Agency approval to burn such fuels in accordance with Section 9.08(a-)) any oil in excess of the limits of this section to any person who has not obtained an Order of Approval from the Agency in accordance with Section 6.07 of this Regulation.

((e)) Any person who sells or makes available for sale ((waste derived fuel for burning)) such oil shall submit a report((s)) to the Agency within 15 days of the end of the ((each reporting)) month ((on Agency supplied forms for each calendar month after the effective date of this section as follows:)) that includes the name and address of the recipient, the amount of oil delivered, and the concentration of contaminants therein.

((1) The name and address of, and the amount delivered to, each customer;

(2) Other pertinent information as may be required by the Control Officer.

(d) The following are exempt from the provisions of Sections 9.08(a), 9.08(b), and 9.08(e:))

(c) The provisions of this section shall not apply to:

(1) Ocean-going vessels;

((1) Gasoline when used as a fuel for internal combustion engines;))

((2) Aviation fuel;))

(2) ((3)) Used oil burned in space heaters that have a maximum heat output ((input of less)) of not greater than ((0.5 GJ (-)) 0.5 million Btu((+)) per hour((-, provided that:)) ; and

((1) The used oil burned is either generated on site or received from do it yourself oil changers; and

(ii) The used oil burned is not contaminated with added dangerous wastes.))

(3) Persons in the business of collecting used oil from residences when under authorization by a city, county, or the utilities and transportation commission.

((e) When used in Regulation I:

(1) WASTE DERIVED FUEL means any fuel that is contaminated with dangerous waste or exceeds, in the case of fuels in a liquid state under standard conditions, any of the following limits:

(i) 0.10% ash by weight

(ii) 100 parts per million (ppm) by weight of lead

(iii) 5 ppm arsenic by weight

(iv) 2 ppm cadmium by weight

(v) 10 ppm chromium by weight

(vi) 1000 ppm by weight chlorides

(vii) 5 ppm polychlorinated biphenyls (PCBs)

(viii) a flash point lower than 38°C (100°F)

Procedures for determining compliance with the above specifications have been adopted by the Board and are on

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file at the offices of the Agency. Alternate procedures must be mutually agreed upon by the Board or the Control Officer and the person burning, selling or making available for sale a waste derived fuel.

(2) ~~DANGEROUS WASTES~~ means those solid, semi-solid, liquid or contained gaseous materials designated in the Washington Dangerous Waste Regulations (WAC 173-303-070 through 173-303-103) as dangerous or extremely hazardous waste, Exhibit B, on file at the offices of the Agency.

(3) ~~USED OIL~~ means any oil that has been refined from crude oil, used, and as a result of such use is contaminated by physical or chemical impurities.)

AMENDATORY SECTION

REGULATION I ARTICLE 11: AMBIENT AIR QUALITY STANDARDS (~~AND CONTROL MEASURES REQUIRED~~)

REPEALER

REGULATION I SECTION 11.01 AIR QUALITY CONTROL MEASURES

REPEALER

REGULATION I SECTION 11.03 AMBIENT AIR QUALITY STANDARDS: SUSPENDED PARTICULATE

REPEALER

REGULATION I SECTION 11.04 AMBIENT AIR QUALITY STANDARDS: PM₁₀

REPEALER

REGULATION I SECTION 11.05 AMBIENT AIR QUALITY STANDARDS: LEAD

REPEALER

REGULATION I SECTION 11.06 AMBIENT AIR QUALITY STANDARDS: CARBON MONOXIDE

REPEALER

REGULATION I SECTION 11.07 AMBIENT AIR QUALITY STANDARDS: OZONE

REPEALER

REGULATION I SECTION 11.08 AMBIENT AIR QUALITY STANDARDS: NITROGEN DIOXIDE

REPEALER

REGULATION I SECTION 11.09 AMBIENT AIR QUALITY STANDARDS: SULFUR DIOXIDE

NEW SECTION

REGULATION I SECTION 11.01 AMBIENT AIR QUALITY STANDARDS

(a) Ambient air quality standards shall be as follows:

Averaging Period	Carbon Monoxide (ppm)	PM ₁₀ (µg/m ³)	Ozone (ppm)	Sulfur Dioxide (ppm)	Lead (µg/m ³)	Nitrogen Dioxide (ppm)
annual		50 ^a		0.02 ^b		0.053 ^b
calendar quarter					1.5 ^b	
24 hours		150 ^c		0.10 ^b		
8 hours	9 ^d					
1 hour	35 ^d		0.12 ^e	0.25 ^f /0.40 ^b		

ppm = parts per million by volume

µg/m³ = micrograms per cubic meter (@ 25°C and 760 mm Hg)

- a attained when the expected annual arithmetic mean concentration, as determined in accordance with 40 CFR Part 50, Appendix K, is less than or equal to 50 µg/m³
- b never to be exceeded
- c attained when the expected number of days per calendar year with a 24-hour average concentration above 150 µg/m³, as determined in accordance with 40 CFR Part 50, Appendix K, is equal to or less than one
- d not to be exceeded more than once per year
- e attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm is equal to or less than one, as determined by 40 CFR Part 50, Appendix H
- f not to be exceeded more than twice in 7 consecutive days

(b) It shall be unlawful for any person to cause or allow the emission of air contaminants in sufficient quantity as to exceed any ambient air quality standard in this section.

NEW SECTION

REGULATION I SECTION 11.02 AMBIENT AIR MONITORING

Monitoring for compliance with ambient air quality standards shall be performed in accordance with currently approved U.S. Environmental Protection Agency methods.

AMENDATORY SECTION

REGULATION III SECTION 2.01 APPLICABILITY

(a) Article 2 of this Regulation III shall apply to all sources of toxic air contaminants except the following:

- (1) Asbestos Removal Operations (~~((see))~~) subject to Article 4 of Regulation III(~~(?)~~)
- (2) Chromic Acid Plating and Anodizing Tanks (~~((see))~~) subject to Section 3.01 of Regulation III(~~(?)~~)
- (3) Solvent Metal Cleaners (~~((see))~~) subject to Section 3.05 of Regulation III(~~(?)~~)
- (4) Perchloroethylene Dry Cleaners (~~((see))~~) subject to Section 3.03 of Regulation III(~~(?)~~)

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(5) Petroleum Solvent Dry Cleaning Systems ~~((see))~~ subject to Section 3.07 of Regulation II((3))

(6) Gasoline Storage and Dispensing Operations ~~((see))~~ subject to Article 2 of Regulation II((3))

(7) Graphic Arts Systems ~~((see))~~ subject to Section 3.05 of Regulation II((3))

(8) Can and Paper Coating Operations ~~((see))~~ subject to Section 3.03 of Regulation II((3))

(9) Motor Vehicle and Mobile Equipment Coating Operations ~~((see))~~ subject to Section 3.04 of Regulation II((3))

(10) Polyester/Vinylester/Gelcoat/Resin Operations ~~((see))~~ subject to Section 3.08 of Regulation II((3))

(11) Coatings and Ink Manufacturing ~~((see))~~ subject to Section 3.11 of Regulation II((3))

(12) Ethylene Oxide Sterilizers and Aerators ~~((see))~~ subject to Section 3.07 of Regulation III((3))

(b) Any demonstration required by this Article shall be conducted in accordance with the Agency "Guidelines For Evaluating Sources of Toxic Air Contaminants", which are hereby incorporated by reference.

REPEALER

REGULATION III SECTION 2.03 NEW OR ALTERED TOXIC AIR CONTAMINANT SOURCES

AMENDATORY SECTION

REGULATION III SECTION 2.05 REGISTERED SOURCES OF TOXIC AIR CONTAMINANTS

(a) This Section applies to all sources of toxic air contaminants required to be registered by Article 5 of Regulation I, unless covered by specific rules referenced in Section 2.01 above.

(b) The Control Officer shall have the authority to conduct a screening evaluation of any source in accordance with the Agency "Guidelines For Evaluating Sources of Toxic Air Contaminants" to determine if the toxic air contaminant emissions from the source would result in the exceedance of an ASIL contained in Appendix A of this Regulation III. The owner or operator of the source shall be informed of the results of any such screening evaluation.

(c) If, as a result of the screening evaluation conducted under (b) above, the Control Officer determines that the toxic air contaminant emissions from a source may result in the exceedance of an ASIL contained in Appendix A of this Regulation III, the Control Officer may issue an order requiring the owner or operator of the source to perform an analysis in accordance with the Agency "Guidelines For Evaluating Sources of Toxic Air Contaminants" and may establish a schedule for submission of the analysis.

(d) It shall be unlawful for any person required to perform an analysis under (c) above, to cause or allow the continued operation of the source after the submission date established by the Control Officer, unless one of the following conditions is met:

(1) A dispersion modeling analysis demonstrates to the Control Officer that the toxic air contaminant emissions from the source will not result in the exceedance of any ASIL contained in Appendix A of this Regulation III; or

(2) A dispersion modeling analysis demonstrates to the Control Officer that the toxic air contaminant emissions from the source will not result in the exceedance of any ASIL contained in Appendix A of this Regulation III after the installation of the Best Available Control Technology (BACT) and a compliance schedule for employing BACT is approved by the Control Officer; or

(3) BACT is employed on the source or a compliance schedule for employing BACT is approved by the Control Officer, and a risk analysis demonstrates to the Control Officer that the toxic air contaminant emissions from the source will not cause air pollution as defined in Section 1.07 of Regulation I.

~~((e) Nothing in this Article shall be construed to prevent the owner or operator of a source of toxic air contaminants from applying for a variance under Article 4 of Regulation I.)~~

WSR 94-09-039
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS
[Filed April 19, 1994, 9:00 a.m.]

Date of Adoption: April 11, 1994.

Purpose: To codify the factors considered by the department in determining whether a worker is an independent contractor or an employee subject to retirement system membership.

Statutory Authority for Adoption: RCW 41.50.050.

Pursuant to notice filed as WSR 94-05-012 on February 4, 1994.

Effective Date of Rule: Thirty-one days after filing.

April 15, 1994

Sheryl Wilson

Director

AMENDATORY SECTION (Amending Order 4, filed 7/27/77)

WAC 415-02-030 Definitions. ~~((1))~~ Unless the context requires otherwise, the following terms shall have the meanings established below:

~~((1)) "Department" means the department of retirement systems.~~

~~(2) "Director" means the director of retirement systems.~~

~~(3) "Clerk" means the director, any assistant director of the department of retirement systems, or the confidential secretary to the director of retirement systems, when used in reference to requests, submittals, papers or pleadings which must be filed with the clerk of one of the retirement boards established by chapters 2.10, 41.26, 41.32, 41.40, and 43.43 RCW or the director of the department of retirement systems.~~

~~(4) "Retirement board" means either the Washington judicial retirement board, the Washington law enforcement officers' and fire fighters' retirement board, the board of trustees of the Washington state teachers' retirement system, the Washington public employees retirement board, or the Washington state patrol retirement board.~~

~~(5) "Member" means a person who is entitled to membership in one of the retirement systems created by chapters 2.10, 2.12, 41.25, 41.32, 41.40, or 43.43 RCW.~~

~~(6) "Employer" means the employer of a particular member.~~

~~(7) "Hearings examiner" or "presiding officer" means a person or persons appointed by a retirement board or the director to preside at a contested case hearing and matters related thereto.~~

~~(8) "Appeal" means the method by which a party secures a contested case hearing before a retirement board or the director subsequent an initial determination by the board or director of the legal rights, duties or privileges of the specific party.~~

~~(9) "Petition" means the method by which a party secures a review of an administrative determination by an assistant director prior to an appeal to the director.)~~

(1) "Appeal" means the method by which a party secures a contested case hearing before a retirement board or the director subsequent to an initial determination by the board or director of the legal rights, duties or privileges of the specific party.

(2) "Clerk" means the director, any assistant director of the department of retirement systems, or the confidential secretary to the director of retirement systems, when used in reference to requests, submittals, papers or pleadings which must be filed with the clerk of one of the retirement boards established by chapters 2.10, 41.26, 41.32, 41.40, and 43.43 RCW or the director of the department of retirement systems.

(3) "Department" means the department of retirement systems.

(4) "Director" means the director of retirement systems.

(5) "Employee" under this chapter, means a worker who performs labor or services for a retirement systems employer under the control and direction of the employer as determined under WAC 415-02-110(2). An employee may be eligible to participate as a member of one of the state-administered retirement systems according to eligibility requirements specified under the applicable retirement system.

(6) "Employer" means the employer of a particular member.

(7) "Hearings examiner" or "presiding officer" means a person or persons appointed by a retirement board or the director to preside at a contested case hearing and matters related thereto.

(8) "Independent contractor" under this chapter, means a worker providing services under contract to a retirement system employer for remuneration who is not under the direction or control of the employer as determined under WAC 415-02-110 (2) and (3). Independent contractors are ineligible to participate as members in any state-administered retirement system.

(9) "Member" means a person who is entitled to membership in one of the retirement systems created by chapter 2.10, 2.12, 41.25, 41.32, 41.40, or 43.43 RCW.

(10) "Petition" means the method by which a party secures a review of an administrative determination by an assistant director prior to an appeal to the director.

(11) "Retirement board" means either the Washington judicial retirement board, the Washington law enforcement

officers' and fire fighters' retirement board, the board of trustees of the Washington state teachers' retirement system, the Washington public employees' retirement board, or the Washington state patrol retirement board.

(12) "Retirement system employer" means "employer" as defined in RCW 41.26.030(2), 41.32.010(11), or 41.40.010(4), and a "city" or "cities" as defined in RCW 41.44.030(2).

(13) "Worker" means a person who performs services for a retirement system employer either as an employee or as an independent contractor.

NEW SECTION

WAC 415-02-110 Determination of employee status.

(1) An employee of a retirement system employer, other than a teachers' retirement system plan I retiree, who otherwise meets the eligibility criteria to participate in a state-administered retirement system is required to establish or continue membership in that system. An independent contractor is not eligible for active membership in any state-administered retirement system.

(2)(a) The department will review the entire relationship between the worker and the retirement system employer in order to determine whether a worker is an independent contractor or an employee. Generally, a worker is an employee if the employing individual or entity has the right to control and direct the work of the worker, not only as to the result to be accomplished, but also as to the means or methods by which the result is accomplished.

(b) Generally, a worker is an independent contractor if the employing entity has the right to control or direct only the result of the labor or services and not the means and methods accomplishing the labor or services.

(c) Whether or not the parties intend to establish an employer-employee relationship, or whether the parties regard the worker as being an independent contractor is not controlling. When the elements of direction and control are present in determining the means and methods of performing the worker's labor or service, any disclaimers to the contrary are not binding on the department for the purpose of determining employer-employee status. The terms of the contract and the actual arrangement under which the labor or services are performed will determine whether a worker is an employee or independent contractor.

(d) In evaluating whether the retirement system employer has direction or control over the means and methods of performing the worker's labor or services, no one factor is determinative. The department will apply several factors, including but not limited to the following:

(i) Is the worker required to comply with detailed work instructions or procedures about when, where and how the worker must perform services? An employer has control if the employer requires or has the right to require the worker to comply with instructions about the manner in which services must be performed.

(ii) Does the employing individual or entity provide free training for the worker, or have the right to train the worker? Typically, an employer would have the right to train an employee but not an independent contractor.

(iii) Are the worker's services an integral part of the employing individual's or entity's business operation?

Usually the regular administrative work of a business is performed by employees rather than independent contractors. Services outside the usual course of the employer's business may imply independent contractor status.

(iv) Is the worker required to perform the labor or services personally? While employees are typically required to personally perform labor or services, independent contractors are not necessarily required to perform personally, but may subcontract part or all of the required labor or services to another party.

(v) Does the employer hire, supervise or pay others to perform the same job as the worker? Usually a person who works the same job or performs the same function as performed by employees of the employer is an employee rather than an independent contractor.

(vi) Does the worker hire, supervise and pay others on the job under a contract to furnish labor and materials? Independent contractors may or may not be responsible for performing the contracted labor or services themselves, and usually have the right to hire and terminate their own employees who perform the contracted labor or services.

(vii) Does the worker perform continuing services for the retirement system employer? Independent contractors are typically hired for a job of relatively short-term or temporary duration and do not have a continuous relationship with or perform continuing services for the employing entity.

(viii) Are the worker's hours, routine or schedule set by the employing entity? The establishment of a set routine or schedule for the worker by the employer indicates employee status. Independent contractors are typically free to set their own hours of work.

(ix) Is the worker required to devote his or her full time to the business of a single employing individual or entity? A worker who is required to work full time for a single employer is likely to be an employee. Independent contractors are usually free to provide labor or services for two or more employing entities concurrently.

(x) Does the employing individual or entity require the worker to perform labor or services on the employer's premises? The employing entity is likely to have the right of control over the worker's method of work if the work is performed solely on the employer's premises, particularly if the worker could perform the required labor or services elsewhere.

(xi) Does the employing individual or entity require the worker to perform labor or services in a set sequence? A worker is likely to be an employee if the worker must perform work in an order or sequence set by the employer.

(xii) Is the worker required to provide regular, oral or written reports to the employer? Regular reports, for example weekly time sheets, are usually required of employees as opposed to independent contractors.

(xiii) Is the worker paid by unit of time (hour, week or month)? Employees are typically paid by unit of time while independent contractors are typically paid by the job (commission, bid, piecework or lump sum). Payment for labor or services upon completion of the performance of specific portions of a project or on the basis of an annual or periodic retainer usually indicates independent contractor status.

(xiv) Does the employing individual or entity reimburse the worker for the worker's job-related expenses? Independent contractors typically pay their own business or travel

expenses; the regular expenses they incur as part of providing labor or services are generally included in the stipulated contract payment and are not reimbursed by the employing entity.

(xv) Does the worker providing labor or services furnish the tools and supplies necessary for the performance of the contracted labor or service? Generally, an employer furnishes tools and supplies for their employees while independent contractors furnish their own.

(xvi) Has the worker invested in the equipment or facilities used in performing the labor or services? A significant investment by the worker in the equipment or facilities used in performing the labor or services usually indicates independent contractor status.

(xvii) Does the worker have a right to realize a profit or have a significant risk of loss as a result of the worker's services? Having the right to a profit or the risk of loss arising from the worker's services implies independent contractor status. The worker may be presumed to have assumed the risk of loss if the worker assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of a performance bond, warranties, errors, and omissions insurance or liability insurance relating to the labor or services provided.

(xviii) Does the worker perform services for several persons or firms concurrently? Performance of services for a number of different unrelated clients indicates independent contractor status.

(xix) Does the worker offer services to the general public on a regular or consistent basis? An individual actively advertising services to the general public and representing to the public that the labor and services are to be provided by an independently established business is typically an independent contractor. The following are evidence of "actively advertising":

(A) The worker uses commercial advertising or business cards as is customary in operating a similar business, or is a member of a trade association;

(B) The worker uses a telephone listing and service for the business that is separate from the worker's personal residence listing and service.

(xx) Does the employer have the right to discharge the worker at will? An employee is typically subject to discharge or layoff at the will of the employer.

(xxi) Does the worker have the right to terminate the employment relationship without incurring liability? The right to terminate the work relationship at will usually indicates employee status.

(3) Typically, an independent contractor works for an employing individual or entity as a specialist in an independently established occupation, profession, trade or business. While the right of control over the method or means of work is determinative, the department shall also consider the following factors in evaluating independent contractor status. The degree of importance of each factor varies depending on the labor or services to be performed and the context in which the labor or services are performed.

(a) Does the worker perform labor or services only pursuant to written contracts?

(b) Has the worker providing labor or services attained business registrations, professional occupation licenses or

certificates required by state law or local government ordinances to perform the contracted labor or services?

- (c) Has the worker providing labor or services:
 - (i) Purchased worker's compensation insurance and paid taxes required for an independent business;
 - (ii) Filed income tax returns in the name of an independent business; or
 - (iii) Filed a Schedule of Expenses for the type of business conducted or a Business Schedule C or Farm Schedule F as part of the personal income tax return for the previous year if the worker performed the labor or services as an independent contractor in previous years?
- (d) Does the worker providing labor or services maintain a separate set of books or records that reflect all items of business income and expenses as an independently established business?
- (e) Has the worker assumed financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of a performance bond, warranties, errors and omissions insurance or liability insurance relating to the labor or services to be provided?

(4) The burden of persuasion in claiming that a worker is an independent contractor or an employee is on the worker or employer making the claim.

WSR 94-09-040
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS
 [Filed April 19, 1994, 9:03 a.m.]

and actuarially recompute the individual's retirement allowance pursuant to RCW 41.40.690 as follows:

- (a) If the member first retired before age sixty-five, the department shall:
 - (i) Calculate the retirement allowance pursuant to RCW 41.40.620 using the retiree's total years of career service, including service earned prior to initial retirement and service earned after reentering membership;
 - (ii) Actuarially reduce the member's retirement allowance based on the present value of the retirement allowance payments the individual received during the initial retirement; and
 - (iii) Calculate any survivor option selected by the retiree based upon the monthly retirement allowance calculated pursuant to (a)(i) and (ii) of this subsection.
- (b) If the member initially retired at or after age sixty-five, the department shall recompute the member's retirement allowance pursuant to RCW 41.40.620 and include any additional service credit earned and any applicable increase in the member's average final compensation resulting from the member's reentry into membership. Under no circumstances shall a retiree receive a retirement allowance creditable to a month during which that individual earned service credit.

(3) If a retiree's retirement allowance is suspended under RCW 41.40.690 due to reemployment but the retiree does not reenter membership, upon the retiree's separation from such employment, the retiree shall receive an actuarially recomputed retirement allowance equal to the sum of:

- (a) The amount of the monthly suspended retirement allowance; plus
- (b) An actuarially computed increase based upon the retirement allowance payments the member did not receive due to reemployment. The retiree may elect to receive the actuarially computed increase in either:
 - (i) An amount amortized over the expected term of the recomputed retirement allowance; or
 - (ii) A lump sum payment equal to the suspended retirement allowance plus interest.

NEW SECTION

WAC 415-104-111 Actuarial recomputation of retirement allowance upon retirement following reemployment. (1) The purpose of this rule is to establish a method to actuarially recompute the retirement allowance of a Plan II member who retires, reenters employment causing his or her retirement allowance to be suspended, and then retires again. The actuarially recomputed retirement allowance shall:

- (a) Include service credit the member earned following reestablishment of membership if any; and
 - (b) Account for the actuarial reduction applied to the member's initial retirement if the member initially retired prior to age fifty-five.
- (2) If a Plan II retiree reenters membership, upon the individual's next retirement, the department shall reinstate and actuarially recompute the individual's retirement allowance pursuant to RCW 41.26.500 as follows:
- (a) If the member first retired before age fifty-five, the department shall:

NEW SECTION

WAC 415-108-580 Actuarial recomputation of retirement allowance upon retirement following reemployment. (1) The purpose of this rule is to establish a method to actuarially recompute the retirement allowance of a Plan II member who retires, reenters employment causing his or her retirement allowance to be suspended, and then retires again. The actuarially recomputed retirement allowance shall:

- (a) Include service credit the member earned following reestablishment of membership if any; and
 - (b) Account for the actuarial reduction applied to the member's initial retirement if the member initially retired prior to age sixty-five.
- (2) If a Plan II retiree reenters membership, upon the individual's next retirement, the department shall reinstate

(i) Calculate the retirement allowance pursuant to RCW 41.26.420 using the retiree's total years of career service, including service earned prior to initial retirement and service earned after reentering membership;

(ii) Actuarially reduce the member's retirement allowance based on the present value of the retirement allowance payments the individual received during the initial retirement; and

(iii) Calculate any survivor option selected by the retiree based upon the monthly retirement allowance calculated pursuant to (a)(i) and (ii) of this subsection.

(b) If the member initially retired at or after age fifty-five, the department shall recompute the member's retirement allowance pursuant to RCW 41.26.500 and include any additional service credit earned and any applicable increase in the member's average final compensation resulting from the member's reentry into membership. Under no circumstances shall a retiree receive a retirement allowance creditable to a month during which that individual earned service credit.

(3) If a retiree's retirement allowance is suspended under RCW 41.26.500 due to reemployment but the retiree does not reenter membership, upon the retiree's separation from such employment, the retiree shall receive an actuarially recomputed retirement allowance equal to the sum of:

(a) The amount of the monthly suspended retirement allowance; plus

(b) An actuarially computed increase based upon the retirement allowance payment the member did not receive due to reemployment. The retiree may elect to receive the actuarially computed increase in either:

(i) An amount amortized over the expected term of the recomputed retirement allowance; or

(ii) A lump sum payment equal to the suspended retirement allowance plus interest.

NEW SECTION

WAC 415-112-840 Actuarial recomputation of retirement allowance upon retirement following reemployment. (1) The purpose of this rule is to establish a method to actuarially recompute the retirement allowance of a Plan II member who retires, reenters employment causing his or her retirement allowance to be suspended, and then retires again. The actuarially recomputed retirement allowance shall:

(a) Include service credit the member earned following reestablishment of membership if any; and

(b) Account for the actuarial reduction applied to the member's initial retirement if the member initially retired prior to age sixty-five.

(2) If a Plan II retiree reenters membership, upon the individual's next retirement, the department shall reinstate and actuarially recompute the individual's retirement allowance pursuant to RCW 41.32.800 as follows:

(a) If the member first retired before age sixty-five, the department shall:

(i) Calculate the retirement allowance pursuant to RCW 41.32.760 using the retiree's total years of career service, including service earned prior to initial retirement and service earned after reentering membership;

(ii) Actuarially reduce the member's retirement allowance based on the present value of the retirement allowance payments the individual received during the initial retirement; and

(iii) Calculate any survivor option selected by the retiree based upon the monthly retirement allowance calculated pursuant to (a)(i) and (ii) of this subsection.

(b) If the member initially retired at or after age sixty-five, the department shall recompute the member's retirement allowance pursuant to RCW 41.32.800 and include any additional service credit earned and any applicable increase in the member's average final compensation resulting from the member's reentry into membership. Under no circumstances shall a retiree receive a retirement allowance creditable to a month during which that individual earned service credit.

(3) If a retiree's retirement allowance is suspended under RCW 41.32.800 due to reemployment but the retiree does not reenter membership, upon the retiree's separation from such employment, the retiree shall receive an actuarially recomputed retirement allowance equal to the sum of:

(a) The amount of the monthly suspended retirement allowance; plus

(b) An actuarially computed increase based upon the retirement allowance payments the member did not receive due to reemployment. The retiree may elect to receive the actuarially computed increase in either:

(i) An amount amortized over the expected term of the recomputed retirement allowance; or

(ii) A lump sum payment equal to the suspended retirement allowance plus interest.

**WSR 94-09-066
PERMANENT RULES
FISH AND WILDLIFE
COMMISSION**

[Order 635—Filed April 20, 1994, 11:53 a.m.]

Date of Adoption: April 8, 1994.

Purpose: To provide additional protection of reduced sockeye production efforts on Baker and Shannon lakes.

Summary: This regulation would implement a minimum size limit on trout of six inches, and a maximum size limit of eighteen inches. Retaining trout under six inches or over eighteen inches would be prohibited.

Reasons Supporting this Proposal: Migrating sockeye smolts are generally less than six inches in length. This regulation would restrict retention of trout under six inches, thereby affording protection to sockeye smolts. The eighteen-inch maximum affords protection to adult sockeye by allowing them to spawn. There is no surplus of adult sockeye for angler harvest.

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

Resource Impacts: Providing protection to these particular sockeye runs. No resource impacts are anticipated on game fish.

Financial Impacts: None.

Citation of Existing Rules Affected by this Order: New section WAC 232-28-61947 1994-95 Washington game fish

seasons and catch limits—Baker Lake and Shannon Lake (Region 4).

Statutory Authority for Adoption: RCW 77.12.040.

Pursuant to notice filed as WSR 94-06-040 on February 25, 1994.

Changes Other than Editing from Proposed to Adopted Version: The adopted version of WAC 232-28-61947 Washington game fish seasons and catch limits—Baker Lake and Shannon Lake (Region 4) from the proposed version filed with the code reviser in the following specifics: **BAKER LAKE:** Change maximum length from "20 inches" to "18 inches", also Retaining TROUT ...over "20 inches" Change to over "18 inches" is prohibited; and **SHANNON LAKE:** change maximum length from "20 inches" to "18 inches", also, Retaining Trout...over "20 inches" change to over "18 inches" is prohibited.

Effective Date of Rule: Thirty-one days after filing.

April 16, 1994

John McGlenn

Chair

NEW SECTION

WAC 232-28-61947 1994-95 Washington game fish seasons and catch limits — Baker Lake and Shannon Lake (Region 4). Notwithstanding the provisions of WAC 232-28-619, the following game fish regulations apply to Baker Lake and Shannon Lake:

BAKER LAKE: April 30 through October 31 season. Feeding (chumming) permitted. TROUT - minimum length 6", maximum length ((~~20"~~)) 18". Retaining TROUT under 6" or over ((~~20"~~)) 18" is prohibited.

An area 200' in radius around the pump discharge, at the south end of the lake is closed.

SHANNON LAKE: April 30 through October 31 season. Feeding (chumming) permitted. TROUT - minimum length 6", maximum length ((~~20"~~)) 18". Retaining TROUT under 6" or over ((~~20"~~)) 18" is prohibited.

WSR 94-09-067
PERMANENT RULES
FISH AND WILDLIFE
COMMISSION

[Order 634—Filed April 20, 1994, 11:54 a.m.]

Date of Adoption: April 8, 1994.

Purpose: To make season corrections, clarify the regulation and provide increased recreational opportunity. Item 1, Grande Ronde River, corrects season from June 1 through April 30 to June 1 through April 15, and provides consistent, updated language for "wild steelhead release"; Item 2, Tucannon River, corrects season from November 1 through April 15 to September 1 through April 15, and establishes a trout catch limit of five; and Item 3, Sauk River, deletes reference to June 15 through October 31 wild steelhead release.

Summary: The above changes are to provide regulations that are clear, concise, consistent, and to provide recreational opportunity and resource protection as needed (see Reasons Supporting Proposal below).

Reasons Supporting Proposal: Item 1, Grande Ronde River, reverting the season back to June 1 through April 15 provides consistency with the wild steelhead release season ending April 15. This reinstates the steelhead season closing date of April 15 which is the current and preferred standard regulation to protect wild steelhead as adopted by the Wildlife Commission at its October 1993 meeting. Additionally, previously used language referring to wild steelhead release is proposed for replacement with the consistent language "wild steelhead release." This provides for clarity and consistency; Item 2, Tucannon River, regulations adopted for the Tucannon River inadvertently reduced the game fishing season by two months. This change reinstates September and October as open months for game fishing. This maintains the season anglers are familiar to enjoying and incurs no negative resource impacts. Also, a trout catch limit of 5, rather than 2 is proposed from Highway 12 Bridge upstream to mouth of Cummings Creek. This is to provide recreational opportunity on hatchery fish; and Item 3, Sauk River, deleting the special regulation referring to a June 15 through October 31 wild steelhead release causes the Sauk River (from its mouth to mouth of White Chuck River) regulation to default to the general statewide regulation-June 1 through November 30 wild steelhead release. This will provide needed protection for wild steelhead June 1 through June 14 and for the month of November.

Short Explanation of Rule, its Purpose, and Anticipated Effects: See supporting information provided above.

Resource Impacts: See supporting information provided above.

Financial Impacts: None.

Citation of Existing Rules Affected by this Order: New section WAC 232-28-61946 1994-95 Washington game fish seasons and catch limits—Grande Ronde River (Region 1), Tucannon River (Region 1), and Sauk River (Region 4).

Statutory Authority for Adoption: RCW 77.12.040.

Pursuant to notice filed as WSR 94-06-039 on February 25, 1994.

Effective Date of Rule: Thirty-one days after filing.

April 16, 1994

John McGlenn

Chair

NEW SECTION

WAC 232-28-61946 1994-95 Washington game fish seasons and catch limits-Grande Ronde River (Region 1), Tucannon River (Region 1), and Sauk River (Region 4). Notwithstanding the provisions of WAC 232-28-619, the following game fish regulations apply to the Grande Ronde River (Region 1), Tucannon River (Region 1), and Sauk River (Region 4).

Item 1: GRANDE RONDE RIVER

From County Road Bridge upstream to Oregon state line and all tributaries: June 1 through April 15 season. Trout, minimum length twelve inches. Selective fishery regulations June 1 through August 31. Wild steelhead release September 1 through April 15.

Item 2: TUCANNON RIVER

From Highway 261 Bridge upstream to Highway 12 Bridge: June 1 through August 31 season. Open only to fishing for steelhead and whitefish September 1 through April 15.

From Highway 12 Bridge upstream to mouth of Cummings Creek: Open only to fishing for steelhead and whitefish November 1 through April 15. Trout-catch limit-five.

Item 3: SAUK RIVER

From its mouth to mouth of White Chuck River: June 1 through February 28 season. Trout, minimum length fourteen inches. Dolly Varden/Bull Trout: Legal to retain Dolly Varden/Bull Trout as part of trout daily catch limit, minimum length twenty inches.

All other provisions of WAC 232-28-619 relating to the above waters remain in effect and unchanged.

**WSR 94-09-068
PERMANENT RULES
FISH AND WILDLIFE
COMMISSION**

[Order 633—Filed April 20, 1994, 11:56 a.m.]

Date of Adoption: April 8, 1994.

Purpose: Reinstates a twelve-inch minimum for trout for the Columbia River.

Summary: Adopts permanently a twelve-inch minimum for trout for the Columbia River. This regulation was approved by the Wildlife Commission as an emergency rule at its meeting January 21, 1994.

Reasons Supporting this Proposal: During the 1994-95 game fish regulation development process a recommendation was presented by the Department of Wildlife to the Washington Wildlife Commission to establish an eight-inch minimum size limit for trout statewide. Regions 4, 5, and 6 at that time managed trout under the eight-inch minimum size, but Regions 1, 2, and 3 maintained no minimum size limit. The proposal requested increasing the size limit from none to eight inches in Regions 1, 2, and 3, thereby establishing an eight-inch minimum size limit for trout statewide. The purpose for the recommendation was to allow more trout the opportunity to spawn at least one time before being subject to harvest, and to increase the survival of juvenile anadromous fish. The Washington Wildlife Commission adopted this regulation at its October 1, 1993, meeting. Within the technical process for providing bill-draft language for regulation changes statewide, language was inadvertently included for the Columbia River, reducing the trout minimum size limit from twelve inches to eight inches. The intent of the Department of Wildlife was not to change the minimum size limit for trout on the Columbia River. The intent was to leave the minimum size limit at twelve inches as established. The state of Oregon manages trout under a twelve-inch minimum size limit for the Columbia River. An eight-inch minimum size limit is not adequate to protect smolts or sea-run cutthroat trout in the Columbia River. Correction of this error is necessary to provide adequate protection for the steelhead and trout resources in this river.

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

Resource Impacts: Provides adequate protection for the steelhead and trout resources in this river.

Financial Impacts: None.

Citation of Existing Rules Affected by this Order: New section WAC 232-28-61945 1994-95 Washington game fish seasons and catch limits—Columbia River.

Statutory Authority for Adoption: RCW 77.12.040.

Pursuant to notice filed as WSR 94-06-038 on February 25, 1994.

Effective Date of Rule: Thirty-one days after filing,
April 16, 1994
John McGlenn
Chair

NEW SECTION

WAC 232-28-61945 1994-95 Washington game fish seasons and catch limits—Columbia River. Notwithstanding the provisions of WAC 232-28-619, the following regulations apply to the Columbia River:

<u>Game Fish Species</u>	<u>Daily Catch Limits</u>	<u>Minimum Size Limits</u>
Trout (Including kokanee and steelhead)	Two	Twelve inches

All other provisions of WAC 232-28-619 relating to the above water remain in effect and unchanged.

PERMANENT

WSR 94-09-004
EMERGENCY RULES
DEPARTMENT OF AGRICULTURE
 [Order 5039—Filed April 7, 1994, 1:47 p.m.]

Date of Adoption: April 7, 1994.

Purpose: To control the import and possession of the brushtailed possum because of disease transmission and reservoir concerns.

Citation of Existing Rules Affected by this Order: Amending chapter 16-54 WAC.

Statutory Authority for Adoption: RCW 16.36.096 and 16.36.040.

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: Brushtailed possums have been imported since 1992 unnoticed by USDA-APHIS and United States Fish and Wildlife Services. Some of the imports have undoubtedly been infected with tuberculosis and escapes of these animals could create a potential in the wild for tuberculosis which could severely impact wildlife and its habitat, domestic livestock and public health in this state.

Effective Date of Rule: Immediately.

April 7, 1994
 James M. Jesernig
 Director

NEW SECTION

WAC 16-54-035A Phalangeridae—Restrictions on import and possession. (1) Brushtail possums (New Zealand) have been imported into the United States from New Zealand since 1992. This exotic animal is recognized as the most efficient known reservoir for tuberculosis (*Mycobacterium bovis*) and is an important factor contributing to the inability of New Zealand to control bovine tuberculosis in their domestic livestock and wildlife. The subsequent effects of wild populations of the brushtail possum becoming established in Washington state on wildlife, domestic livestock, and public health require emergency import health restrictions and control measures for brushtail possums (*Trichosurus vulpecula*) and a related species, the spotted phalanger or spotted cuscus (*Phalanger maculatus*) as provided in subsection (2).

(2) Phalangeridae: Such as spotted phalanger or spotted cuscus (*Phalanger maculatus*), and brushtail possum (*Trichosurus vulpecula*) must be from sources not known to be affected with or exposed to tuberculosis and must comply with all state requirements governing import of these species. To protect wildlife, domestic livestock and the public health, all phalangeridae present in this state will be subject to the following conditions:

(a) All phalangeridae shall be held under quarantine until released by the state veterinarian pending investigation of source and legality of entry, and potential for tuberculosis infection.

(b) Any person possessing phalangeridae shall submit records to the state veterinarian showing sources, sales and other movements upon request of the state veterinarian.

(c) Premises wherein are found any phalangeridae with suspicious or confirmed tuberculosis shall be subject to inspection and investigation of all classes of animals on the premises. All cattle, bison or cervidae present on the premises, or which have been otherwise associated with phalangeridae shall be subject to mandatory testing for tuberculosis.

WSR 94-09-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 631—Filed April 8, 1994, 4:47 p.m., effective April 16, 1994]

Date of Adoption: April 8, 1994.

Purpose: Reinstates a trout - 2 fish catch limit on Lake Wenatchee and reinstates a trout - 12" minimum size limit of Spada Lake.

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: Lake Wenatchee: The two trout catch limit was inadvertently dropped when 1994-95 game fish regulations were adopted in October 1993. Reinstating this catch limit will maintain the intent to manage Lake Wenatchee for wild trout and anadromous fish. Spada Lake: Spada Lake is managed as a wild trout water. No plants have occurred in this lake since 1978. A twelve inch minimum size limit was put in place to insure adequate recruitment to the lake by insuring good numbers of spawners. The twelve inch minimum was inadvertently dropped when 1994-95 game fish regulations were adopted in October 1993.

Effective Date of Rule: April 16, 1994.

April 8, 1994
 John McGlenn, Chair
 Fish and Wildlife Commission

NEW SECTION

WAC 232-28-61948 1994-95 Washington game fish seasons and catch limits-Lake Wenatchee (Region 3) and Spada Lake (Region 4). Notwithstanding the provisions of WAC 232-28-619, the following regulations apply to Lake Wenatchee and Spada Lake:

Lake Wenatchee: TROUT - catch limit - two, minimum length twelve inches. Kokanee - catch limit sixteen. Feeding (chumming) permitted. Kokanee/sockeye under sixteen inches will be considered kokanee while those sixteen inches and over will be considered sockeye salmon.

Spada Lake (Reservoir): April 30 through October 31 season. Trout, minimum length twelve inches. Selective

EMERGENCY

fishery regulations, except electric motors allowed. All tributaries to lake are closed to fishing.

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

WSR 94-09-009
EMERGENCY RULES
PARKS AND RECREATION
COMMISSION

[Filed April 11, 1994, 2:11 p.m., effective May 1, 1994]

Date of Adoption: April 9, 1994.

Purpose: To remove the day-use parking permit and the annual day-use parking permit WAC language that would have become effective May 1, 1994.

Citation of Existing Rules Affected by this Order: Amending WAC 352-32-250.

Statutory Authority for Adoption: RCW 43.51.060.

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: On April 6, 1994, Governor Lowry vetoed the 1994 supplemental budget bill language that directed state parks to implement fees that would have raised at least \$3 million of additional revenue for the biennium. With the additional revenue requirement removed, the need for a day-use parking permit to raise revenue no longer exists. Filing on an emergency basis will prevent the day-use parking permit program from being implemented thereby allowing staff to save substantial funds and the public to continue day use of state parks at no charge.

Effective Date of Rule: May 1, 1994.

April 9, 1994
Anne Cox Preecs
Chair

[AMENDATORY SECTION (Amending WSR 94-08-036, filed 3/31/94)]

WAC 352-32-250 Standard fees charged. The following fees shall be charged in all parks operated by the Washington state parks and recreation commission:

(1) Overnight camping - standard campsite: \$10.00 per night;

(2) Overnight camping - utility campsite: \$15.00 per night. Payment for utility campsite will be collected whether utility hookups are actually used or not, except when otherwise specified by a ranger. The electrical hookup surcharge reference in WAC 352-32-252(3) shall be \$3.00 per night;

(3) Overnight camping - primitive campsite: \$5.00 per night for nonmotorized vehicle and \$7.00 per night for motorized vehicle;

(4) Overnight camping - reservation fee: As specified in WAC 352-32-035;

(5) Overnight camping - multiple campsites: Where campsites are designated and posted as a "multiple campsite," an individual may rent the multiple campsite by paying the multiple campsite fee. The multiple campsite fee will be calculated by multiplying the standard utility or primitive campsite fee, as applicable, by the number of individual campsites to be used in the designated multiple campsite;

(6) Group camping area - certain parks: \$1.00 per person for groups of 20 or more per day and/or night; nonrefundable reservation/registration fee - \$25.00. Camping units must pay the primitive campsite fee or other appropriate fee based on facilities available;

(7) Environmental learning center - overnight camping: \$5.50 per camper per night;

(a) Camp Wooten environmental learning center during the season the swimming pool is operational: \$6.85 per camper per night;

(b) Environmental learning center - day use only: \$2.00 multiplied by the minimum capacity established for each environmental learning center or \$2.00 for each member of the group - whichever is higher;

(c) A late check-in fee of \$50.00 shall be charged if arrival is more than one hour after the scheduled check-in time, unless the group contacts the park ranger prior to scheduled check-in time in order to reschedule the check-in;

(8) Hot showers: \$.25 for a maximum of six minutes shower time;

(9) Electric stoves: \$.25 for thirty minutes cooking time;

(10) Adirondacks - not to include those located in ELC areas: Same as fee charged for full utility campsite. Occupancy shall be limited to the number of built-in bunks provided;

(11) Extra vehicle overnight parking fee: \$5.00 per night for each additional unhitched vehicle in excess of the one recreational vehicle allowed at each campsite: *Provided*, An extra vehicle overnight parking fee shall not be imposed when the recreational vehicle and the towed vehicle arrive at the park hitched together, and after the camper has registered for and occupied the assigned campsite either the recreational vehicle or the towed vehicle remain parked at the campsite for the duration of the camper's stay;

(12) Marine park moorage facilities - see WAC 352-12-020 and 352-12-030;

(13) Overnight camping - emergency camp area: The fee shall be the standard campsite fee.

These fees do not apply in those circumstances set forth in WAC 352-32-280 and 352-32-285 as now or hereafter amended.

(14) Unattended vehicle overnight parking permit: \$5.00 per night per vehicle. Unoccupied vehicles parked overnight in designated areas must register and pay the nightly permit fee. The permit must be prominently displayed in the vehicle;

(15) Boat launch permit fee - \$4.00 per day per watercraft for use of all boat launches designated by the commission with maintained bathrooms, parking areas, and docking facilities. \$3.00 per day per watercraft for use of all other boat launches designated by the commission. Boat launch permit shall not be required for:

(a) Vehicles registered for camping in the park containing the boat launch area;

(b) Vehicles of persons using any recreational housing or conference facilities at Fort Worden State Park;

(c) Vehicles of persons holding limited-income senior citizen, disability or disabled veteran passes;

(d) Vehicles displaying a valid annual boat launch permit;

(16) Annual boat launch permit fee - \$40.00 per boat launching vehicle per calendar year. Valid January 1 - December 31 at any launch designated by the commission. Permit must be displayed as instructed on permit backing;

(17) Trailer dump station fee - \$3.00 per use: Fee shall not be required for registered camping vehicles in the park containing the dump station;

(18) Popular destination park fee - \$1.00 surcharge for use of standard or utility campsite located in a popular destination park during the period of April 1 through September 30;

(19) Marine trail camping area fee - certain parks: \$1.00 per person per day and/or night;

(20) Day use parking permit—\$2.00 per vehicle per day for parking in all designated state parks Thursday through Monday year round. The Director shall implement day use parking at those parks that meet the following criteria:

~~(a) High revenue potential;~~

~~(b) Facilities suitable for fee collection;~~

~~(c) Availability of staff to collect fees; and~~

~~(d) Minimal impact on surrounding neighborhoods.~~

Day use parking permit requirements shall not be imposed on the following:

~~(i) Any administrative vehicle;~~

~~(ii) Vehicles used for boat launching which are subject to a boat launch fee as set forth in subsection (15) of this section;~~

~~(iii) Vehicles of persons camping/overnight mooring within the park use area;~~

~~(iv) Vehicles of persons using any recreational housing or conference facilities at Fort Worden State Park;~~

~~(v) Vehicles of persons using the environmental learning center at the park;~~

~~(vi) In snow parks between October 1 and May 1, vehicles of persons with current snow park permits;~~

~~(vii) Vehicles of persons holding limited-income senior citizen, disability or disabled veteran passes;~~

~~(viii) Vehicles of persons that paid the unattended vehicle overnight parking permit;~~

~~(ix) Vehicles displaying a valid annual day use parking permit;~~

(21) Annual day use parking permit—\$15.00 per vehicle per calendar year valid January 1 through December 31 at any designated state park area Thursday through Monday;

(22) Those permit payments required in subsections 20 and 21 of this section shall sunset December 31, 1995.

(23) A surcharge of \$5.00 per collection shall be assessed for any staff collected fee at a self-registration overnight facility.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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.

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 94-09-020
EMERGENCY RULES
DEPARTMENT OF
NATURAL RESOURCES**

[Order 621—Filed April 14, 1994, 9:30 a.m.]

Date of Adoption: April 14, 1994.

Purpose: Postponing the starting date of closed season.

Statutory Authority for Adoption: RCW 76.04.005(2).

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: Current and predicted weather conditions allow for the delay of the start of the closed season, as defined in RCW 76.04.005(2), until June 1, 1994.

Effective Date of Rule: Immediately.

April 14, 1994

Amy Bell

for Kaleen Cottingham

Supervisor

NEW SECTION

WAC 332-26-080 Closed season. The start of the Closed Season, as defined in RCW 76.04.005(2), for 1994 shall be delayed until June 1.

**WSR 94-09-021
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 94-20—Filed April 14, 1994, 4:25 p.m.]

Date of Adoption: April 14, 1994.

Purpose: Commercial fishing regulations.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-49-020.

Statutory Authority for Adoption: RCW 75.08.080.

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: This change was recently adopted as a permanent regulation by the department, but the new regulation has not yet become effective. The fishery is

scheduled to start on April 18, 1994, and this regulation is required to ensure an orderly commercial fishery.

Effective Date of Rule: Immediately.

April 14, 1994
Judith Freeman
Deputy
for Robert Turner
Director

NEW SECTION

WAC 220-49-02000G Baitfish—Seasons. Notwithstanding the provisions of WAC 220-49-020, effective immediately through May 31, 1994, it is unlawful to commercially fish for or possess herring, candlefish, anchovies and sardines in Marine Fish and Shellfish Catch Management and Catch Reporting Areas 20A, 20B, 21A and 21B except for authorized participants in the herring spawn-on-kelp fishery. Fishing gear specifications and limitations on fishing on detailed is detailed in each herring spawn-on-kelp license.

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.

**WSR 94-09-022
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 94-21—Filed April 14, 1994, 4:29 p.m.]

Date of Adoption: April 14, 1994.

Purpose: Commercial fishing regulations.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-32-055.

Statutory Authority for Adoption: RCW 75.08.080.

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: Harvestable numbers of salmon are available for a subsistence fishery. This conforms state rules with Yakama Indian Nation regulations.

Effective Date of Rule: Immediately.

April 14, 1994
Gene DiDonato
for Robert Turner
Director

NEW SECTION

WAC 220-32-05500F Columbia River tributaries—Subsistence. Notwithstanding the provisions of WAC 220-32-055, effective immediately until further notice, it is unlawful for a person possessing treaty fishing rights under the Yakama treaty to take or possess salmon taken for subsistence purposes from the Yakima River, the Klickitat River, Icicle Creek, the Wind River, or the Columbia River

in the vicinity of Ringold Hatchery, except under the following provisions:

(1) The Yakima River from Horn Rapids Dam to Wapato Dam is open noon Tuesday to 6:00 p.m. Saturday of each week from April 12 through June 25.

(2) The Klickitat River from the Swinging Bridge (RM 1.5) to Fishway No. 5 (RM 2.2) is open noon Wednesday to 6:00 p.m. Saturday of each week from April 6 through May 28.

(3) Icicle Creek where it borders the property of the U.S. Fish and Wildlife National Fish Hatchery at Leavenworth is open 9:00 p.m. Wednesday to noon Saturday of each week from May 4 through June 25.

(4) The Wind River from the mouth to a marker 400 feet downstream of Shipperd Falls is open 6:00 a.m. Monday to 6:00 p.m. Saturday of each week from March 28 through June 11.

(5) The Wind River from 200 feet above Shipperd Falls upstream to a marker 30 feet below the outlet stream for Carson National Fish Hatchery is open noon Wednesday to 6:00 p.m. Saturday of each week from June 1 through June 25.

(6) Columbia River from a marker approximately 1/2 mile upstream of Spring Creek (Hatchery rearing pond outlet) downstream to a marker approximately 1.4 mile downstream of Ringold wasteway outlet is open 6:00 a.m. Monday to 6:00 p.m. Saturday of each week from April 4 through July 30.

**WSR 94-09-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 94-22—Filed April 14, 1994, 4:32 p.m.]

Date of Adoption: April 14, 1994.

Purpose: Personal use rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-56-36000I; and amending WAC 220-56-360.

Statutory Authority for Adoption: RCW 75.08.080.

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: Test results show that adequate clams are available for harvest in Razor Clam Areas 1, 2 and 3. Department of Health has issued a human health advisory for clams dug north of the Moclips River, except for that portion of beaches at Kalaloch described above. Digging clams determined to be unsafe for human consumption would lead to wastage.

Effective Date of Rule: Immediately.

April 14, 1994
Mary Lou Mills
for Robert Turner
Director

NEW SECTION

WAC 220-56-3600J Razor clams. Notwithstanding the provisions of WAC 220-56-360, effective immediately it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, 3 except as provided in this section:

- (1) Razor Clam Area 1 is open 12:01 a.m. to 12:00 noon each day, immediately through April 30, 1994.
- (2) Razor Clam Area 2 and that portion of Razor Clam Area 3 south of the Moclips River are open from 12:01 a.m. to 12:00 noon on odd-numbered days only, immediately through April 29, 1994.
- (3) Razor Clam Area 3 - that portion from Olympic National Park Beach Trail 2 (Kalaloch area, Jefferson County) to Olympia National Park Beach 3 (Kalaloch area, Jefferson County) is open from 12:01 a.m. April 15, through 11:59 p.m. May 13, 1994, on odd days only.
- (4) It is unlawful to dig for razor clams at anytime in Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-3600I Razor clams. (94-16)

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

WSR 94-09-024
EMERGENCY RULES
DEPARTMENT OF HEALTH
 (Examining Board of Psychology)
 [Filed April 15, 1994, 8:51 a.m.]

Date of Adoption: April 15, 1994.

Purpose: Adopt by emergency rule WAC 246-924-095 Failure of oral examination. Rule outlines the necessary requirements for an applicant to sit for a second, third or successive oral examination.

Statutory Authority for Adoption: RCW 18.155.040(5).

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: Need to implement this rule immediately for any applicants who have failed oral examinations that need to be on notice of requirements for taking future successive oral examinations.

Effective Date of Rule: Immediately.

March 25, 1994
 Dolph M. Printz, Ph.D., Chair
 Examining Board of Psychology

NEW SECTION

WAC 246-924-095 Failure of oral examination. After an oral examination failure, an applicant shall sit for reexamination as follows:

- (1) First reexamination: At the next administration date or any subsequent administration date;
- (2) Second reexamination: At least one year after the date of the first reexamination;
- (3) Successive reexamination: At least one year after the date of the previous reexamination and after having shown adequate proof of meeting any additional professional training required by the board.

WSR 94-09-030
EMERGENCY RULES
FOREST PRACTICES BOARD
 [Filed April 15, 1994, 10:31 a.m.]

Date of Adoption: April 15, 1994.

Purpose: To modify forest practices rules, in order to protect public resources while maintaining a viable timber industry.

Citation of Existing Rules Affected by this Order: Amending WAC 222-16-010, 222-16-035, and 222-30-020.

Statutory Authority for Adoption: RCW 76.09.040 and chapter 34.05 RCW.

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: To protect forested bogs and fens as Type A wetlands which require a wetland management zone (WMZ).

Effective Date of Rule: Immediately.

April 14, 1994
 Jennifer M. Belcher
 Commissioner of Public Lands

AMENDATORY SECTION (Amending WSR 93-12-001, filed 5/19/93, effective 6/19/93)

WAC 222-16-010 General definitions.* Unless otherwise required by context, as used in these regulations: "Act" means the Forest Practices Act, chapter 76.09 RCW.

"Affected Indian tribe" means any federally recognized Indian tribe that requests in writing from the department information on forest practices applications and notification filed on specified areas.

"Appeals board" means the forest practices appeals board established in the act.

EMERGENCY

"Area of resource sensitivity" means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060(2).

"Board" means the forest practices board established by the act.

"Bog" means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as sphagnum moss, labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce, western hemlock, lodgepole pine, cedar, crabapple, or aspen, and may be associated with open water.

"Borrow pit" shall mean an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

"Chemicals" means substances applied to forest lands or timber including pesticides, fertilizers, and other forest chemicals.

"Clearcut" means a harvest method in which the entire stand of trees is removed in one timber harvesting operation. Except as provided in WAC 222-30-110, an area remains clearcut until:

It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Commercial tree species" means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

"Completion of harvest" means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: *Provided*, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

"Constructed wetlands" means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

"Contamination" means the introducing into the atmosphere, soil, or water, sufficient quantities of substances as may be injurious to public health, safety or welfare, or to domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

"Conversion option harvest plan" means a voluntary plan developed by the landowner and approved by the local

government entity indicating the limits of harvest areas, road locations, and open space.

"Conversion to a use other than commercial timber operation" shall mean a bona fide conversion to an active use which is incompatible with timber growing.

"Critical habitat (federal)" means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior under Sections 3(5)(A) and 4(a)(3) of the Federal Endangered Species Act.

"Critical wildlife habitat (state)" means those habitats designated by the board in accordance with WAC 222-16-080.

"Cultural resources" means archaeological and historic sites and artifacts and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

"Cumulative effects" means the changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices.

"Debris" means woody vegetative residue less than 3 cubic feet in size resulting from forest practice activities which would reasonably be expected to cause significant damage to a public resource.

"Department" means the department of natural resources.

"Eastern Washington" means the lands of the state lying east of an administrative line which approximates the change from the Western Washington timber types to the Eastern Washington timber types described as follows:

Beginning at the International Border and Okanogan National Forest boundary at the N1/4 corner Section 6, T. 40N, R. 24E., W.M., south and west along the Pasayten Wilderness boundary to the west line of Section 30, T. 37N, R. 19E.,

Thence south on range line between R. 18E. and R. 19E., to the Lake Chelan-Sawtooth Wilderness at Section 31, T. 35N, R. 19E.,

Thence south and east along the eastern wilderness boundary of Lake Chelan-Sawtooth Wilderness to the west line of Section 18, T. 31N, R. 19E. on the north shore of Lake Chelan,

Thence south on the range line between R. 18E. and R. 19E. to the SE corner of T. 28N, R. 18E.,

Thence west on the township line between T. 27N, and T. 28N to the NW corner of T. 27N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the Alpine Lakes Wilderness at Section 31, T. 26N, R. 17E.,

Thence south along the eastern wilderness boundary to the west line of Section 6, T. 22N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the SE corner of T. 22N, R. 16E.,

Thence west along township line between T. 21N, and T. 22N to the NW corner of T. 21N, R. 15E.,

Thence south along range line between R. 14E. and R. 15E. to SW corner of T. 20N, R. 15E.,

Thence east along township line between T. 19N, and T. 20N to the SW corner of T. 20N, R. 16E.,

Thence south along range line between R. 15E. and R. 16E. to the SW corner of T. 18N, R. 16E.,

Thence west along township line between T. 17N, and T. 18N to the SE corner of T. 18N, R. 14E.,

Thence south along range line between T. 14E. and R. 15E. to the SW corner of T. 14N, R. 15E.,

Thence south and west along Wenatchee National Forest Boundary to the NW corner of T. 12N, R. 14E.,

Thence south along range line between R. 13E. and R. 14E. to SE corner of T. 10N, R. 13E.,

Thence west along township line between T. 9N, and T. 10N to the NW corner of T. 9N, R. 12E.,

Thence south along range line between R. 11E. and R. 12E. to SE corner of T. 8N, R. 11E.,

Thence west along township line between T. 7N, and T. 8N to the Gifford Pinchot National Forest Boundary,

Thence south along Forest Boundary to SE corner of Section 33, T. 7N, R. 11E.,

Thence west along township line between T. 6N, and T. 7N to SE corner of T. 7N, R. 9E.,

Thence south along Skamania-Klickitat County line to Oregon-Washington state line.

"End hauling" means the removal and transportation of excavated material, pit or quarry overburden, or landing or road cut material from the excavation site to a deposit site not adjacent to the point of removal.

"Erodible soils" means those soils exposed or displaced by a forest practice operation, that would be readily moved by water.

"Even-aged harvest methods" means the following harvest methods:

Clearcuts;

Seed tree harvests in which twenty or fewer trees per acre remain after harvest;

Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;

Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;

Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;

Partial cutting in which fewer than fifty trees per acre remain after harvest;

Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and

Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC 222-30-010(2) or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Fen" means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce, western hemlock, lodgepole pine, cedar, crabapple, or aspen, and may be associated with open water.

"Fertilizers" means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

"Fill" means the placement of earth material or aggregate for road or landing construction or other similar activities. Fill does not include the growing or harvesting of timber including, but not limited to, slash burning, site preparation, reforestation, precommercial thinning, intermediate or final harvesting, salvage of trees, brush control, or fertilization.

"Flood level - 50 year." For purposes of field interpretation of these regulations, the 50-year flood level shall be considered to refer to a vertical elevation measured from the ordinary high-water mark which is 1.25 times the vertical distance between the average stream bed and the ordinary high-water mark, and in horizontal extent shall not exceed 2 times the channel width measured on either side from the ordinary high-water mark, unless a different area is specified by the department based on identifiable topographic or vegetative features or based on an engineering computation of flood magnitude that has a 2 percent chance of occurring in any given year. The 50-year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.

"Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing.

"Forest land owner" shall mean any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner: *Provided*, That any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest land owner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

"Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

Road and trail construction;

Harvesting, final and intermediate;

Precommercial thinning;

Reforestation;

Fertilization;

Prevention and suppression of diseases and insects;

Salvage of trees; and

Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

"Forest trees" excludes trees cultivated by agricultural methods in growing cycles shorter than ten years: *Provided*, That Christmas trees are forest trees and: *Provided further*,

That this exclusion applies only to trees planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees.

"Green recruitment trees" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

"Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

"Historic site" includes:

Sites, areas and structures or other evidence of human activities illustrative of the origins, evolution and development of the nation, state or locality; or

Places associated with a personality important in history;

or

Places where significant historical events are known to have occurred even though no physical evidence of the event remains.

"Identified watershed processes" means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

Mass wasting;

Surface and road erosion;

Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);

Large organic debris;

Shading; and

Stream bank and bed stability.

"Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

"Interdisciplinary team" (ID Team) means a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practice activity.

"Islands" means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

"Limits of construction" means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

"Load bearing portion" means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

"Local government entity" means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

"Low impact harvest" means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process. The department shall determine such equipment, methods or systems in consultation with the department of ecology.

"Merchantable stand of timber" means a stand of trees that will yield logs and/or fiber:

Suitable in size and quality for the production of lumber, plywood, pulp or other forest products;

Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

"Notice to comply" means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

"Operator" shall mean any person engaging in forest practices except an employee with wages as his/her sole compensation.

"Ordinary high-water mark" means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: *Provided*, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

"Other forest chemicals" means fire retardants when used to control burning (other than water), nontoxic repellents, oil, dust-control agents (other than water), salt, and other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

"Park" means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

"Partial cutting" means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

"Pesticide" means any insecticide, herbicide, fungicide, or rodenticide but does not include nontoxic repellents or other forest chemicals.

"Plantable area" is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility rights-of-way, that portion of riparian management zones where scarification is not permitted, and any other area devoted to a use incompatible with commercial timber growing.

"Power equipment" means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

"Public resources" means water, fish, and wildlife and in addition shall mean capital improvements of the state or its political subdivisions.

"Rehabilitation" means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

"Relief culvert" means a structure to relieve surface runoff from roadside ditches to prevent excessive buildup in water volume and velocity.

"Resource characteristics" means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

For fish and water:

Physical fish habitat, including temperature and turbidity;

Turbidity in hatchery water supplies; and
Turbidity and volume for areas of water supply.

For capital improvements of the state or its political subdivisions:

Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other characteristics of fish, water, and capital improvements of the state or its subdivisions, the board shall amend this list to include these characteristics.

"Riparian management zone" means a specified area alongside Type 1, 2 and 3 Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

"Salvage" means the removal of snags, down logs, windthrow, or dead and dying material.

"Scarification" means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

"Shorelines of the state" shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

"Side casting" means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

"Site preparation" means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

"Skid trail" means a route used by tracked or wheeled skidders to move logs to a landing or road.

"Slash" means pieces of woody material containing more than 3 cubic feet resulting from forest practice activities.

"Spoil" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"Stop work order" means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

"Threatened or endangered species" means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior, and all species of wildlife designated as "threatened" or "endangered" by the Washington wildlife commission.

"Timber" shall mean forest trees, standing or down, of a commercial species, including Christmas trees.

"Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

"Watershed administrative unit (WAU)" means an area shown on the map specified in WAC 222-22-020(1).

"Watershed analysis" means, for a given WAU, the assessment completed under WAC 222-22-050 or 222-22-060 together with the prescriptions selected under WAC 222-22-070 and shall include assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity.

"Weed" is any plant which tends to overgrow or choke out more desirable vegetation.

"Western Washington" means the lands of the state lying west of the administrative line described in the definition of Eastern Washington.

"Wetland" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

"Wetland functions" include the protection of water quality and quantity, providing fish and wildlife habitat, and the production of timber.

"Wetland management zone" means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

"Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

"Wildlife reserve trees" means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

"**Windthrow**" means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

AMENDATORY SECTION (Amending WSR 92-15-011 [94-01-134], filed 7/2/92 [12/20/93], effective 8/2/92 [1/1/94])

WAC 222-16-035 Wetland typing system. *The department in cooperation with the departments of fisheries, wildlife, and ecology, and affected Indian tribes shall classify wetlands. The wetlands will be classified in order to distinguish those which require wetland management zones and those which do not. Wetlands which require wetland management zones shall be identified using the following criteria. Accurate delineation of wetlands in accordance with the manual shall be required only where necessary to determine whether replacement by substitution or enhancement is required pursuant to WAC 222-24-025(10) and shall be limited to the area of wetland proposed to be filled. For the purposes of determining acreage to classify or type wetlands under this section, approximate determination using aerial photographs and maps, including the national wetlands inventory, shall be sufficient. In addition, the innermost boundary of the wetland management zone on Type A or B wetlands may be determined by either of two methods: Delineation of the wetland edge, or identifying the point where the crown cover changes from less than 30% to 30% or more. Except where necessary to determine whether replacement by substitution or enhancement is required pursuant to WAC 222-24-025(10), accurate delineation shall not be required under this Title 222 WAC for activities regulated by these rules, including but not limited to the location of roads, landings, culverts, and cross drains. Landowners are encouraged to leave vegetation in these forested wetlands in undisturbed leave areas where possible. When so requested by any affected landowners, applicant or aggrieved person, the department shall make available informal conferences, which shall include the departments of fisheries, wildlife, and ecology, and affected Indian tribes and those contesting the adopted wetland types. These conferences shall be established under procedures established in WAC 222-46-020.

(1) "**Nonforested wetlands**" means any wetland or portion thereof that has, or if the trees were mature would have, a crown closure of less than 30 percent.

(a) "**Type A Wetland**" classification shall be applied to all nonforested wetlands which:

(i) Are greater than 0.5 acre in size, including any acreage of open water where the water is completely surrounded by the wetland; and

(ii) Are associated with at least 0.5 acre of ponded or standing open water. The open water must be present on the site for at least 7 consecutive days between April 1 and October 1 to be considered for the purposes of these rules(;

~~(iii) Are bogs and fens greater than 0.25 acre).~~

(b) "**Type B Wetland**" classification shall be applied to all other nonforested wetlands greater than 0.25 acre.

(2) "**Forested wetland**" means any wetland or portion thereof that has, or if the trees were mature would have, a crown closure of 30 percent or more.

(3) "**All forested and nonforested bogs and fens**" greater than 0.25 acres shall be considered Type A Wetlands.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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 WSR 93-12-001, filed 5/19/93, effective 6/19/93)

WAC 222-30-020 Harvest unit planning and design.

(1) **Logging system.** The logging system should be appropriate for the terrain, soils, and timber type so yarding or skidding can be economically accomplished in compliance with these regulations.

***(2) Landing locations.** Locate landings to prevent damage to public resources. Avoid excessive excavation and filling.

***(3) Western Washington riparian management zones.** These zones shall be measured horizontally from the ordinary high-water mark of Type 1, 2 or 3 Water and extend to the line where vegetation changes from wetland to upland plant community, or the line required to leave sufficient shade as required by WAC 222-30-040, whichever is greater, but shall not be less than 25 feet in width nor more than the maximum widths described in (c) of this subsection, provided that the riparian management zone width shall be expanded as necessary to include wetlands or ponds adjacent to the stream. When the riparian management zone overlaps a Type A or B Wetland or a wetland management zone, the requirement which best protects public resources shall apply.

(a) Harvest units shall be designed so that felling, bucking, yarding or skidding, and reforestation can be accomplished in accordance with these regulations, including those regulations relating to stream bank integrity and shade requirements to maintain stream temperature. Where the need for additional actions or restrictions adjacent to waters not covered by the following become evident, WAC 222-12-050 and 222-12-060 may apply.

(b) When requested in writing by the applicant, the department shall assist in preparation of an alternate plan for the riparian management zone.

(c) Within the riparian management zone, there shall be trees left for wildlife and fisheries habitat as provided for in the chart below. Fifty percent or more of the trees shall be live and undamaged on completion of the harvest. The leave trees shall be randomly distributed where feasible; some clumping is allowed to accommodate operational considerations. The number, size, species and ratio of leave trees, deciduous to conifer, is specified by the bed material and average width of the water type within the harvest unit. Trees left according to (d) of this subsection may be included in the number of required leave trees in this subsection.

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Water Type / Average Width	RMZ Maximum Width	Ratio of Conifer to Deciduous/Minimum Size Leave Trees	# Trees/1000 ft. each side
1 & 2 Water 75' & over	100'	representative of stand	50 trees 25 trees
1 & 2 Water under 75'	75'	representative of stand	100 trees 50 trees
3 Water 5' & over	50'	2 to 1/ 12" or next largest available	75 trees 25 trees
3 Water less than 5'	25'	1 to 1/ 6" or next largest available	25 trees 25 trees

Water Type / Average Width	RMZ Maximum Width	Ratio of Conifer to Deciduous/Minimum Size Leave Trees	# Trees/1000 ft. each side	
			Gravel/Cobble <10" Diameter	Boulder/Bedrock
1 & 2 Water 75' & over	100'	representative of stand	50 trees	25 trees
1 & 2 Water under 75'	75'	representative of stand	100 trees	50 trees
3 Water 5' & over	50'	2 to 1/ 12" or next largest available	75 trees	25 trees
3 Water less than 5'	25'	1 to 1/ 6" or next largest available	25 trees	25 trees

"Or next largest available" requires that the next largest trees to those specified in the rule be left standing when those available are smaller than the sizes specified. Ponds or lakes which are Type 1, 2 or 3 Waters shall have the same leave tree requirements as boulder/bedrock streams.

(d) For wildlife habitat within the riparian management zone, leave an average of 5 undisturbed and uncut wildlife trees per acre at the ratio of 1 deciduous tree to 1 conifer tree equal in size to the largest existing trees of those species within the zone. Where the 1 to 1 ratio is not possible, then substitute either species present. Forty percent or more of the leave trees shall be live and undamaged on completion of harvest. Wildlife trees shall be left in clumps whenever possible.

(e) When 10 percent or more of the harvest unit lies within any combination of a riparian management zone of Type 1, 2 or 3 Waters or a wetland management zone and the harvest unit is a clearcutting of 30 acres or less, leave not less than 50 percent of the trees required in (c) of this subsection.

*** (4) Eastern Washington riparian management zones.** These zones shall be measured horizontally from the ordinary high-water mark of Type 1, 2 or 3 Waters and extend to the line where vegetation changes from wetland to upland plant community, or to the line required to leave sufficient shade as required by WAC 222-30-040, whichever is greater, but shall not be less than the minimum width nor more than the maximum widths described in (c) of this

subsection, provided that the riparian management zone width shall be expanded as necessary to include wetlands or ponds adjacent to the stream. When the riparian management zone overlaps a Type A or B Wetland or a wetland management zone, the requirement which best protects public resources shall apply.

(a) Harvest units shall be designed so that felling, bucking, yarding or skidding, and reforestation can be accomplished in accordance with these regulations, including those regulations relating to stream bank integrity and shade requirements to maintain stream temperature. Where the need for additional actions or restrictions adjacent to waters not covered by the following become evident, WAC 222-12-050 and 222-12-060 may apply.

(b) When requested in writing by the applicant, the department shall assist in preparation of an alternate plan for the riparian management zone.

(c) Within the riparian management zone, there shall be trees left for wildlife and fisheries habitat as provided for below. Fifty percent or more of the trees shall be live and undamaged on completion of the harvest. The leave trees shall be randomly distributed where feasible; some clumping is allowed to accommodate operational considerations.

(i) The width of the riparian management zone shall be based on the adjacent harvest type as defined in WAC 222-16-010 "Partial cutting." When the adjacent unit harvest type is:

Partial cutting - The riparian management zone width shall be a minimum of 30 feet to a maximum of 50 feet on each side of the stream.

Other harvest types - The riparian management zone shall average 50 feet in width on each side of the stream with a minimum width of 30 feet and a maximum of 300 feet on each side of the stream.

(ii) Leave tree requirements within the riparian management zones of Type 1, 2 or 3 Waters:

(A) Leave all trees 12 inches or less in diameter breast height (dbh); and

(B) Leave all wildlife reserve trees within the riparian management zone where operations in the vicinity do not violate the state safety regulations (chapter 296-54 WAC and chapter 49.17 RCW administered by department of labor and industries, safety division); and

(C) Leave 16 live conifer trees/acre between 12 inches dbh and 20 inches dbh distributed by size, as representative of the stand; and

(D) Leave 3 live conifer trees/acre 20 inches dbh or larger and the 2 largest live deciduous trees/acre 16 inches dbh or larger. Where these deciduous trees do not exist, and where 2 wildlife reserve trees/acre 20 inches or larger do not exist, substitute 2 live conifer trees/acre 20 inches dbh or larger. If live conifer trees of 20 inches dbh or larger do not exist within the riparian management zone, then substitute the 5 largest live conifer trees/acre; and

(E) Leave 3 live deciduous trees/acre between 12 inches and 16 inches dbh where they exist.

(iii) Minimum leave tree requirements per acre for Type 1, 2 and 3 Waters. Trees left for (c)(ii) of this subsection shall be included in the minimum counts.

(A) On streams with a boulder/bedrock bed, the minimum leave tree requirements shall be 75 trees/acre 4 inches dbh or larger.

(B) On streams with a gravel/cobble (less than 10 inches diameter) bed, the minimum leave tree requirement shall be 135 trees/acre 4 inches dbh or larger.

(C) On lakes or ponds the minimum leave tree requirement shall be 75 trees/acre 4 inches dbh or larger.

Note: (See the Forest Practices Board Manual for assistance in calculating trees/acre and average RMZ widths.)

(d) When 10 percent or more of the harvest unit lies within any combination of a riparian management zone of Type 1, 2 or 3 Waters or a wetland management zone and either the harvest unit is a clearcutting of 30 acres or less or the harvest unit is a partial cutting of 80 acres or less, leave not less than 50 percent of the trees required in (c) of this subsection. (See WAC 222-16-010 "Partial cutting.")

* (5) Riparian leave tree areas. The department will require trees to be left along Type 4 Water where such practices are necessary to protect public resources. Where such practices are necessary leave at least 25 conifer or deciduous trees, 6 inches in diameter or larger, on each side of every 1000 feet of stream length within 25 feet of the stream. The leave trees may be arranged to accommodate the operation.

(6) **Forested wetlands.** Within the wetland, unless otherwise approved in writing by the department, harvest methods shall be limited to low impact harvest or cable systems. Where feasible, at least one end of the log shall be suspended during yarding.

(a) When forested wetlands are included within the harvest area, landowners are encouraged to leave a portion (30 to 70%) of the wildlife reserve tree requirement for the harvest area within a wetland. In order to retain undisturbed habitat within forested wetlands, these trees should be left in clumps. Leave tree areas should be clumped adjacent to streams, riparian management zones, or wetland management zones where possible and they exist within forested wetlands. Green recruitment trees should be representative of the size and species found within the wetland. Leave nonmerchantable trees standing where feasible.

(b) If a RMZ or WMZ lies within a forested wetland, the leave tree requirement associated with those areas may be counted toward the percentages in (a) of this subsection.

(c) If the conditions described in (a) and (b) of this subsection are met, the distribution requirements for wildlife reserve trees and green recruitment trees (subsection (11)(e) of this section) are modified as follows: For purposes of distribution, no point within the harvest unit shall be more than 1000 feet from a wildlife reserve tree and green recruitment tree retention area.

(d) Approximate determination of the boundaries of forested wetlands greater than 5 acres shall be required. Approximate boundaries and areas shall be deemed to be sufficient for harvest operations.

(e) The department shall consult with the department of wildlife, the department of fisheries, and affected Indian tribes about site specific impacts of forest practices on wetland-sensitive species in forested wetlands.

(7) **Wetland management zones (WMZ).** These zones shall apply to Type A and B Wetlands, as indicated in (a) of this subsection, and shall be measured horizontally from the wetland edge or the point where the nonforested wetland becomes a forested wetland, as determined by the method

described in the board manual, and shall be of an average width as described in (a) of this subsection. These zones shall not be less than the minimum nor more than the maximum widths described in (a) of this subsection. When these zones overlap a riparian management zone the requirement which best protects public resources shall apply.

* (a) Wetland management zones (WMZ) shall have variable widths based on the size of the wetland and the wetland type, described as follows:

((WETLAND MANAGEMENT ZONE WIDTHS

Wetland Type	Acres of Nonforested Wetland	Maximum WMZ Width	Average WMZ Width	Minimum WMZ Width
A	Greater than 5	200 feet	100 feet	50 feet
A	0.5 to 5	100 feet	50 feet	25 feet
A Bog/Fen	0.25 to 0.5	100 feet	50 feet	25 feet
B	Greater than 5	100 feet	50 feet	25 feet
B	0.5 to 5			25 feet
B	0.25 to 0.5	No WMZ Required		

WETLAND MANAGEMENT ZONES

Wetland Type	Acres of Nonforested Wetland*	Maximum WMZ Width	Average WMZ Width	Minimum WMZ Width
A (including bogs and fens)	Greater than 5	200 feet	100 feet	50 feet
A (including bogs and fens)	0.5 to 5	100 feet	50 feet	25 feet
A (bogs and fens only)	0.25 to 0.5	100 feet	50 feet	25 feet
B	Greater than 5	100 feet	50 feet	25 feet
B	0.5 to 5			25 feet
B	0.25 to 0.5	No WMZ Required	No WMZ Required	

*For bogs and fens, both forested and non-forested acres are included.

(b) Within the WMZ, leave a total of 75 trees per acre of WMZ greater than 6 inches dbh in Western Washington and greater than 4 inches dbh in Eastern Washington, 25 of which shall be greater than 12 inches dbh including 5 trees greater than 20 inches dbh, where they exist. Leave trees shall be representative of the species found within the WMZ.

(c) Retain wildlife reserve trees where feasible. Type 1 and 3 wildlife reserve trees may be counted among, and need not exceed, the trees required in (b) of this subsection. Leave all cull logs on site.

(d) Partial-cutting or removal of groups of trees is acceptable within the WMZ. The maximum width of openings created by harvesting within the WMZ shall not exceed 100 feet as measured parallel to the wetland edge. Openings within WMZs shall be no closer than 200 feet. Landowners are encouraged to concentrate leave trees within the WMZ to the wetland edge.

* (e) Tractors, wheeled skidders, or other ground based harvesting systems shall not be used within the minimum WMZ width without written approval of the department.

* (f) When 10% or more of a harvest unit lies within any combination of a wetland management zone or a riparian management zone of Type 1, 2, or 3 Waters and either the

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harvest unit is a clearcut of 30 acres or less or the harvest unit is a partial cut of 80 acres or less, leave not less than 50% of the trees required in (b) of this subsection.

*** (8) (~~Nonforested wetlands (-)~~) Type A or B (3) Wetlands.** Within the boundaries of Type A or B Wetlands the following shall apply:

(a) Individual trees or forested wetland areas less than 0.5 acre in size may occur. These trees have a high habitat value to the nonforested wetland. Leave individual trees or forested wetlands less than 0.5 acre. These trees may be counted toward the WMZ requirements.

(b) Harvest of upland areas or forested wetlands which are surrounded by Type A or B Wetlands must be conducted in accordance with a plan, approved in writing by the department.

(c) No timber shall be felled into or cable yarded across Type A or B Wetlands without written approval of the department.

(d) Harvest shall not be allowed within a Type A bog or fen.

(9) **Future productivity.** Harvesting shall leave the land in a condition conducive to future timber production except:

(a) To the degree required for riparian management zones; or

(b) Where the lands are being converted to another use or classified urban lands as specified in WAC 222-34-050.

(10) **Wildlife habitat.** This subsection is designed to encourage timber harvest practices that would protect wildlife habitats, provided, that such action shall not unreasonably restrict landowners action without compensation.

(a) The applicant should make every reasonable effort to cooperate with the department of wildlife to identify critical wildlife habitats (state) as defined by the board. Where these habitats are known to the applicant, they shall be identified in the application or notification.

(b) Harvesting methods and patterns in established big game winter ranges should be designed to insure adequate access routes and escape cover where practical.

(i) Where practical, cutting units should be designed to conform with topographical features.

(ii) Where practical on established big game winter ranges, cutting units should be dispersed over the area to provide cover, access for wildlife, and to increase edge effect.

(11) **Wildlife reserve tree management.** In areas where leaving wildlife reserve trees under this section will not create a significant fire hazard, or significant hazard to overhead power lines and operations that are proposed in the vicinity of wildlife reserve trees will not create a significant safety or residential hazard nor conflict with achieving conformance with the limitation of or performance with the provisions of chapter 76.04 RCW (snag falling law) and chapter 49.17 RCW (safety), wildlife reserve trees will be left to protect habitat for cavity nesting wildlife in accordance with the following:

(a) In Western Washington, for each acre harvested 3 wildlife reserve trees, 2 green recruitment trees, and 2 down logs shall be left. In Eastern Washington for each acre harvested 2 wildlife reserve trees, 2 green recruitment trees, and 2 down logs shall be left. Type 1 wildlife reserve trees may be counted, at the landowner's option, either as a wildlife reserve tree or as a green recruitment tree. If

adequate wildlife reserve trees are not available, no additional green recruitment trees will be required as substitutes. Landowners shall not under any circumstances be required to leave more than 2 green recruitment trees per acre for the purpose of wildlife reserve tree recruitment, or be required to leave Type 3 or 4 wildlife reserve trees.

(b) In Eastern Washington, for 5 years from the effective date of this subsection where over-story harvest of seed trees left for purpose of reforestation are proposed and less than 10 trees per acre will be harvested within the 5-year period, 50% of the green recruitment trees otherwise required in this subsection may be left.

(c) In Western Washington, only those wildlife reserve trees 10 or more feet in height and 12 or more inches dbh shall be counted toward wildlife reserve tree retention requirements. In Eastern Washington, only those wildlife reserve trees 10 or more feet in height and 10 or more inches dbh shall be counted toward wildlife reserve tree retention requirements. Green recruitment trees, 10 or more inches dbh and 30 or more feet in height and with at least 1/3 of their height in live crown, left standing after harvest may be counted toward green recruitment tree requirements. Green recruitment trees and/or wildlife reserve trees left to meet other requirements of the rules or those left voluntarily by the landowner shall be counted toward satisfying the requirements of this section. Large, live defective trees with broken tops, cavities, and other severe defects are preferred as green recruitment trees. Only down logs with a small end diameter greater than or equal to 12 inches and a length greater than or equal to 20 feet or equivalent volume shall be counted under (a) of this subsection. Large cull logs are preferred as down logs.

(d) In the areas where wildlife reserve trees are left, the largest diameter wildlife reserve trees shall be retained to meet the specific needs of cavity nesters. Where the opportunity exists, larger trees with numerous cavities should be retained and count as recruitment trees.

(e) In order to facilitate safe and efficient harvesting operations, wildlife reserve trees and recruitment trees may be left in clumps. For purposes of distribution, no point within the harvest unit shall be more than 800 feet from a wildlife reserve tree or green recruitment tree retention area. Subject to this distribution requirement, the location of these retention areas and the selection of recruitment trees shall be at the landowner's discretion. Closer spacing of retention areas through voluntary action of the landowner is encouraged. Wildlife reserve tree and green recruitment tree retention areas may include, but are not limited to, riparian management zones, riparian leave tree areas, other regulatory leave areas, or voluntary leave areas that contain wildlife reserve trees and/or green recruitment trees.

(f) In order to provide for safety, landowners may remove any Type 3 or 4 wildlife reserve tree which poses a threat to humans working, recreating, or residing within the hazard area of that tree. In order to provide for fire safety, the distribution of wildlife reserve tree retention areas, described in (e) of this subsection, may be modified as necessary based on a wildlife reserve tree management plan proposed by the landowner and approved by the department.

WSR 94-09-011
NOTICE OF PUBLIC MEETINGS
WORKFORCE TRAINING AND
EDUCATION COORDINATING BOARD

[Memorandum—April 7, 1994]

April 27-28, 1994

Tacoma Community College
 5900 South 12th
 Tacoma, WA

April 27, 1994, 7:00 - 9:00 p.m., Building 7, Cascade Center, the Workforce Training and Education Coordinating Board will hold a work session for the purpose of discussing the comprehensive plan action step options.

April 28, 1994, 8:00 a.m. - 5:00 p.m., Building 7, Cascade Center, the Workforce Training and Education Coordinating Board will hold its regular business meeting on Thursday, April 28, beginning at 8:00 a.m. Agenda items will include the comprehensive plan/action step options, 2nd. year plan for workforce training (HB 1988), and the Carl Perkins plan.

People needing special accommodations, please call Anne Townsend at least 10 days in advance at (206) 753-5677 or SCAN 234-5677.

WSR 94-09-013
RULES COORDINATOR
HEALTH SERVICES COMMISSION

[Filed April 12, 1994, 3:10 p.m.]

The Health Services Commission, a new state agency, was established under E2SSB 5304, "The Washington Health Services Act of 1993." Randy Revelle will serve as rules coordinator for the Health Services Commission in place of Leslie Thorpe.

As required by RCW 34.05.325, I am submitting his name, office, and mailing address for publication in the Washington State Register.

Randy Revelle, Director
 Washington Health Services Commission
 P.O. Box 41185
 Olympia, WA 98504-1185
 (206) 407-0046

Bernadene Dochnahl
 Commission Chair

WSR 94-09-014
NOTICE OF PUBLIC MEETINGS
SEATTLE COMMUNITY COLLEGES

[Memorandum—April 8, 1994]

The Seattle Community College District board of trustees will hold a board retreat on Monday, April 25, 1994, from 12 noon to 8:00 p.m. The retreat will be held in Conference Room 3 at the Battelle Conference Center, 4000 N.E. 41st Street, Seattle, WA 98105-5428.

WSR 94-09-015
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF COMMUNITY, TRADE
AND ECONOMIC DEVELOPMENT

[Memorandum—April 13, 1994]

NOTICE OF CHANGE OF PUBLIC MEETING
FIRE PROTECTION POLICY BOARD MEETINGS

The May 1994 Fire Protection Policy Board meeting dates which were published earlier in the year have been changed to coincide with the Fire Service '94 Conference on May 23, 24, and 25.

Please note that the board will meet in Wenatchee, Washington at the Wenatchee Conference Center, as follows:

Special Board Meeting	Sunday, May 22 at 6:00 p.m. to 7:00 p.m.
Work Session Dinner Meeting	Tuesday, May 24 at 6:00 p.m. to 10:00 p.m.
Full Board Meeting	Wednesday, May 25 at 9:00 a.m. to 3:00 p.m.

WSR 94-09-032
NOTICE OF PUBLIC MEETINGS
CONVENTION AND TRADE
CENTER

[Memorandum—April 14, 1994]

A regular meeting of the board of directors of the Washington State Convention and Trade Center will be held on Wednesday, April 20, 1994, at 1:30 p.m. in Room 307/308 of the Convention Center, 800 Convention Place, Seattle.

If you have any questions regarding this meeting, please call 447-5000.

WSR 94-09-033
NOTICE OF PUBLIC MEETINGS
MARINE OVERSIGHT BOARD

[Memorandum—April 14, 1994]

The following public meeting has been canceled: May 20, 1994 (rescheduled to June 9, 1994).

Rescheduled meeting to be held: June 9, 1994 (rescheduled from May 20, 1994), 1 p.m., Seattle-Tacoma International Airport, Theater, Door No. 5132, Ticketing Level (hallway area behind Mark Air ticketing). Contact: Staff Director, Olympia, (206) 664-9130, SCAN 366-9130, FAX (206) 664-8761.

WSR 94-09-036
NOTICE OF PUBLIC MEETINGS
EDMONDS COMMUNITY COLLEGE

[Memorandum—April 18, 1994]

Board of Trustees Meeting
 April 21, 1994
 Sno-King Room 103
 4:30 - 6:25

MISCELLANEOUS

The facilities for this meeting are free of mobility barriers and interpreters for deaf individuals and braille or taped information for blind individuals will be provided upon request when adequate notice is given.

WSR 94-09-037
NOTICE OF PUBLIC MEETINGS
HUMAN RIGHTS COMMISSION
 [Memorandum—April 15, 1994]

The Washington State Human Rights Commission will hold its May regular commission meeting by video conferencing on May 26, 1994, beginning at 10:00 a.m. The sites of the video conference are as follows:

- Lacey Washington Interactive Television
 (WIT) Central Office
 710 Sleater-Kinney Road
 Suite Q
 Lacey, WA
- Seattle WIT Videoconference Center
 Seattle Central Community College
 District Office
 1500 Harvard Street
 Seattle, WA
- Mt. Vernon WIT Videoconference Center
 Educational Service District #189
 205 Stewart Road
 Mt. Vernon, WA
- Spokane WIT Videoconference Center
 Educational Service District #101
 4022 East Broadway
 Spokane, WA
- Pasco WIT Videoconference Center
 Educational Service District #123
 124 South 4th Street
 Pasco, WA

The meeting is being held to close cases and to conduct a brief business meeting. An executive session will be convened if necessary.

WSR 94-09-038
NOTICE OF PUBLIC MEETINGS
EASTERN WASHINGTON UNIVERSITY
 [Memorandum—April 18, 1994]

BOARD OF TRUSTEES
 SPECIAL MEETING
 May 4, 1994, 9:00 a.m.
 Spokane Center, Second Floor Mall

The board of trustees has called a special meeting for the purpose of discussing collective bargaining.

Eastern Washington University strives to satisfy all requests for special access needs for persons with disabilities. Requests for such accommodation are welcome and may be made by calling President's Office, 359-2371.

WSR 94-09-044
NOTICE OF PUBLIC MEETINGS
HIGHER EDUCATION
COORDINATING BOARD
 [Memorandum—April 19, 1994]

The June meeting of the Higher Education Coordinating Board has been changed from June 16 in Spokane (as reported to you earlier) to June 17 at the SeaTac Radisson Hotel.

WSR 94-09-053
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF LICENSING
 [Memorandum—April 19, 1994]

Please publish a public meeting notice for the Title and Registration Advisory Committee (TRAC):

- DATE: The regularly scheduled Title and Registration Advisory Committee (TRAC) meeting convened on April 14, 1994, was adjourned and will reconvene May 24, 1994.
- TIME: 10:00 a.m. to 12:00 noon
- PLACE: Room 500
 SeaTac Office Building
 18000 Pacific Highway South
 Seattle, WA

WSR 94-09-056
NOTICE OF PUBLIC MEETINGS
OFFICE OF
MARINE SAFETY
 [Memorandum—April 20, 1994]

The Office of Marine Safety will hold two public workshops on proposed bunkering rules the evenings of May 10 and 12. These informational meetings will give the public an opportunity to ask questions about the proposed standards for the refueling of vessels 300 gross tons and above.

The first public meeting will be held on Tuesday, May 10, 1994, at the Western Regional Center of the National Oceanic and Atmospheric Administration, 7600 Sand Point Way N.E., Seattle, WA. The meeting will be held in conference rooms A and B of Building 9 from 6:00 to 8:00 p.m.

The second meeting will be held on Thursday, May 12, 1994, in Kelso, Washington at the County Administration Building, 207 4th Avenue North. The meeting room is located on the third floor North and will take place from 6:00 to 8:00 p.m.

For more information on the two public workshops on proposed bunkering rules, call David Johnson at (206) 664-9121, or Cindy Moore at (206) 664-9119.

MISCELLANEOUS

WSR 94-09-059
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF
NATURAL RESOURCES
 [Memorandum—April 20, 1994]

NOTICE OF MEETING FOR THE
NATURAL HERITAGE ADVISORY COUNCIL

1994

The Natural Heritage Advisory Council will meet on the following date: June 10, 1994, 9:30 a.m. to 5:00 p.m., Cheney, Washington, Eastern Washington University, Science Building, Room 246.

Regular council business will include the review and approval of the natural heritage plan, consideration of any natural area preserve recommendations, site recommendations for the registry program and NAP management activities.

For further information contact: Department of Natural Resources, Washington Natural Heritage Program, Division of Land and Water Conservation, 1111 Washington Street S.E., P.O. Box 47047, Olympia, WA 98504-7047, (206) 902-1688.

WSR 94-09-063
NOTICE OF PUBLIC MEETINGS
COMMISSION OF
HISPANIC AFFAIRS
 [Memorandum—April 20, 1994]

Please accept this letter as notice of our next public meeting to be held on July 9, 1994, at the Othello Latin Seniors Club, 35 East Hemlock, Othello, WA. The regular commission meeting will begin at 9 a.m. and end at 3:00 p.m.

The public is invited to offer comment throughout the meeting. An agenda can be obtained by calling the commission. Any request for special accommodations can be made by calling Ana Rojas at (206) 753-3159.

Future meetings will take place on: September 24th in Bellingham and December 3rd in Vancouver.

WSR 94-09-064
ATTORNEY GENERAL'S OPINION
 [Filed April 20, 1994, 11:29 a.m.]

NOTICE OF REQUEST FOR ATTORNEY GENERAL'S OPINION
WASHINGTON ATTORNEY GENERAL

The Washington Attorney General issues formal published opinions in response to requests by the heads of state agencies, state legislators, and county prosecuting attorneys. When it appears that individuals outside the Attorney General's Office have information or expertise that will assist in the preparation of a particular opinion, a summary of that opinion request will be published in the state register. If you are interested in commenting on a request listed in this volume of the register, you should

notify the Attorney General's Office of your interest by May 11, 1994. This is not the due date by which comments must be received. However, if you do not notify the Attorney General's Office of your interest in commenting on an opinion request by May 11, 1994, the opinion may be issued before your comments have been received. You may notify the Attorney General's Office of your intention to comment by calling (206) 753-4114, or by writing to the Solicitor General, Office of the Attorney General, 905 Plum Street, P.O. Box 40100, Olympia, WA 98504-0100. When you notify the office of your intention to comment, you will be provided with a copy of the opinion request in which you are interested; information about the Attorney General's Opinion process; information on how to submit your comments; and a due date by which your comments must be received to ensure that they are fully considered.

The Attorney General's Office seeks public input on the following opinion requests:

94-3-4 Request by Senator Al Williams

Can a PUD loan money to customers to encourage their changing their energy use to another fuel in order to reduce the PUD's electrical demand?

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 #
1-21-010	AMD-P	94-09-045	16-219-029	NEW-P	94-05-092	16-400-210	AMD-E	94-04-091
1-21-170	AMD-P	94-09-045	16-219-029	NEW	94-09-028	16-403-145	AMD-P	94-05-050
4-25-185	REP	94-02-070	16-219-030	REP-P	94-05-092	16-403-145	AMD	94-07-133
4-25-186	REP	94-02-070	16-219-030	REP	94-09-028	16-403-150	AMD-P	94-05-050
4-25-187	REP	94-02-070	16-219-031	NEW-P	94-05-092	16-403-150	AMD	94-07-133
4-25-188	REP	94-02-070	16-219-031	NEW	94-09-028	16-403-290	AMD-P	94-05-050
4-25-280	REP	94-02-070	16-219-100	NEW-P	94-05-061	16-403-290	AMD	94-07-133
4-25-300	REP	94-02-070	16-219-100	NEW	94-08-035	16-415-010	REP	94-03-026
4-25-320	REP	94-02-070	16-219-105	NEW-P	94-05-061	16-415-020	REP	94-03-026
4-25-521	NEW	94-02-068	16-219-105	NEW	94-08-035	16-415-030	REP	94-03-026
4-25-522	NEW	94-02-068	16-221-001	REP	94-03-024	16-415-040	REP	94-03-026
4-25-810	NEW	94-02-072	16-221-010	REP	94-03-024	16-432-010	REP	94-03-025
4-25-811	NEW	94-02-072	16-221-020	REP	94-03-024	16-432-020	REP	94-03-025
4-25-812	NEW	94-02-072	16-221-030	REP	94-03-024	16-432-030	REP	94-03-025
4-25-813	NEW	94-02-072	16-221-040	REP	94-03-024	16-432-040	REP	94-03-025
4-25-820	NEW	94-02-071	16-223-001	REP	94-03-023	16-432-050	REP	94-03-025
4-25-920	NEW	94-02-069	16-223-002	REP	94-03-023	16-432-060	REP	94-03-025
16-32-009	NEW-P	94-09-072	16-223-004	REP	94-03-023	16-432-070	REP	94-03-025
16-32-010	REP-P	94-09-072	16-223-005	REP	94-03-023	16-432-080	REP	94-03-025
16-32-011	NEW-P	94-09-072	16-223-010	REP	94-03-023	16-432-090	REP	94-03-025
16-38-001	REP	94-05-009	16-223-020	REP	94-03-023	16-432-100	REP	94-03-025
16-38-010	REP	94-05-009	16-223-030	REP	94-03-023	16-432-110	REP	94-03-025
16-38-020	REP	94-05-009	16-223-040	REP	94-03-023	16-432-120	REP	94-03-025
16-54-035A	NEW-E	94-09-004	16-223-050	REP	94-03-023	16-432-130	REP	94-03-025
16-86-015	AMD	94-05-008	16-223-060	REP	94-03-023	16-470-92005	NEW-C	94-06-003
16-103-001	AMD	94-05-040	16-223-070	REP	94-03-023	16-470-92005	NEW-W	94-06-051
16-108-010	AMD-P	94-05-074	16-228-235	REP-P	94-09-017	16-470-92010	NEW-C	94-06-003
16-108-010	AMD-W	94-07-038	16-228-245	REP-P	94-09-017	16-470-92010	NEW-W	94-06-051
16-200-805	AMD-P	94-05-060	16-228-250	REP-P	94-09-017	16-470-92015	NEW-C	94-06-003
16-200-805	AMD	94-08-034	16-228-255	REP-P	94-09-017	16-470-92015	NEW-W	94-06-051
16-212-020	AMD-P	94-06-058	16-228-260	REP-P	94-09-017	16-470-92020	NEW-C	94-06-003
16-212-030	AMD-P	94-06-058	16-228-265	REP-P	94-09-017	16-470-92020	NEW-W	94-06-051
16-212-060	AMD-P	94-06-058	16-228-275	REP-P	94-09-017	16-470-92025	NEW-C	94-06-003
16-212-070	AMD-P	94-06-058	16-304-040	AMD-P	94-09-046	16-470-92025	NEW-W	94-06-051
16-212-080	AMD-P	94-06-058	16-304-050	AMD-P	94-09-046	16-470-92030	NEW-C	94-06-003
16-212-082	AMD-P	94-06-058	16-304-110	AMD-P	94-09-046	16-470-92030	NEW-W	94-06-051
16-219	AMD-C	94-08-033	16-304-130	AMD-P	94-09-046	16-470-92035	NEW-C	94-06-003
16-219-015	AMD-P	94-05-092	16-313-015	AMD-P	94-09-046	16-470-92035	NEW-W	94-06-051
16-219-015	AMD	94-09-028	16-313-035	AMD-P	94-09-046	16-470-92040	NEW-C	94-06-003
16-219-017	NEW-P	94-05-092	16-316-0901	AMD-P	94-09-046	16-470-92040	NEW-W	94-06-051
16-219-017	NEW	94-09-028	16-316-105	AMD-P	94-09-046	16-482-016	AMD-P	94-01-111
16-219-018	NEW-P	94-05-092	16-316-230	AMD-P	94-09-046	16-514-020	AMD-P	94-05-073
16-219-018	NEW	94-09-028	16-316-350	AMD-P	94-09-046	16-514-020	AMD	94-08-091
16-219-020	AMD-P	94-05-092	16-316-440	AMD-P	94-09-046	16-580-040	AMD-P	94-05-066
16-219-020	AMD	94-09-028	16-316-474	AMD-P	94-09-046	16-580-040	AMD	94-08-090
16-219-022	NEW-P	94-05-092	16-316-717	AMD-P	94-09-046	16-602-025	NEW	94-05-049
16-219-022	NEW	94-09-028	16-316-727	AMD-P	94-09-046	16-602-027	NEW-P	94-09-052
16-219-025	AMD-P	94-05-092	16-316-800	AMD-P	94-09-046	16-675-010	AMD-P	94-09-054
16-219-025	AMD	94-09-028	16-316-820	AMD-P	94-09-046	16-675-029	NEW-P	94-09-054
16-219-027	NEW-P	94-05-092	16-316-830	AMD-P	94-09-046	16-675-030	AMD-P	94-09-054
16-219-027	NEW	94-09-028	16-324-640	REP-P	94-01-110	16-675-039	NEW-P	94-09-054

Table of WAC Sections Affected

WAC #		WSR #	WAC #		WSR #	WAC #		WSR #
16-675-040	AMD-P	94-09-054	55-01-050	AMD-E	94-06-032	106-116-701	AMD-P	94-07-090
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16-678-010	REP	94-03-022	55-01-060	AMD-E	94-06-032	106-116-702	AMD-P	94-07-090
16-680-001	REP	94-03-021	55-01-060	AMD-W	94-07-075	106-116-702	AMD-E	94-07-091
16-680-010	REP	94-03-021	55-01-070	AMD-E	94-06-032	106-116-853	AMD-P	94-07-090
16-680-015	REP	94-03-021	55-01-070	AMD-W	94-07-075	106-116-853	AMD-E	94-07-091
16-694-001	AMD-P	94-09-055	55-01-080	AMD-W	94-07-075	106-116-901	AMD-P	94-07-090
44-06-010	AMD-P	94-06-050	67-35-030	AMD-P	94-07-067	106-116-901	AMD-E	94-07-091
44-06-020	AMD-P	94-06-050	67-35-230	AMD-P	94-07-067	131-46-010	AMD	94-04-120
44-06-030	AMD-P	94-06-050	106-116-011	AMD-P	94-07-090	131-46-020	AMD	94-04-120
44-06-040	AMD-P	94-06-050	106-116-011	AMD-E	94-07-091	131-46-025	AMD	94-04-120
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44-06-080	AMD-P	94-06-050	106-116-042	AMD-E	94-07-091	131-46-035	AMD	94-04-120
44-06-085	NEW-P	94-06-050	106-116-103	AMD-P	94-07-090	131-46-040	AMD	94-04-120
44-06-090	AMD-P	94-06-050	106-116-103	AMD-E	94-07-091	131-46-045	AMD	94-04-120
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44-06-160	NEW-P	94-06-050	106-116-202	AMD-E	94-07-091	131-46-075	AMD	94-04-120
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50-60-020	NEW	94-03-009	106-116-203	AMD-E	94-07-091	131-46-080	AMD	94-04-120
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51-04-025	AMD	94-05-058	106-116-305	AMD-E	94-07-091	132F-08-140	REP-P	94-05-097A
51-04-030	AMD-W	94-05-102	106-116-306	AMD-P	94-07-090	132F-08-230	REP-P	94-05-097A
51-04-060	AMD	94-05-058	106-116-306	AMD-E	94-07-091	132F-08-240	REP-P	94-05-097A
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51-11-0603	AMD	94-05-059	106-116-403	AMD-P	94-07-090	132F-08-330	REP-P	94-05-097A
51-11-0625	AMD	94-05-059	106-116-403	AMD-E	94-07-091	132F-08-340	REP-P	94-05-097A
51-11-0626	AMD	94-05-059	106-116-410	AMD-P	94-07-090	132F-08-350	REP-P	94-05-097A
51-11-0627	AMD	94-05-059	106-116-410	AMD-E	94-07-091	132F-08-360	REP-P	94-05-097A
51-11-0628	AMD	94-05-059	106-116-501	AMD-P	94-07-090	132F-08-400	REP-P	94-05-097A
51-11-0629	AMD	94-05-059	106-116-501	AMD-E	94-07-091	132F-08-410	REP-P	94-05-097A
51-11-0630	AMD	94-05-059	106-116-513	AMD-P	94-07-090	132F-08-420	REP-P	94-05-097A
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51-11-1006	AMD	94-05-059	106-116-514	AMD-P	94-07-090	132F-08-440	REP-P	94-05-097A
51-11-1011	NEW-E	94-05-007	106-116-514	AMD-E	94-07-091	132F-08-450	REP-P	94-05-097A
55-01-010	AMD-E	94-06-032	106-116-515	AMD-P	94-07-090	132F-08-460	REP-P	94-05-097A
55-01-010	AMD-W	94-07-075	106-116-515	AMD-E	94-07-091	132F-08-470	REP-P	94-05-097A
55-01-020	AMD-E	94-06-032	106-116-521	AMD-P	94-07-090	132F-08-480	REP-P	94-05-097A
55-01-020	AMD-W	94-07-075	106-116-521	AMD-E	94-07-091	132F-104-030	AMD-P	94-05-097A
55-01-030	AMD-E	94-06-032	106-116-601	AMD-P	94-07-090	132F-104-811	AMD-P	94-05-097A
55-01-030	AMD-W	94-07-075	106-116-601	AMD-E	94-07-091	132F-104-813	AMD-P	94-05-097A
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55-01-040	AMD-W	94-07-075	106-116-603	AMD-E	94-07-091	132F-104-819	AMD-P	94-05-097A

TABLE

Table of WAC Sections Affected

WAC #	WSR #	WAC #	WSR #	WAC #	WSR #			
132F-108-010	NEW-P	94-05-097A	132J-128-070	REP	94-04-053	162-12-110	REP-W	94-04-087
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132F-108-030	NEW-P	94-05-097A	132J-128-090	REP	94-04-053	162-12-130	AMD-W	94-04-087
132F-108-040	NEW-P	94-05-097A	132J-128-100	REP	94-04-053	162-12-135	AMD-W	94-04-087
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132F-108-060	NEW-P	94-05-097A	132J-128-120	REP	94-04-053	162-12-150	AMD-W	94-04-087
132F-108-070	NEW-P	94-05-097A	132J-128-130	REP	94-04-053	162-12-160	AMD-W	94-04-087
132F-108-080	NEW-P	94-05-097A	132J-128-140	REP	94-04-053	162-12-170	AMD-W	94-04-087
132F-108-090	NEW-P	94-05-097A	132J-128-150	NEW	94-04-053	162-12-180	AMD-W	94-04-087
132F-108-100	NEW-P	94-05-097A	132J-128-210	NEW	94-04-053	162-18-010	REP-W	94-04-087
132F-108-110	NEW-P	94-05-097A	132J-136-020	REP	94-04-054	162-18-020	REP-W	94-04-087
132F-108-120	NEW-P	94-05-097A	132J-136-025	REP	94-04-054	162-18-030	REP-W	94-04-087
132F-108-130	NEW-P	94-05-097A	132J-136-030	REP	94-04-054	162-18-040	REP-W	94-04-087
132F-108-140	NEW-P	94-05-097A	132J-136-040	REP	94-04-054	162-18-050	REP-W	94-04-087
132H-160-040	REP	94-04-098	132J-136-050	REP	94-04-054	162-18-060	REP-W	94-04-087
132H-160-050	REP	94-04-098	132R-190-010	AMD	94-07-019	162-18-070	REP-W	94-04-087
132H-160-056	REP	94-04-098	132R-190-020	AMD	94-07-019	162-18-080	REP-W	94-04-087
132H-160-059	REP	94-04-098	132R-190-030	AMD	94-07-019	162-18-090	REP-W	94-04-087
132H-160-070	REP	94-04-098	132R-190-035	AMD	94-07-019	162-18-100	REP-W	94-04-087
132H-160-080	REP	94-04-098	132R-190-040	AMD	94-07-019	162-22-010	AMD-W	94-04-087
132H-160-120	REP	94-04-098	132R-190-050	AMD	94-07-019	162-22-020	AMD-W	94-04-087
132H-160-140	REP	94-04-098	132R-190-060	AMD	94-07-019	162-22-030	REP-W	94-04-087
132H-160-150	REP	94-04-098	132R-190-070	AMD	94-07-019	162-22-040	REP-W	94-04-087
132H-160-260	REP	94-04-098	132R-190-080	AMD	94-07-019	162-22-050	AMD-W	94-04-087
132H-160-320	REP	94-04-098	132R-190-090	AMD	94-07-019	162-22-060	AMD-W	94-04-087
132H-160-330	REP	94-04-098	132R-190-100	AMD	94-07-019	162-22-070	AMD-W	94-04-087
132H-160-350	REP	94-04-098	132R-190-110	AMD	94-07-019	162-22-080	AMD-W	94-04-087
132H-160-390	REP	94-04-098	132V-300-020	AMD-W	94-03-082	162-22-090	AMD-W	94-04-087
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132H-160-440	REP	94-04-098	136-130-060	AMD-P	94-06-029	162-26-020	AMD-W	94-04-087
132H-160-492	REP	94-04-098	136-160-050	AMD-P	94-06-028	162-26-030	AMD-W	94-04-087
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132H-160-600	REP	94-04-098	136-180-040	AMD-P	94-06-031	162-26-050	AMD-W	94-04-087
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132H-160-640	REP	94-04-098	137-56-040	AMD	94-07-065	162-26-090	AMD-W	94-04-087
132H-160-650	REP	94-04-098	137-56-050	AMD	94-07-065	162-26-100	AMD-W	94-04-087
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173-95-070	REP	94-04-030	173-460-060	AMD	94-03-072	194-20-050	PREP	94-08-070
173-95-080	REP	94-04-030	173-460-080	AMD	94-03-072	194-20-060	PREP	94-08-070
173-95-090	REP	94-04-030	173-460-090	AMD	94-03-072	194-20-070	PREP	94-08-070
173-95-100	REP	94-04-030	173-460-100	AMD	94-03-072	194-20-080	PREP	94-08-070
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173-320-040	REP	94-07-078	180-51-105	AMD	94-03-103	194-22-100	PREP	94-08-070
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220-48-041	AMD-P	94-03-106	220-56-307	AMD-P	94-03-105	220-88A-050	NEW-P	94-03-098
220-48-051	AMD-P	94-03-106	220-56-315	AMD-P	94-03-105	220-88A-050	NEW	94-07-092
220-48-061	AMD-P	94-03-106	220-56-320	AMD-P	94-03-105	220-88A-060	NEW-P	94-03-098
220-48-071	AMD-P	94-03-106	220-56-350	AMD-P	94-03-105	220-88A-060	NEW	94-07-092
220-49-005	NEW-P	94-03-106	220-56-35000X	NEW-E	94-07-052	220-88A-070	NEW-P	94-03-098
220-49-011	AMD-P	94-03-106	220-56-35000X	REP-E	94-07-076	220-88A-070	NEW	94-07-092
220-49-012	AMD-P	94-03-106	220-56-35000Y	NEW-E	94-07-076	220-88A-080	NEW-P	94-03-098
220-49-013	AMD-P	94-03-106	220-56-36000H	NEW-E	94-07-003	220-88A-080	NEW	94-07-092
220-49-014	AMD-P	94-03-106	220-56-36000H	REP-E	94-08-009	222-16-010	AMD-E	94-05-046
220-49-015	REP-P	94-03-106	220-56-36000I	NEW-E	94-08-009	222-16-010	AMD-E	94-07-053
220-49-016	REP-P	94-03-106	220-56-36000I	REP-E	94-09-023	222-16-010	AMD-P	94-09-029
220-49-017	AMD-P	94-03-106	220-56-36000J	NEW-E	94-09-023	222-16-010	AMD-E	94-09-030
220-49-020	AMD-P	94-03-106	220-56-380	AMD-P	94-03-105	222-16-035	AMD-P	94-09-029
220-49-02000F	NEW-E	94-04-047	220-56-38000R	NEW-E	94-07-052	222-16-035	AMD-E	94-09-030
220-49-02000G	NEW-E	94-09-021	220-56-38000R	REP-E	94-07-076	222-16-080	AMD-E	94-05-046
220-49-021	AMD-P	94-03-106	220-56-38000S	NEW-E	94-07-076	222-16-080	AMD-E	94-07-053
220-49-022	REP-P	94-03-106	220-56-382	AMD-P	94-03-105	222-24-030	AMD-E	94-05-046
220-49-023	AMD-P	94-03-106	220-56-390	AMD-P	94-03-105	222-30-020	AMD-P	94-09-029
220-49-024	AMD-P	94-03-106	220-56-400	AMD-P	94-03-105	222-30-020	AMD-E	94-09-030
220-49-025	REP-P	94-03-106	220-56-405	AMD-P	94-03-105	222-30-050	AMD-E	94-05-046
220-49-026	REP-P	94-03-106	220-56-410	AMD-P	94-03-105	222-30-060	AMD-E	94-05-046
220-49-055	REP-P	94-03-106	220-56-415	NEW-P	94-03-105	222-30-065	NEW-E	94-05-046
220-49-056	AMD-P	94-03-106	220-57-130	AMD-P	94-03-105	222-30-070	AMD-E	94-05-046
220-49-057	AMD-P	94-03-106	220-57-135	AMD-P	94-03-105	222-30-075	NEW-E	94-05-046
220-49-063	AMD-P	94-03-106	220-57-140	AMD-P	94-03-105	222-30-100	AMD-E	94-05-046
220-49-06300A	NEW-E	94-07-063	220-57-155	AMD-P	94-03-105	222-38-020	AMD-E	94-05-046
220-49-06300A	REP-E	94-07-077	220-57-16000T	NEW-E	94-08-049	222-38-030	AMD-E	94-05-046
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223-08-072	NEW-E	94-07-062	232-28-02240	NEW-P	94-04-064	240-20-070	NEW-P	94-05-100
223-08-072	NEW-P	94-07-097	232-28-02250	NEW-P	94-04-065	240-20-070	NEW-E	94-05-101
223-08-148	NEW-E	94-07-062	232-28-02260	NEW-P	94-04-066	240-20-075	NEW-P	94-05-100
223-08-148	NEW-P	94-07-097	232-28-02270	NEW-P	94-04-067	240-20-075	NEW-E	94-05-101
223-08-162	NEW-E	94-07-062	232-28-02280	NEW-P	94-04-068	240-20-080	NEW-P	94-05-100
223-08-162	NEW-P	94-07-097	232-28-02290	NEW-P	94-04-069	240-20-080	NEW-E	94-05-101
223-08-165	AMD-E	94-07-062	232-28-226	REP-P	94-04-114	240-20-090	NEW-P	94-05-100
223-08-165	AMD-P	94-07-097	232-28-227	REP-P	94-04-116	240-20-090	NEW-E	94-05-101
223-08-171	NEW-E	94-07-062	232-28-228	REP-P	94-04-115	240-20-110	NEW-P	94-05-100
223-08-171	NEW-P	94-07-097	232-28-236	REP-P	94-05-079	240-20-110	NEW-E	94-05-101
223-08-252	NEW-E	94-07-062	232-28-237	REP-P	94-05-078	240-20-120	NEW-P	94-05-100
223-08-252	NEW-P	94-07-097	232-28-238	REP-P	94-04-117	240-20-120	NEW-E	94-05-101
230-02-030	AMD-P	94-07-083	232-28-239	NEW	94-04-123	240-20-130	NEW-P	94-05-100
230-02-125	AMD-P	94-07-083	232-28-240	NEW-P	94-04-114	240-20-130	NEW-E	94-05-101
230-02-161	AMD-P	94-04-024	232-28-241	NEW-P	94-04-115	240-20-210	NEW-P	94-05-100
230-02-161	AMD	94-07-084	232-28-242	NEW-P	94-04-116	240-20-210	NEW-E	94-05-101
230-04-035	AMD-P	94-04-024	232-28-243	NEW-P	94-04-117	240-20-220	NEW-P	94-05-100
230-04-035	AMD	94-07-084	232-28-244	NEW-P	94-05-079	240-20-220	NEW-E	94-05-101
230-04-075	AMD-P	94-04-024	232-28-245	NEW-P	94-05-078	240-20-230	NEW-P	94-05-100
230-04-075	AMD	94-07-084	232-28-417	AMD-E	94-04-007	240-20-230	NEW-E	94-05-101
230-08-015	AMD-P	94-04-024	232-28-61940	NEW	94-04-018	240-20-310	NEW-P	94-05-100
230-08-015	AMD	94-07-084	232-28-61941	NEW	94-06-012	240-20-310	NEW-E	94-05-101
230-08-120	AMD-P	94-07-083	232-28-61942	NEW	94-06-013	240-20-320	NEW-P	94-05-100
230-08-130	AMD-P	94-07-083	232-28-61944	NEW-E	94-03-038	240-20-320	NEW-E	94-05-101
230-08-150	AMD-P	94-07-083	232-28-61945	NEW-E	94-04-012	240-20-330	NEW-P	94-05-100
230-08-160	AMD-P	94-07-083	232-28-61945	NEW-P	94-06-038	240-20-330	NEW-E	94-05-101
230-08-260	AMD-P	94-07-083	232-28-61945	NEW	94-09-068	240-20-410	NEW-P	94-05-100
230-12-010	AMD-P	94-04-024	232-28-61946	NEW-P	94-06-039	240-20-410	NEW-E	94-05-101
230-12-010	AMD	94-07-084	232-28-61946	NEW	94-09-067	240-20-420	NEW-P	94-05-100
230-12-305	AMD-P	94-04-024	232-28-61947	NEW-P	94-06-040	240-20-420	NEW-E	94-05-101
230-12-305	AMD	94-07-084	232-28-61947	NEW	94-09-066	240-20-430	NEW-P	94-05-100
230-20-064	AMD-P	94-04-024	232-28-61948	NEW-E	94-09-005	240-20-430	NEW-E	94-05-101
230-20-064	AMD	94-07-084	232-28-61949	NEW-E	94-08-048	240-20-425	NEW-E	94-04-015
230-20-111	AMD-P	94-04-024	232-28-61950	NEW-P	94-09-069	240-20-427	NEW-E	94-04-015
230-20-111	AMD	94-07-084	236-14	PREP	94-09-047	242-02-040	AMD	94-07-033
230-20-220	AMD-P	94-04-024	240-20-001	NEW-P	94-05-100	242-02-052	AMD	94-07-033
230-20-220	AMD	94-07-084	240-20-001	NEW-E	94-05-101	242-02-072	AMD	94-07-033
230-20-230	AMD-P	94-04-024	240-20-010	NEW-P	94-05-100	242-02-110	AMD	94-07-033
230-20-230	AMD	94-07-084	240-20-010	NEW-E	94-05-101	242-02-140	AMD	94-07-033
230-20-400	AMD-P	94-04-024	240-20-015	NEW-P	94-05-100	242-02-210	AMD	94-07-033
230-20-400	AMD	94-07-084	240-20-015	NEW-E	94-05-101	242-02-220	AMD	94-07-033
230-20-680	AMD-P	94-04-024	240-20-020	NEW-P	94-05-100	242-02-240	AMD	94-07-033
230-20-680	AMD	94-07-084	240-20-020	NEW-E	94-05-101	242-02-250	AMD	94-07-033
230-25-160	AMD-P	94-04-024	240-20-025	NEW-P	94-05-100	242-02-270	AMD	94-07-033
230-25-160	AMD	94-07-084	240-20-025	NEW-E	94-05-101	242-02-280	AMD	94-07-033
230-25-200	AMD-P	94-07-083	240-20-030	NEW-P	94-05-100	242-02-310	AMD	94-07-033
230-30-050	AMD-P	94-07-083	240-20-030	NEW-E	94-05-101	242-02-320	AMD	94-07-033
230-30-060	AMD-P	94-04-024	240-20-035	NEW-P	94-05-100	242-02-330	AMD	94-07-033
230-30-060	AMD	94-07-084	240-20-035	NEW-E	94-05-101	242-02-340	AMD	94-07-033
230-30-072	AMD-P	94-04-024	240-20-040	NEW-P	94-05-100	242-02-410	AMD	94-07-033
230-30-072	AMD	94-07-084	240-20-040	NEW-E	94-05-101	242-02-440	AMD	94-07-033
230-30-102	AMD-P	94-04-024	240-20-042	NEW-P	94-05-100	242-02-510	AMD	94-07-033
230-30-102	AMD	94-07-084	240-20-042	NEW-E	94-05-101	242-02-520	NEW-W	94-07-007
230-30-103	AMD-P	94-04-024	240-20-044	NEW-P	94-05-100	242-02-522	AMD	94-07-033
230-30-103	AMD	94-07-084	240-20-044	NEW-E	94-05-101	242-02-530	AMD	94-07-033
230-40-055	AMD-P	94-04-024	240-20-046	NEW-P	94-05-100	242-02-540	AMD	94-07-033
230-40-055	AMD	94-07-084	240-20-046	NEW-E	94-05-101	242-02-550	AMD	94-07-033
232-12-131	AMD-P	94-04-118	240-20-048	NEW-P	94-05-100	242-02-554	AMD	94-07-033
232-12-131	AMD-W	94-06-036	240-20-048	NEW-E	94-05-101	242-02-558	AMD	94-07-033
232-12-131	AMD-P	94-06-037	240-20-050	NEW-P	94-05-100	242-02-570	AMD	94-07-033
232-12-166	AMD-P	94-06-043	240-20-050	NEW-E	94-05-101	242-02-580	AMD	94-07-033
232-12-166	AMD	94-09-019	240-20-052	NEW-P	94-05-100	242-02-620	AMD	94-07-033
232-12-168	AMD	94-06-014	240-20-052	NEW-E	94-05-101	242-02-680	AMD	94-07-033
232-28-022	REP-P	94-04-055	240-20-054	NEW-P	94-05-100	242-02-830	AMD	94-07-033
232-28-02201	NEW-P	94-04-055	240-20-054	NEW-E	94-05-101	242-02-850	AMD	94-07-033
232-28-02202	NEW-P	94-04-057	240-20-056	NEW-P	94-05-100	242-02-880	AMD	94-07-033
232-28-02203	NEW-P	94-04-056	240-20-056	NEW-E	94-05-101	242-02-892	NEW-W	94-07-007
232-28-02204	NEW-P	94-04-058	240-20-058	NEW-P	94-05-100	242-02-910	AMD	94-07-033
232-28-02205	NEW-P	94-04-059	240-20-058	NEW-E	94-05-101	242-02-920	AMD	94-07-033
232-28-02206	NEW-P	94-04-060	240-20-060	NEW-P	94-05-100	242-04-050	AMD	94-07-033
232-28-02210	NEW-P	94-04-061	240-20-060	NEW-E	94-05-101	245-01-010	NEW	94-04-046
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246-290-632	AMD-P	94-08-075	246-316-100	AMD-P	94-08-040	246-454-120	AMD-P	94-09-026
246-290-654	AMD-P	94-08-075	246-316-110	AMD-P	94-08-040	246-455-001	AMD-P	94-09-007
246-290-660	AMD-P	94-08-075	246-316-120	AMD-P	94-08-040	246-455-010	AMD-P	94-09-007
246-290-662	AMD-P	94-08-075	246-316-130	AMD-P	94-08-040	246-455-020	AMD-P	94-09-007
246-290-664	AMD-P	94-08-075	246-316-140	AMD-P	94-08-040	246-455-040	AMD-P	94-09-007
246-290-666	AMD-P	94-08-075	246-316-150	AMD-P	94-08-040	246-455-050	AMD-P	94-09-007
246-290-670	AMD-P	94-08-075	246-316-160	AMD-P	94-08-040	246-455-060	AMD-P	94-09-007
246-290-686	AMD-P	94-08-075	246-316-170	AMD-P	94-08-040	246-455-070	AMD-P	94-09-007
246-290-692	AMD-P	94-08-075	246-316-180	AMD-P	94-08-040	246-455-080	AMD-P	94-09-007
246-290-694	AMD-P	94-08-075	246-316-190	AMD-P	94-08-040	246-455-090	AMD-P	94-09-007
246-290-696	AMD-P	94-08-075	246-316-200	AMD-P	94-08-040	246-455-100	AMD-P	94-09-007
246-291-001	NEW-P	94-06-008	246-316-210	AMD-P	94-08-040	246-490-100	NEW	94-04-083
246-291-010	NEW-P	94-06-008	246-316-220	AMD-P	94-08-040	246-490-110	NEW	94-04-083
246-291-020	NEW-P	94-06-008	246-316-230	AMD-P	94-08-040	246-520-001	REP	94-05-052
246-291-025	NEW-P	94-06-008	246-316-240	AMD-P	94-08-040	246-520-010	REP	94-05-052
246-291-030	NEW-P	94-06-008	246-316-250	AMD-P	94-08-040	246-520-020	REP	94-05-052
246-291-040	NEW-P	94-06-008	246-316-260	AMD-P	94-08-040	246-520-030	REP	94-05-052
246-291-050	NEW-P	94-06-008	246-316-265	NEW-P	94-08-040	246-520-040	REP	94-05-052
246-291-060	NEW-P	94-06-008	246-316-268	NEW-P	94-08-040	246-520-050	REP	94-05-052
246-291-100	NEW-P	94-06-008	246-316-270	REP-P	94-08-040	246-520-060	REP	94-05-052
246-291-110	NEW-P	94-06-008	246-316-280	AMD-P	94-08-040	246-520-070	REP	94-05-052
246-291-120	NEW-P	94-06-008	246-316-290	AMD-P	94-08-040	246-807-115	NEW-P	94-03-053
246-291-130	NEW-P	94-06-008	246-316-300	AMD-P	94-08-040	246-807-115	NEW	94-08-053
246-291-140	NEW-P	94-06-008	246-316-310	AMD-P	94-08-040	246-815-030	AMD	94-05-053
246-291-200	NEW-P	94-06-008	246-316-320	AMD-P	94-08-040	246-815-300	NEW	94-04-005
246-291-210	NEW-P	94-06-008	246-316-330	AMD-P	94-08-040	246-815-990	AMD	94-02-059
246-291-220	NEW-P	94-06-008	246-316-335	NEW-P	94-08-040	246-816-015	NEW-P	94-03-045
246-291-230	NEW-P	94-06-008	246-316-340	AMD-P	94-08-040	246-818-015	NEW-P	94-03-044
246-291-240	NEW-P	94-06-008	246-316-990	AMD-P	94-08-040	246-818-015	NEW	94-08-011
246-291-250	NEW-P	94-06-008	246-450-001	REP-P	94-09-026	246-818-020	AMD-P	94-06-046
246-291-260	NEW-P	94-06-008	246-450-010	REP-P	94-09-026	246-818-990	REP	94-02-058
246-291-270	NEW-P	94-06-008	246-450-020	REP-P	94-09-026	246-818-991	NEW	94-02-058
246-291-300	NEW-P	94-06-008	246-450-030	REP-P	94-09-026	246-824-200	NEW-P	94-02-057
246-291-310	NEW-P	94-06-008	246-450-040	REP-P	94-09-026	246-824-210	NEW-P	94-02-057
246-291-320	NEW-P	94-06-008	246-450-050	REP-P	94-09-026	246-824-220	NEW-P	94-02-057
246-291-330	NEW-P	94-06-008	246-450-060	REP-P	94-09-026	246-824-220	NEW	94-06-047
246-291-340	NEW-P	94-06-008	246-450-070	REP-P	94-09-026	246-824-230	NEW-P	94-02-057
246-291-350	NEW-P	94-06-008	246-450-080	REP-P	94-09-026	246-824-230	NEW	94-06-047
246-291-360	NEW-P	94-06-008	246-450-090	REP-P	94-09-026	246-824-990	AMD-P	94-05-032
246-291-370	NEW-P	94-06-008	246-450-100	REP-P	94-09-026	246-824-990	AMD	94-08-078
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246-292-010	AMD	94-04-004	246-451-010	AMD-P	94-09-026	246-828-060	AMD-P	94-08-037
246-292-020	AMD	94-04-004	246-451-020	AMD-P	94-09-026	246-828-065	NEW-P	94-08-037
246-292-030	AMD	94-04-004	246-451-030	AMD-P	94-09-026	246-828-070	AMD-P	94-08-037
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246-292-050	AMD	94-04-004	246-451-050	AMD-P	94-09-026	246-830-010	NEW-P	94-06-045
246-292-055	NEW	94-04-004	246-451-060	AMD-P	94-09-026	246-830-030	REP-P	94-05-080
246-292-060	AMD	94-04-004	246-452-001	REP-P	94-09-026	246-830-035	NEW-P	94-05-080
246-292-070	AMD	94-04-004	246-452-010	REP-P	94-09-026	246-830-255	NEW-P	94-06-045
246-292-075	NEW	94-04-004	246-452-020	REP-P	94-09-026	246-830-280	NEW-P	94-05-080
246-292-080	AMD	94-04-004	246-452-030	REP-P	94-09-026	246-830-290	NEW-P	94-05-080
246-292-090	AMD	94-04-004	246-452-040	REP-P	94-09-026	246-830-410	AMD-P	94-06-045
246-292-100	AMD	94-04-004	246-452-050	REP-P	94-09-026	246-830-430	AMD-P	94-06-045
246-292-110	AMD	94-04-004	246-452-060	REP-P	94-09-026	246-830-460	NEW-P	94-05-080
246-292-120	REP	94-04-004	246-452-070	REP-P	94-09-026	246-830-465	NEW-P	94-05-080
246-292-130	REP	94-04-004	246-452-080	REP-P	94-09-026	246-830-470	NEW-P	94-05-080
246-292-140	REP	94-04-004	246-453-001	AMD-P	94-09-026	246-830-475	NEW-P	94-05-080
246-292-150	REP	94-04-004	246-453-010	AMD-P	94-09-026	246-830-480	NEW-P	94-05-080
246-292-160	NEW	94-04-004	246-453-050	AMD-P	94-09-026	246-830-485	NEW-P	94-05-080
246-292-170	NEW	94-04-004	246-453-070	AMD-P	94-09-026	246-838-040	AMD-P	94-05-033
246-292-990	REP	94-04-004	246-453-090	AMD-P	94-09-026	246-838-040	AMD	94-08-050
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388-29-005	REP	94-09-001	388-29-005	REP	94-09-001
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388-29-010	REP	94-09-001	388-29-010	REP	94-09-001
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388-29-080	REP	94-09-001	388-29-080	REP	94-09-001
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388-29-110	REP-P	94-06-035	388-29-110	REP-P	94-06-035
388-29-110	REP	94-09-001	388-29-110	REP	94-09-001
388-29-112	REP-P	94-06-035	388-29-112	REP-P	94-06-035
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388-85-105	REP-P	94-07-114	388-96-134	AMD-P	94-07-109	388-212-1000	NEW-P	94-07-114
388-85-110	REP-P	94-07-114	388-96-217	AMD-P	94-07-109	388-212-1050	NEW-P	94-07-114
388-85-115	REP-P	94-07-114	388-96-221	AMD-P	94-07-109	388-212-1100	NEW-P	94-07-114
388-86-030	AMD-C	94-04-031	388-96-226	AMD-P	94-07-109	388-212-1140	NEW-P	94-07-114
388-86-030	AMD-C	94-05-044	388-96-228	AMD-P	94-07-109	388-212-1150	NEW-P	94-07-114
388-86-030	AMD-C	94-07-021	388-96-525	AMD-P	94-07-109	388-212-1200	NEW-P	94-07-114
388-86-030	AMD	94-07-122	388-96-533	AMD-P	94-07-109	388-212-1250	NEW-P	94-07-114
388-86-040	REP-C	94-05-043	388-96-534	AMD-P	94-07-109	388-215-1000	NEW-P	94-07-114
388-86-040	REP	94-07-022	388-96-559	AMD-P	94-07-109	388-215-1025	NEW-P	94-07-114
388-86-04001	NEW-C	94-05-043	388-96-565	AMD-P	94-07-109	388-215-1050	NEW-P	94-07-114
388-86-04001	NEW	94-07-022	388-96-585	AMD-P	94-07-109	388-215-1060	NEW-P	94-07-114
388-86-045	AMD	94-03-052	388-96-704	AMD-P	94-07-109	388-215-1070	NEW-P	94-07-114
388-86-073	AMD-P	94-04-022	388-96-707	REP-P	94-07-109	388-215-1080	NEW-P	94-07-114
388-86-073	AMD-E	94-04-023	388-96-709	AMD-P	94-07-109	388-215-1100	NEW-P	94-07-114
388-86-073	AMD	94-07-030	388-96-710	AMD-P	94-07-109	388-215-1110	NEW-P	94-07-114
388-86-090	AMD-P	94-04-022	388-96-719	AMD-P	94-07-109	388-215-1120	NEW-P	94-07-114
388-86-090	AMD-E	94-04-023	388-96-721	REP-P	94-07-109	388-215-1200	NEW-P	94-07-114
388-86-090	AMD	94-07-030	388-96-722	AMD-P	94-07-109	388-215-1225	NEW-P	94-07-114
388-86-098	AMD-P	94-04-022	388-96-727	AMD-P	94-07-109	388-215-1230	NEW-P	94-07-114
388-86-098	AMD-E	94-04-023	388-96-735	AMD-P	94-07-109	388-215-1245	NEW-P	94-07-114
388-86-098	AMD	94-07-030	388-96-737	AMD-P	94-07-109	388-215-1300	NEW-P	94-07-114
388-87-300	REP-E	94-08-045	388-96-745	AMD-P	94-07-109	388-215-1320	NEW-P	94-07-114
388-87-300	REP-P	94-08-046	388-96-753	NEW-P	94-07-109	388-215-1325	NEW-P	94-07-114
388-92-005	REP-P	94-07-114	388-96-754	AMD-P	94-07-109	388-215-1330	NEW-P	94-07-114
388-92-015	REP-P	94-07-114	388-96-763	AMD-P	94-07-109	388-215-1335	NEW-P	94-07-114
388-92-025	REP-P	94-07-114	388-96-774	AMD-P	94-07-109	388-215-1340	NEW-P	94-07-114
388-92-027	REP-P	94-07-114	388-96-776	NEW-P	94-07-109	388-215-1345	NEW-P	94-07-114
388-92-030	REP-P	94-07-114	388-96-777	NEW-P	94-07-109	388-215-1350	NEW-P	94-07-114
388-92-034	REP-P	94-07-114	388-96-904	AMD-P	94-07-109	388-215-1355	NEW-P	94-07-114
388-92-036	REP-P	94-07-114	388-99-005	REP-P	94-07-114	388-215-1360	NEW-P	94-07-114
388-92-036	AMD-E	94-08-041	388-99-010	REP-P	94-07-114	388-215-1365	NEW-P	94-07-114
388-92-036	AMD-P	94-08-042	388-99-011	REP-P	94-07-114	388-215-1370	NEW-P	94-07-114
388-92-040	REP-P	94-07-114	388-99-015	REP-P	94-07-114	388-215-1375	NEW-P	94-07-114
388-92-041	AMD-E	94-05-027	388-99-020	REP-P	94-07-114	388-215-1380	NEW-P	94-07-114
388-92-041	AMD-P	94-05-028	388-99-030	REP-P	94-07-114	388-215-1385	NEW-P	94-07-114
388-92-041	REP-P	94-07-114	388-99-035	REP-P	94-07-114	388-215-1390	NEW-P	94-07-114
388-92-041	AMD	94-07-131	388-99-036	REP-P	94-07-114	388-215-1400	NEW-P	94-07-114
388-92-045	REP-P	94-07-114	388-99-040	REP-P	94-07-114	388-215-1410	NEW-P	94-07-114
388-92-050	REP-P	94-07-114	388-99-050	REP-P	94-07-114	388-215-1420	NEW-P	94-07-114
388-93-005	REP-P	94-07-114	388-99-055	REP-P	94-07-114	388-215-1430	NEW-P	94-07-114
388-93-010	REP-P	94-07-114	388-99-060	REP-P	94-07-114	388-215-1440	NEW-P	94-07-114
388-93-015	REP-P	94-07-114	388-100-001	REP-P	94-07-114	388-215-1450	NEW-P	94-07-114
388-93-020	REP-P	94-07-114	388-100-005	REP-P	94-07-114	388-215-1460	NEW-P	94-07-114
388-93-025	REP-P	94-07-114	388-100-010	REP-P	94-07-114	388-215-1470	NEW-P	94-07-114
388-93-030	REP-P	94-07-114	388-100-015	REP-P	94-07-114	388-215-1480	NEW-P	94-07-114
388-93-035	REP-P	94-07-114	388-100-020	REP-P	94-07-114	388-215-1490	NEW-P	94-07-114
388-93-040	REP-P	94-07-114	388-100-025	REP-P	94-07-114	388-215-1500	NEW-P	94-07-114
388-93-045	REP-P	94-07-114	388-100-030	REP-P	94-07-114	388-215-1520	NEW-P	94-07-114
388-93-050	REP-P	94-07-114	388-100-035	REP-P	94-07-114	388-215-1540	NEW-P	94-07-114
388-93-055	REP-P	94-07-114	388-200-1050	NEW-P	94-07-114	388-215-1560	NEW-P	94-07-114
388-93-060	REP-P	94-07-114	388-200-1100	NEW-P	94-07-114	388-215-1600	NEW-P	94-07-114
388-93-065	REP-P	94-07-114	388-200-1150	NEW-P	94-07-114	388-215-1610	NEW-P	94-07-114
388-93-075	REP-P	94-07-114	388-200-1160	NEW-P	94-07-114	388-215-1620	NEW-P	94-07-114
388-93-080	REP-P	94-07-114	388-200-1200	NEW-P	94-07-114	388-215-1650	NEW-P	94-07-114
388-95-300	REP-P	94-07-114	388-200-1250	NEW-P	94-07-114	388-216-2000	NEW-P	94-07-114
388-95-310	REP-P	94-07-114	388-210-1000	NEW-P	94-07-114	388-216-2050	NEW-P	94-07-114
388-95-320	REP-P	94-07-114	388-210-1010	NEW-P	94-07-114	388-216-2075	NEW-P	94-07-114
388-95-335	REP-P	94-07-114	388-210-1020	NEW-P	94-07-114	388-216-2100	NEW-P	94-07-114
388-95-337	AMD-P	94-05-025	388-210-1050	NEW-P	94-07-114	388-216-2150	NEW-P	94-07-114
388-95-337	REP-P	94-07-114	388-210-1100	NEW-P	94-07-114	388-216-2200	NEW-P	94-07-114
388-95-337	AMD	94-07-130	388-210-1200	NEW-P	94-07-114	388-216-2250	NEW-P	94-07-114
388-95-340	REP-P	94-07-114	388-210-1220	NEW-P	94-07-114	388-216-2300	NEW-P	94-07-114
388-95-340	AMD-E	94-08-041	388-210-1230	NEW-P	94-07-114	388-216-2350	NEW-P	94-07-114
388-95-340	AMD-P	94-08-042	388-210-1250	NEW-P	94-07-114	388-216-2450	NEW-P	94-07-114
388-95-360	REP-P	94-07-114	388-210-1300	NEW-P	94-07-114	388-216-2500	NEW-P	94-07-114
388-95-360	AMD-E	94-08-043	388-210-1310	NEW-P	94-07-114	388-216-2550	NEW-P	94-07-114
388-95-360	AMD-P	94-08-044	388-210-1320	NEW-P	94-07-114	388-216-2560	NEW-P	94-07-114
388-95-380	REP-P	94-07-114	388-210-1330	NEW-P	94-07-114	388-216-2570	NEW-P	94-07-114
388-95-390	REP-P	94-07-114	388-210-1340	NEW-P	94-07-114	388-216-2580	NEW-P	94-07-114
388-95-395	REP-P	94-07-114	388-210-1350	NEW-P	94-07-114	388-216-2590	NEW-P	94-07-114
388-95-400	REP-P	94-07-114	388-210-1400	NEW-P	94-07-114	388-216-2600	NEW-P	94-07-114

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WAC #		WSR #	WAC #		WSR #	WAC #		WSR #
388-270-1150	NEW	94-05-045	388-508-0830	NEW-P	94-07-114	388-521-2160	NEW-P	94-07-114
388-270-1200	NEW	94-05-045	388-508-0835	NEW-P	94-07-114	388-521-2170	NEW-P	94-07-114
388-270-1250	NEW	94-05-045	388-508-0840	NEW-P	94-07-114	388-522-2205	NEW-P	94-07-114
388-270-1300	NEW	94-05-045	388-509-0905	NEW-P	94-07-114	388-522-2210	NEW-P	94-07-114
388-270-1400	NEW	94-05-045	388-509-0910	NEW-P	94-07-114	388-522-2230	NEW-P	94-07-114
388-270-1500	NEW	94-05-045	388-509-0920	NEW-P	94-07-114	388-523-2305	NEW-P	94-07-114
388-270-1550	NEW	94-05-045	388-509-0940	NEW-P	94-07-114	388-523-2320	NEW-P	94-07-114
388-270-1600	NEW	94-05-045	388-509-0960	NEW-P	94-07-114	388-524-2405	NEW-P	94-07-114
388-275-0010	NEW	94-04-033	388-509-0970	NEW-P	94-07-114	388-524-2420	NEW-P	94-07-114
388-275-0020	NEW	94-04-033	388-510-1020	NEW-P	94-07-114	388-525-2505	NEW-P	94-07-114
388-275-0030	NEW	94-04-033	388-510-1030	NEW-P	94-07-114	388-525-2520	NEW-P	94-07-114
388-275-0040	NEW	94-04-033	388-511-1105	NEW-P	94-07-114	388-525-2570	NEW-P	94-07-114
388-275-0050	NEW	94-04-033	388-511-1110	NEW-P	94-07-114	388-526-2610	NEW-P	94-07-114
388-275-0060	NEW	94-04-033	388-511-1115	NEW-P	94-07-114	388-527-2710	NEW-P	94-07-114
388-275-0070	NEW	94-04-033	388-511-1130	NEW-P	94-07-114	388-527-2720	NEW-P	94-07-114
388-275-0080	NEW	94-04-033	388-511-1140	NEW-P	94-07-114	388-528-2810	NEW-P	94-07-114
388-275-0090	NEW	94-04-033	388-511-1150	NEW-P	94-07-114	388-529-2910	NEW-P	94-07-114
388-500-0005	NEW-P	94-07-114	388-511-1160	NEW-P	94-07-114	388-529-2920	NEW-P	94-07-114
388-501-0105	NEW-P	94-07-114	388-511-1170	NEW-P	94-07-114	388-529-2930	NEW-P	94-07-114
388-501-0110	NEW-P	94-07-114	388-512-1210	NEW-P	94-07-114	388-529-2940	NEW-P	94-07-114
388-501-0125	NEW-P	94-07-114	388-512-1215	NEW-P	94-07-114	388-529-2950	NEW-P	94-07-114
388-501-0130	NEW-P	94-07-114	388-512-1220	NEW-P	94-07-114	388-529-2960	NEW-P	94-07-114
388-501-0135	NEW-P	94-07-114	388-512-1225	NEW-P	94-07-114	388-538-110	AMD	94-04-038
388-501-0140	NEW-P	94-07-114	388-512-1230	NEW-P	94-07-114	390-05-235	AMD-P	94-07-088
388-501-0150	NEW-P	94-07-114	388-512-1235	NEW-P	94-07-114	390-12-010	AMD	94-05-010
388-501-0160	NEW-P	94-07-114	388-512-1240	NEW-P	94-07-114	390-14-040	AMD	94-05-010
388-501-0165	NEW-P	94-07-114	388-512-1245	NEW-P	94-07-114	390-16-011	AMD	94-05-011
388-501-0170	NEW-P	94-07-114	388-512-1250	NEW-P	94-07-114	390-16-012	AMD	94-05-011
388-501-0175	NEW-P	94-07-114	388-512-1255	NEW-P	94-07-114	390-16-031	AMD	94-05-011
388-501-0180	NEW-P	94-07-114	388-512-1260	NEW-P	94-07-114	390-16-032	AMD	94-05-011
388-501-0190	NEW-P	94-07-114	388-512-1265	NEW-P	94-07-114	390-16-033	AMD	94-05-011
388-501-0195	NEW-P	94-07-114	388-512-1275	NEW-P	94-07-114	390-16-041	AMD	94-05-011
388-502-0205	NEW-P	94-07-114	388-512-1280	NEW-P	94-07-114	390-16-050	AMD	94-05-011
388-502-0210	NEW-P	94-07-114	388-513-1305	NEW-P	94-07-114	390-16-071	NEW-E	94-07-001
388-502-0220	NEW-P	94-07-114	388-513-1310	NEW-P	94-07-114	390-16-071	NEW-P	94-07-035
388-502-0230	NEW-P	94-07-114	388-513-1315	NEW-P	94-07-114	390-16-207	AMD-P	94-07-035
388-502-0250	NEW-P	94-07-114	388-513-1320	NEW-P	94-07-114	390-16-238	NEW-P	94-05-097
388-503-0305	NEW-P	94-07-114	388-513-1330	NEW-P	94-07-114	390-16-238	NEW	94-07-141
388-503-0310	NEW-P	94-07-114	388-513-1340	NEW-P	94-07-114	390-16-245	NEW-P	94-05-097
388-503-0320	NEW-P	94-07-114	388-513-1345	NEW-P	94-07-114	390-16-245	NEW	94-07-141
388-503-0350	NEW-P	94-07-114	388-513-1350	NEW-P	94-07-114	390-16-300	AMD-P	94-05-097
388-503-0370	NEW-P	94-07-114	388-513-1360	NEW-P	94-07-114	390-16-308	AMD-P	94-07-035
388-504-0405	NEW-P	94-07-114	388-513-1365	NEW-P	94-07-114	390-16-308	AMD-P	94-07-088
388-504-0410	NEW-P	94-07-114	388-513-1380	NEW-P	94-07-114	390-16-308	AMD-W	94-07-089
388-504-0420	NEW-P	94-07-114	388-513-1395	NEW-P	94-07-114	390-16-309	NEW-E	94-07-001
388-504-0430	NEW-P	94-07-114	388-513-1396	NEW-P	94-07-114	390-16-309	NEW-P	94-07-035
388-504-0440	NEW-P	94-07-114	388-515-1505	NEW-P	94-07-114	390-16-309	NEW-W	94-08-080
388-504-0450	NEW-P	94-07-114	388-515-1510	NEW-P	94-07-114	390-16-310	AMD-P	94-07-035
388-504-0460	NEW-P	94-07-114	388-515-1530	NEW-P	94-07-114	390-16-310	AMD-P	94-07-088
388-504-0470	NEW-P	94-07-114	388-517-1710	NEW-P	94-07-114	390-16-310	AMD-W	94-07-089
388-504-0480	NEW-P	94-07-114	388-517-1715	NEW-P	94-07-114	390-16-311	NEW-P	94-07-142
388-504-0485	NEW-P	94-07-114	388-517-1720	NEW-P	94-07-114	390-16-315	AMD-P	94-05-097
388-505-0501	NEW-P	94-07-114	388-517-1730	NEW-P	94-07-114	390-16-324	NEW-P	94-03-087
388-505-0505	NEW-P	94-07-114	388-517-1740	NEW-P	94-07-114	390-16-324	NEW-W	94-04-121
388-505-0510	NEW-P	94-07-114	388-517-1750	NEW-P	94-07-114	390-17-071	NEW	94-05-010
388-505-0520	NEW-P	94-07-114	388-517-1760	NEW-P	94-07-114	390-17-300	AMD-P	94-03-087
388-505-0530	NEW-P	94-07-114	388-518-1805	NEW-P	94-07-114	390-17-300	AMD-W	94-04-121
388-505-0540	NEW-P	94-07-114	388-518-1810	NEW-P	94-07-114	390-17-300	AMD	94-07-141
388-505-0560	NEW-P	94-07-114	388-518-1820	NEW-P	94-07-114	390-17-315	AMD-P	94-03-087
388-505-0570	NEW-P	94-07-114	388-518-1830	NEW-P	94-07-114	390-17-315	AMD-W	94-04-121
388-505-0580	NEW-P	94-07-114	388-518-1840	NEW-P	94-07-114	390-17-315	AMD	94-07-141
388-505-0590	NEW-P	94-07-114	388-518-1850	NEW-P	94-07-114	390-17-320	NEW-P	94-07-035
388-505-0595	NEW-P	94-07-114	388-519-1905	NEW-P	94-07-114	390-17-405	NEW-P	94-07-142
388-506-0610	NEW-P	94-07-114	388-519-1910	NEW-P	94-07-114	390-20-148	NEW-P	94-07-035
388-506-0620	NEW-P	94-07-114	388-519-1930	NEW-P	94-07-114	390-20-052	AMD-P	94-07-035
388-506-0630	NEW-P	94-07-114	388-519-1950	NEW-P	94-07-114	390-24-030	REP	94-05-010
388-507-0710	NEW-P	94-07-114	388-521-2105	NEW-P	94-07-114	390-24-031	REP	94-05-010
388-507-0720	NEW-P	94-07-114	388-521-2110	NEW-P	94-07-114	390-24-160	AMD	94-05-010
388-507-0730	NEW-P	94-07-114	388-521-2120	NEW-P	94-07-114	390-37-070	AMD	94-05-010
388-507-0740	NEW-P	94-07-114	388-521-2130	NEW-P	94-07-114	390-37-105	AMD	94-05-010
388-508-0805	NEW-P	94-07-114	388-521-2140	NEW-P	94-07-114	390-37-142	AMD	94-05-010
388-508-0810	NEW-P	94-07-114	388-521-2150	NEW-P	94-07-114	392-127-700	REP	94-04-096
388-508-0820	NEW-P	94-07-114	388-521-2155	NEW-P	94-07-114	392-127-703	REP	94-04-096

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392-127-710	REP	94-04-096	392-157-170	NEW	94-04-097	392-330-070	NEW-P	94-08-074
392-127-715	REP	94-04-096	392-157-175	NEW	94-04-097	392-330-080	NEW-P	94-08-074
392-127-720	REP	94-04-096	392-157-180	NEW	94-04-097	415-02-030	AMD-P	94-05-012
392-127-725	REP	94-04-096	392-163-400	AMD-P	94-04-094	415-02-030	AMD	94-09-039
392-127-730	REP	94-04-096	392-163-400	AMD	94-07-103	415-02-110	NEW-P	94-05-012
392-127-735	REP	94-04-096	392-163-405	AMD-P	94-04-094	415-02-110	NEW	94-09-039
392-127-740	REP	94-04-096	392-163-405	AMD	94-07-103	415-100-190	NEW-P	94-07-143
392-127-745	REP	94-04-096	392-163-440	AMD-P	94-04-094	415-104-111	NEW-P	94-05-013
392-127-750	REP	94-04-096	392-163-440	AMD	94-07-103	415-104-111	NEW	94-09-040
392-127-755	REP	94-04-096	392-163-445	AMD-P	94-04-094	415-108-010	AMD-P	94-07-144
392-127-760	REP	94-04-096	392-163-445	AMD	94-07-103	415-108-510	AMD-P	94-07-144
392-127-765	REP	94-04-096	392-163-530	AMD-P	94-04-094	415-108-530	NEW-P	94-07-144
392-127-770	REP	94-04-096	392-163-530	AMD	94-07-103	415-108-540	NEW-P	94-07-144
392-127-775	REP	94-04-096	392-163-580	AMD-P	94-04-094	415-108-550	NEW-P	94-08-087
392-127-780	REP	94-04-096	392-163-580	AMD	94-07-103	415-108-560	NEW-P	94-08-087
392-127-785	REP	94-04-096	392-169-005	NEW	94-04-095	415-108-570	NEW-P	94-08-087
392-127-790	REP	94-04-096	392-169-010	NEW	94-04-095	415-108-580	NEW-P	94-05-013
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			group A public water systems	PROP	94-08-075
			group B public water systems	PROP	94-06-008

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water works operator certification	PERM	94-04-004	reinsurance agreements	PROP	94-05-089
HIGHER EDUCATION COORDINATING BOARD			Health insurance reform short term form modification	PROP	94-08-013
Award for excellence in education program	PROP	94-09-061		PROP	94-02-065
Degree Authorization Act				PROP	94-03-048
administration and governance	PROP	94-06-018	portability	PROP	94-03-085
Meetings	MISC	94-03-049		PROP	94-02-065
	MISC	94-09-044		PROP	94-03-048
Running start program	PROP	94-01-112		EMER	94-03-084
	PROP	94-04-093		PROP	94-03-085
State work-study program	PROP	94-09-058		PROP	94-04-126
Washington scholars program	PROP	94-09-060		PROP	94-08-006
			rate limitations	PERM	94-08-060
HIGHLINE COMMUNITY COLLEGE				PROP	94-02-065
Meetings	MISC	94-04-071	renewability	PROP	94-03-048
				PROP	94-03-085
HISPANIC AFFAIRS, COMMISSION ON				PROP	94-02-065
Meetings	MISC	94-04-127	unfair practices	PROP	94-03-048
	MISC	94-08-003	Health maintenance organizations	EMER	94-03-084
	MISC	94-09-063	custodial care benefits	PROP	94-03-085
			participating provider contracts	PROP	94-02-065
HORSE RACING COMMISSION			preexisting condition limitations, restrictions	PROP	94-03-084
Association officials and employees				PROP	94-03-085
duties	PROP	94-09-003	Life insurance	PROP	94-02-065
testing	PROP	94-09-003	accelerated benefits	PROP	94-05-056
Definitions	PROP	94-09-003	reinsurance agreements	PROP	94-01-075
Exacta rules	PROP	94-05-076		PROP	94-04-125
Licenses			Long-term care insurance	PERM	94-08-081
duration	PERM	94-04-002	home health care	PROP	94-05-071
Medication testing program	PERM	94-04-002	inflation protection	PROP	94-05-089
Practice and procedure	PROP	94-09-003	preproposal comments	PROP	94-08-013
Quinella rules	PROP	94-05-077	standards	PROP	94-09-050
Race results, transmission	PERM	94-04-003	Malpractice insurance	PROP	94-09-050
Racing rules	PROP	94-09-003	midwifery and birthing centers		
Trifecta rules	PROP	94-05-075	Midwifery and birthing centers malpractice joint underwriting authority	PERM	94-02-053
				PROP	94-09-049
HUMAN RIGHTS COMMISSION			INTEREST RATES		
Disability discrimination	PROP	94-04-087	(See inside front cover)		
Meetings	MISC	94-01-119	INVESTMENT BOARD		
	MISC	94-01-120	Meetings	MISC	94-04-019
	MISC	94-03-083			
	MISC	94-05-087	JUDICIAL CONDUCT, COMMISSION ON		
	MISC	94-06-002	Meetings	MISC	94-01-050
	MISC	94-07-118		MISC	94-01-051
	MISC	94-09-037	LABOR AND INDUSTRIES, DEPARTMENT OF		
Preemployment inquiries	PROP	94-04-087	Boiler rules, board of		
Pregnancy discrimination	PROP	94-04-087	meetings	MISC	94-01-015
Sex discrimination	PROP	94-04-087	small electric boilers, exemption from rules	EMER	94-04-006
				PROP	94-05-072
HYDRAULIC APPEALS BOARD			Crime victims compensation		
Rules of procedure	EMER	94-07-059	mental health treatment fees and rules	PERM	94-02-015
	PROP	94-07-096	Electrical board		
			meetings	MISC	94-02-055
INDETERMINATE SENTENCE REVIEW BOARD			Electrical installations		
Rules coordinator	MISC	94-02-067	wiring and apparatus	PERM	94-01-005
			Electricians		
INSURANCE COMMISSIONER, OFFICE OF			journeyman electricians		
Annuities	PROP	94-05-057	certificate of competency	PERM	94-01-005
Audited financial statements	PROP	94-01-192	Fees	PERM	94-01-100
	PERM	94-04-045	Medical and mental health treatment fees and rules	PERM	94-02-015
Financial statements	PROP	94-01-192	Occupational health standards		
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Health care service contractors				PERM	94-07-086
custodial care benefits	PROP	94-05-056	tobacco smoke in offices	PERM	94-07-086
participating provider contracts	PROP	94-01-075			
preexisting condition limitations, restrictions	PROP	94-04-125			
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	PERM	94-08-081			

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Safety and health standards				MISC	94-09-053
agriculture	PROP	94-01-186	Vessels		
	EMER	94-06-044	fees	PROP	94-03-018
	PERM	94-06-068	registration and certificate of title	PROP	94-03-018
Workers' compensation			LIQUOR CONTROL BOARD		
classifications	PROP	94-07-128	Booths	PROP	94-07-125
	PROP	94-07-129	Breweries		
general	PROP	94-01-186	retail sale of beer on premises	PROP	94-02-013
health care providers' reimbursement	PERM	94-02-045		PROP	94-06-021
	PERM	94-03-008	retailers' brewery license	PROP	94-02-013
logging or tree thinning,				PROP	94-06-021
mechanized operations	PROP	94-06-055	Licenseses		
medical aid rules and fee schedule	PROP	94-07-126	fetal alcohol syndrome or fetal alcohol effect		
rates and rating system	PROP	94-07-127	warning signs	PROP	94-05-094
respiratory impairment, evaluation	PERM	94-03-073		PROP	94-08-029
self-insurance			hours of operation	PROP	94-05-096
certification	PROP	94-03-006		PERM	94-08-031
	PERM	94-05-042	liquor possession by person under the		
employee rights	PROP	94-03-006	influence prohibited	PROP	94-05-093
	PERM	94-05-042		PERM	94-08-030
surety	PROP	94-03-006	private wine shipper's licenses fees	PROP	94-07-124
	PERM	94-05-042	Private clubs		
LAKE WASHINGTON TECHNICAL COLLEGE			advertising	PROP	94-02-014
Meetings	MISC	94-01-052		PERM	94-06-022
	MISC	94-03-016	Public records, availability	PERM	94-03-060
LEGAL FOUNDATION OF WASHINGTON			Ships chandler		
Meetings	MISC	94-04-008	definition	PROP	94-05-095
	MISC	94-07-057		PERM	94-08-032
LICENSING, DEPARTMENT OF			purchase and receipt of beer and wine	PROP	94-05-095
Cemetery board				PERM	94-08-032
fees	PERM	94-01-117	Tobacco products		
Escrow commission			sales	PROP	94-08-010
escrow officer, responsibilities	PERM	94-04-050		PROP	94-08-023
organization and operation	PERM	94-04-050	Wineries		
meetings	MISC	94-02-018	retail sale of wine on premises	PROP	94-02-013
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applications	PROP	94-07-037		PROP	94-06-021
requirements	PROP	94-07-037	LOTTERY COMMISSION		
Landscape architects			<u>Instant game number 114 - Wildcard</u>		
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	PERM	94-04-044	definitions	PERM	94-03-019
licenses			ticket validation	PERM	94-03-019
examination	PROP	94-01-047	<u>Instant game number 115 - Cash Roulette</u>		
	PERM	94-04-044	criteria	PERM	94-03-019
renewal	PROP	94-01-047	definitions	PERM	94-03-019
	PERM	94-04-044	ticket validation	PERM	94-03-019
Model traffic ordinance	PERM	94-01-082	<u>Instant game number 116 - Fortune</u>		
	PROP	94-09-002	criteria	PERM	94-03-019
Motor vehicles			definitions	PERM	94-03-019
driving under the influence			ticket validation	PERM	94-03-019
withholding ownership documents	PROP	94-08-057	<u>Instant game number 117 - Cash Crop</u>		
fleet vehicles			criteria	PERM	94-03-019
reciprocity and proration	PROP	94-02-025		PROP	94-07-116
model traffic ordinance	PERM	94-01-082	definitions	PERM	94-03-019
	PROP	94-09-002		PROP	94-07-116
special fuel, tax exemption			ticket validation	PERM	94-03-019
and refunds	PROP	94-02-075		PROP	94-07-116
	PROP	94-02-076	<u>Instant game number 118 - Aces Wild</u>		
title and registration advisory committee	MISC	94-01-111	criteria	PROP	94-03-099
unauthorized vehicles, procedures for				PERM	94-07-029
taking custody of	PROP	94-04-017	definitions	PROP	94-03-099
	PERM	94-08-025		PERM	94-07-029
unlicensed vehicle trip permits	PROP	94-07-036	ticket validation	PROP	94-03-099
Private security guards				PERM	94-07-029
licensing fees	PROP	94-09-018	<u>Instant game number 119 - Big Bucks</u>		
Real estate appraisers			criteria	PROP	94-03-099
residential classification	PERM	94-01-002		PERM	94-07-029
Real estate commission			definitions	PROP	94-03-099
meetings	MISC	94-02-018		PERM	94-07-029

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ticket validation	PROP	94-03-099	MINORITY AND WOMEN'S BUSINESS ENTERPRISES, OFFICE OF	
	PERM	94-07-029		Agencies and educational institutions plans, contents	PROP 94-01-164
<u>Instant game number 120 - Lucky Deal</u>				
criteria	PROP	94-03-099		PROP 94-08-110
	PERM	94-07-029		PROP 94-08-109
definitions	PROP	94-03-099	responsibilities	PROP 94-01-127
	PERM	94-07-029	Annual goals for participation	PROP 94-03-068
ticket validation	PROP	94-03-099		PERM 94-07-064
	PERM	94-07-029		
<u>Instant game number 121 - Hog Mania</u>			Certification	
criteria	PROP	94-03-099	applications	PROP 94-08-108
	PERM	94-07-029	fees	PROP 94-08-108
definitions	PROP	94-03-099	Contractors	
	PERM	94-07-029	violations and penalties	PROP 94-08-107
ticket validation	PROP	94-03-099	Fees	PROP 94-01-090
	PERM	94-07-029		PROP 94-01-187
				EMER 94-01-188
<u>Instant game number 122 - High Card</u>			Subcontractor, definition	PROP 94-08-107
criteria	PROP	94-07-116		
definitions	PROP	94-07-116		
ticket validation	PROP	94-07-116		
<u>Instant game number 123 - Holiday Cash</u>			MULTIMODAL TRANSPORTATION PROGRAMS AND PROJECTS SELECTION COMMITTEE	
criteria	PROP	94-07-116	(See GOVERNOR, OFFICE OF THE)	
definitions	PROP	94-07-116		
ticket validation	PROP	94-07-116	NATURAL RESOURCES, DEPARTMENT OF	
<u>Instant game number 124 - Queen of Hearts</u>			Burning permits	
criteria	PROP	94-07-116	fees	PROP 94-08-093
definitions	PROP	94-07-116	Forest closures	
ticket validation	PROP	94-07-116	closed season	EMER 94-09-020
<u>Instant game number 125 - Windfall</u>			Forest fire advisory board	
criteria	PROP	94-07-116	meetings	MISC 94-08-012
definitions	PROP	94-07-116	Forest practices board	
ticket validation	PROP	94-07-116	(see FOREST PRACTICES BOARD)	
<u>Instant game number 126 - Megamoney II</u>			Natural heritage advisory council	
criteria	PROP	94-07-116	meetings	MISC 94-03-070
definitions	PROP	94-07-116		MISC 94-09-059
ticket validation	PROP	94-07-116	Surface Mining Act	
Instant games			mine reclamation	PROP 94-09-062
criteria	PERM	94-03-020	Survey monuments	
effective date	MISC	94-07-028	removal or destruction	PROP 94-01-022
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Lotto			NORTHWEST AIR POLLUTION AUTHORITY	
prizes	PROP	94-03-099	Air contaminant sources	
	PERM	94-07-029	reporting	PERM 94-01-108
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On-line games			OLYMPIC COLLEGE	
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Retailers				MISC 94-02-085
effective date	MISC	94-07-028		MISC 94-07-046
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obligations	PERM	94-03-020		
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retailer settlement	PERM	94-03-020	Meetings	MISC 94-05-099
				MISC 94-06-052
MARINE EMPLOYEES' COMMISSION				MISC 94-07-069
Meetings	MISC	94-07-002	Rules coordinator	MISC 94-02-062
				MISC 94-06-006
MARINE OVERSIGHT BOARD			PARKS AND RECREATION COMMISSION	
Meetings	MISC	94-02-084	Aircraft	
	MISC	94-09-033	paragliders, prohibition exemption	PERM 94-01-087
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Bunkering standards	MISC	94-09-056	local government programs	PROP 94-01-149
Regional marine safety committees				PERM 94-04-076
meetings	MISC	94-01-110	Camping facilities	
	MISC	94-07-039	fees	PROP 94-03-097
Rules coordinator	MISC	94-02-021		PROP 94-06-010
				PERM 94-08-036
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Meetings	MISC	94-01-027		

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Fort Worden fees	PROP 94-01-150	State internship program	PERM 94-02-033
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aircraft prohibition, exemption	PERM 94-01-087	Washington general service, movement between	PROP 94-04-009
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		Meetings	MISC 94-02-017
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	MISC 94-05-098	Oil tankers	
Rules coordinator	MISC 94-04-026	tug escort requirements	PROP 94-04-119
			PERM 94-07-079
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Career executive program		Grays Harbor district	PROP 94-01-153
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Rules coordinator	MISC 94-01-160	POLLUTION CONTROL HEARINGS BOARD	
	MISC 94-06-001	Appeals	EMER 94-07-061
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phase in agencies	PROP 94-06-064	Contributions	
	PERM 94-09-012	annual report	EMER 94-07-001
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	PROP 94-09-065	encouraging expenditures to avoid contributions, result	MISC 94-01-054
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employer contributions	PROP	94-07-035	RENTON TECHNICAL COLLEGE		
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			eligibility and application for		
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DEPARTMENT OF)				PERM	94-07-049
			heat or steam sales	PROP	94-01-155
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duties and powers	PROP	94-02-083		PROP	94-03-047
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Emission standards			reporting	PROP	94-07-026
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